S.No.3

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
17-04-2026 AT 11:30 AM

CP(IB) No. 203/7/HDB/2024
u/s. 7 of IBC, 2016

IN THE MATTER OF:
Mr. Karne Ramesh Babu **…Financial Creditor**

AND

M/s. Kalzen Contech Pvt Ltd., **…Corporate Debtor**

C O R A M:-
SH. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SH. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

O R D E R

Present: Mr. Dishit Bhattacharjee, Ld. Counsel for the Financial Creditor.

Orders pronounced, recorded vide separate sheets.

In the result, this application is dismissed.

Sd/-	**Sd/-**
MEMBER (T)	**MEMBER (J)**

Sridher/siva

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – I, HYDERABAD

In Company Petition (IB) No. 203/7/HDB/ 2024

(Under Section 7 of Insolvency and Bankruptcy Code, 2016
read with Rule 4 of Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016)

IN THE MATTER OF KALZEN CONTECH PRIVATE LIMITED
(CORPORATE DEBTOR)

BETWEEN:
KARNE RAMESH BABU
S/o. KARNE RAJAMOULI,
Age:57
Occ: Business.
R/o. 3-10-66, Gokhalenagar, Ramnathpur,
Hyderabad- 500 013, Telangana ...Financial Creditor

VERSUS

KALZEN CONTECH PRIVATE LIMITED
#2-22-223/1/G1, Aruna Co-Op Society,
Sai Krupa Residency, Jayanagar,
KPHB Hyderabad - 500 072, Telangana
Also at:
E701, Trendest Winz, Financial District,
Nanakramguda, Hyderabad - 500032. ... Corporate Debtor

Date of Order: 17.04.2026

CORAM:-

SH. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)

SH. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

Counsels:

For the Applicant: Mr. Dishit Bhattacharjee, Advocate

for the Respondent: Mr. Srikanth Rathi, Advocate

ORDER

1. The present application under section 7 is filed by the Karne Ramesh Babu (herein after referred to as 'Petitioner' or 'Financial Creditor') Under section 7 of Insolvency and Bankruptcy Code, 2016 ("IBC") read with Rule 4 of Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 against Kalzen Contech Private Limited (herein after referred to as 'Respondent' or 'Corporate Debtor'), inter alia seeking initiation of Corporate Insolvency Resolution Process ("CIRP") for default of Rs.5,98,79,184/- (Five Crores Ninety-eight Lakhs Seventy-nine thousand and one hundred and eighty-four rupees only).

Petition:

1. It is submitted that, Corporate Debtor is a company engaged in the business of construction activities, and approached the Petitioner seeking financial assistance for its business operations. Pursuant to such request, the Financial Creditor extended financial assistance (with equity as security), from time to time through various modes, including transfers from his personal account, his firm's account, and cash payments, aggregating to a total sum of Rs. 1,98,61,990/- in the following manner:

Sl.No	Nature of Disbursement	Amount Disbursed
01.	From Personal Account of the Financial Creditor	Rs. 81,30,000/-
02.	From his own Firm's Account	Rs. 68,50,000/-
03.	Additional disbursed on demand	Rs. 36,31,990/-
04.	Amounts Deposited in Cash	Rs. 12,50,000/-
	Total	**Rs. 1,98,61,990/-**

2. According to the Petitioner, the aforesaid amounts were duly acknowledged by the Corporate Debtor as financial debt, inter alia, vide email dated 10.01.2023[1], wherein the Corporate Debtor undertook to repay the same within a period of 60–90 days. However, despite such acknowledgment and assurance, the Corporate Debtor failed to adhere to the agreed repayment terms.

3. Further, it is contended that, although certain part payments aggregating to Rs. 19,00,000/- were made by the Corporate Debtor, the substantial outstanding amount remained unpaid. In continuation thereof, the Corporate Debtor is stated to have issued a cheque for Rs. 30,00,000/- towards part repayment; however, the said cheque was dishonoured[2] upon presentation, thereby evidencing the continued default.

4. It is further contended that, a Memorandum of Agreement dated 20.06.2022[3] ("MoA") was executed between the parties, whereby the Corporate Debtor agreed to pay a premium amount of Rs. 3,00,00,000/- within a period of two years, i.e., on or before 20.06.2024, towards the investments, loans, and other value additions

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[1] Annexure-7 of the petition at page 74
[2] Annexure 9 of the petition at page 79 to 80
[3] Annexure 8 of the petition at page 76 to 78

made by the Financial Creditor. The Corporate Debtor has failed to honour the obligations arising under the said agreement as well.

5. In these circumstances, as per the Petitioner, the Corporate Debtor committed default in repayment of the loan, the date of default being 14.03.2023. Despite repeated reminders and follow-ups, the Corporate Debtor has failed to discharge its liability. As per the computation placed on record, the total amount in default, including interest calculated at 24% per annum, stands at Rs. 5,98,79,184/- in the following manner:

Sl. No.	Date	Details of Transfer	Principal Rs.	Period Outstanding	Interest Amount @ 24% pa	Total Rs.
1.	05-12-2020 to 20-04-2021	Direct Transfers from K Ramesh to Kalzen Contech (P) Ltd.	81,30,000/-	30 months	48,78,000/-	1,30,08,000/-
2.	18-03-2021 to 23-03-2021	Direct Transfers from K Ramesh through his firm AEI to Kalzen Contech(P) Ltd.	68,50,000/-	30 months	41,10,000/-	1,09,60,000/-
3.	10-11-2020 to 29-07-2021	Additional amounts disbursed on demand	36,31,990/-	30 months	21,79,194/-	58,11,184/-
4.	22-06-2021 To 12-07-2021	Cash deposits made by K Ramesh in to Kalzen Contech (P) Ltd.	12,50,000/-	30 months	7,50,000/-	20,00,000/-
5.	20-06-2024	Consolidated Premium Amount promised by Kalzen to Ramesh vide **Memorandum of Agreement** dt. 20-06-2022 due on 20-06-2024	3,00,00,000/-	-	-	3,00,00,000/-
		Total	4,98,61,990/-		1,19,17,194/-	6,17,79,184/-
	Amount received from Kalzen Contech (P) Ltd. on account Rs.					**1,19,17,194/-**
	Balance Amount due to K Ramesh from Kalzen Contech (P) Ltd. Rs.					**5,98,79,184/-**

6. It is further submitted that, an earlier petition filed under Section 7 of the IBC was rejected vide order dated 13.03.2024[4]; however, liberty was granted to file a fresh application. In pursuance of the said liberty, the present application has been filed.

Counter:

7. Respondent contends that the Petitioner has approached with unclean hands by suppressing material facts and selectively presenting facts to

[4] CP (IB) No. 275/7/HDB/2023

mislead this Adjudicating Authority for undue gain. According to the Respondent, the true nature of the transaction has been deliberately mischaracterized as a loan, whereas in substance, the same was an equity investment.

8. The Respondent submits that there was no loan transaction between the parties and no equity was ever offered as "security" for any alleged loan. On the contrary, the parties had entered into a Share Subscription Agreement and Shareholders' Agreement dated 30.11.2020[5] ("Shareholders Agreement"), pursuant to which the Petitioner agreed to subscribe to equity shares of the Corporate Debtor. It is submitted that the Petitioner had committed to invest a sum of Rs. 4,00,00,070/- towards subscription of shares, out of which only Rs. 72,00,000/- was infused, and the balance amount remains unpaid.

9. It is further contended that the amounts infused by the Petitioner were purely in the nature of capital contribution towards equity, and not a loan disbursed against consideration for time value of money. The said transaction, therefore, falls outside the ambit of "financial debt" as defined under Section 5(8) of the Code. For the same, the Respondent relied upon the decision of **Hon'ble NCLAT, Chennai in Nirej Vadakkedathu Paul & Ors. v. Sunstar Hotels & Estate Private Limited, Company Appeal (AT) (CH) (Ins.) No. 142 of 2022** and the decision of **Hon'ble NCLAT, New Delhi in Pramod Sharma vs Karanya Heartcare Pvt Ltd, Comp. App. (AT) (Ins.) No. 426 of 2022.**

10. The Respondent disputes that the quantum of claim, contending that the amount, if any, due from the Corporate Debtor is only to the extent of Rs. 81,30,000/-, and the remaining amounts alleged by the Petitioner are either unsupported by documentary evidence or pertain to third-party transactions, which are independent legal entities and have not

[5] Annexure – I at page 9 of the counter

approached this Adjudicating Authority. It is submitted that such third-party claims cannot be enforced by the Petitioner in the present proceedings.

11. It is also contended that the alleged MoA relied upon by the Petitioner is neither legally binding nor enforceable, and its execution is denied on grounds of coercion and non-compliance with legal requirements.

12. The Corporate Debtor has not committed any default. The payments of Rs. 15,00,000/- and Rs. 4,00,000/-, as relied upon by the Petitioner, are stated to be unrelated to any loan repayment and are instead connected with independent commercial transactions, including procurement of machinery and services.

13. The Respondent has additionally raised a preliminary objection that the present Petition is barred by the principle of res judicata, inasmuch as an earlier petition under Section 7 of IBC filed by the same Petitioner against the same Corporate Debtor on the same cause of action was rejected by this Adjudicating Authority.

Rejoinder:

14. Petitioner submits that in terms of Sections 5(7) and 7 of the IBC, a Financial Creditor is entitled to independently initiate CIRP. In the present case, the debt qualifies as a financial debt, and the Petitioner is therefore a Financial Creditor.

15. It is submitted that the Petitioner had extended financial assistance to the Corporate Debtor in the form of unsecured loans. Subsequently, the Corporate Debtor duly acknowledged the receipt of the said loans and undertook to repay an amount of Rs. 3,00,00,000/- by June, 2024.

16. Shareholders Agreement dated 30.11.2020 was executed for a proposed investment of Rs. 4,00,00,000/-, a sum of Rs. 2,00,00,000/- had

already been disbursed by the Petitioner to the Corporate Debtor. However, no shares were ever allotted against the said amount. The contention of the Corporate Debtor that only Rs. 72,00,000/- was paid is incorrect and misleading, being contrary to the MoA and the acknowledgment of debt, including interest, in the email dated 10.01.2023.

17. The Petitioner further submits that, to the extent the amount paid by the Petitioner towards share allotment was not converted into shares, the same is liable to be treated as a financial debt, as the funds were utilized for the Company's operations, thereby having a clear commercial effect of borrowing. The MoA also evidences that the amount is not a mere investment but a financial debt owed to the Financial Creditor.

18. It is re-iterated that, the Petitioner disbursed amounts in the form of loans from his personal accounts as well as from the account of his partnership firm, namely AEI Engineering, and the total amount due exceeds the threshold limit of Rs. 1,00,00,000/-. Additionally, the allegation of the Corporate Debtor that the MoA was executed under coercion is untenable, as no criminal complaint has been filed in this regard.

19. According to the Petitioner, the contention of the Corporate Debtor that the MoA is not legally enforceable is misconceived. It is a settled position that a duly executed Memorandum of Understanding containing a clear acknowledgment of debt and repayment obligation is binding in law. In this regard, reliance is placed on **Sri Harish B & Ors. vs. Hi-Tech AIPR Power Pvt. Ltd., CP(IB) No. 91/BB/2023**, wherein the Hon'ble NCLT, Bengaluru Bench held that an MoU, even in the absence of a formal loan agreement, is sufficient to establish a financial debt under the IBC.

20. The MoA clearly stipulates a repayment obligation, and the disbursal of funds by the Financial Creditor coupled with the assurance of repayment by the Corporate Debtor gives the transaction the commercial effect of a borrowing. Further, the Respondent has itself admitted in its reply that, based on the financial commitments and assurances of loan infusion by the Financial Creditor, it undertook various commercial commitments towards vendors, clients, and employees. This demonstrates that the Corporate Debtor treated the funds as borrowings and relied upon them for its operations, thereby imparting a commercial effect and bringing the transaction within the ambit of financial debt.

21. The Petitioner submits the principle of res judicata does not apply to the present case as the previous petition was dismissed not on merits of the case but on technical grounds.

Written Submissions by Petitioner

22. The Petitioner asserts that if a MoA, when duly signed by both the parties, containing a clear acknowledgment of debt and repayment obligations, is legally binding. The **NCLT, Bengaluru** in the matter of **Sri Harish B and ors vs Hi tech AIPR Power pvt Ltd, CP (IB) No. 91/BB/2023**, based on the decisions laid by the **Hon'ble NCLAT Delhi** in **Agarwal Polysacks Limited V K.K Agro Foods and storage Limited, 2023 SCC NCLAT 624** and in **Satish Balan Vs Neeta Navin Nagda & Anr, Company Appeal (AT) Insolvency No. 718/2023**, has held that a Memorandum of Understanding, even in the absence of a formal loan agreement, is sufficient to establish financial debt under the IBC. The Tribunal also observed that financial debt may be proved through other relevant documents.

23. According to the Petitioner, the existence of a repayment obligation and the benefit derived by the Corporate debtor are sufficient to bring such transactions within the scope of "financial debt" under the IBC and in

this regard the Petitioner has relied upon the decision of **Hon'ble NCLAT, New Delhi, in Shailesh Sangani vs Joel Cardoso & Anr, Company Appeal (AT) (Insolvency) No. 616 of 2018**, wherein the tribunal has held that even an interest-free unsecured loan advanced by a shareholder, director, or individual can qualify as a "financial debt" under Section 5(8)(f) of the Insolvency and Bankruptcy Code, 2016, if it has the commercial effect of a borrowing. It is further contended that in a similar situation, where the **NCLT, Hyderabad, in SMT Puspa Soni VS Jairam Foundry Pvt Ltd, CP (IB) No. 59/7/HDB/2022**, held that an unsecured loan given by the financial creditor to the corporate debtor also amounts to a financial debt.

24. Relying on the **Hon'ble Supreme Court of India, in Ebix Singapore Pvt. Ltd. v. CoC of Educomp Solutions Ltd. (2021 ibclaw.in 153 SC)**, it has been argued that the principle of res judicata applies only where an issue has been heard and finally decided on merits, whether on a question of law or fact between the same parties and arising from the same cause of action, and cannot be invoked merely because the issue had previously come up before a court.

25. We have gone through the entire record and have heard the learned Counsel appearing on behalf of the Applicant as well as the Respondent at length.

Findings:

26. Before we proceed to analyse the factual matrix of the present case, it is necessary to examine whether the present Petition is barred by the principle of *res judicata.*

27. As per the order passed by this Adjudicating Authority in **CP (IB) No. 275/7/HDB/2023** between the present Petitioner and the Respondent, the earlier petition came to be dismissed on account of certain procedural defects. The Petitioner had failed to file the record of default

in the prescribed Form D and had instead filed the same under Form C. It is also noted that proper notice was not served upon the Respondent. In view of these deficiencies, the earlier petition was dismissed.

28. In our considered view, such dismissal was on technical grounds and not on merits. Accordingly, the principle of *res judicata* does not apply to the present Petition. In this regard, reference may also be made to the decision of the **Hon'ble Supreme Court in *Ebix Singapore Pvt. Ltd. v. CoC of Educomp Solutions Ltd. & Anr., (2021) ibclaw.in 153 SC.***

> *174 The prayer for withdrawal of the Resolution Plan in the First Withdrawal Application was not substantial and one that the Court was bound to grant, since it was contingent upon a re-evaluation, which in itself was contingent upon receiving the information sought in prayers (i) and (ii). Since the latter two contingencies never arose, the NCLT did not apply its mind to the prayer for withdrawal independently. When it filed the Second Withdrawal Application, it was dismissed on a technical ground and not on its merits. When a revised Third Withdrawal Application was filed, the NCLT then adjudicated it on its merits and allowed it. Hence, since the NCLT did not adjudicate Ebix's prayer for withdrawal of their Resolution Plan on its merits while dismissing the First Withdrawal Application, the opportunity to seek the relief was not available to Ebix in a real sense. Therefore, we reverse the finding of the NCLAT on this issue and hold that Ebix's Third Withdrawal Application was not barred by res judicata.*

29. In the present Petition, the Petitioner asserts that a default has occurred in respect of a debt amounting to Rs. 5,98,79,184/-, allegedly arising on two occasions, i.e., on 14.03.2023 and 20.06.2024.

30. In relation to the earlier instance of alleged default, it is the case of the Petitioner that a sum of Rs. 1,98,61,990/- was disbursed to the Corporate Debtor as a loan. The said amount is stated to comprise Rs. 81,30,000/- transferred from the Petitioner's personal account, Rs. 68,50,000/- transferred from the account of the Petitioner's proprietary

concern, namely Associated Engineering Industries, Rs. 36,31,990/- incurred towards travel and accommodation expenses on demand, and Rs. 12,50,000/- paid in cash.

31. Regarding the same transaction, FIR (**Annexure -14**) dated 24.09.2024 was lodged by the Petitioner against Karthik Kodali, representative of the Corporate Debtor and others. The Petitioner stand in the FIR is contrary to the version given in the present Petition. In the FIR, it is mentioned that the transaction of Rs. 81,30,000/- was invested instead of granting loan as claimed in the Petition. Further, it is recorded in the FIR that Rs. 68,50,000/- was transferred from Associated Engineering Industries which is again contrary to the stand of the Petitioner in the present Petition. Similarly, the nature of the transactions of Rs. 36,31,990/- and Rs. 12,50,000/- are also different from the facts averred in the Petition. Thus, there are two versions of the Petitioner. The petitioner cannot wriggle out from his admission made in the FIR. Hence, it affects the veracity of the stand of the Petition.

32. Further, the MoA, which has been relied upon by the Petitioner to substantiate the alleged financial transaction, also fails to disclose any clause or covenant providing for the payment of interest. The absence of such a stipulation in the MoA clearly indicates that the transaction lacks the essential commercial element of borrowing, namely, consideration for the time value of money.

33. In view of the above, the nature of the disbursements, as reflected in the FIR, clearly contradicts the Petitioner's assertion that the said amounts were extended as a loan. Accordingly, we observe that a sum of Rs. 1,98,61,990/- was not disbursed to the Corporate Debtor as a loan but as an investment in the Respondent company.

34. In light of the aforesaid findings, it is evident that the amount of Rs. 1,98,61,990/- was infused as an investment in the Respondent Company and not as a loan. It is a settled position of law that amounts

invested towards equity participation or business ventures do not fall within the ambit of "financial debt" under Section 5(8) of the Insolvency and Bankruptcy Code, 2016, in the absence of disbursal against consideration for the time value of money.

35. In this regard, reliance is placed on the judgment of the Hon'ble NCLAT in **Pramod Sharma v. Karanaya Heart Care Pvt. Ltd**., **Company Appeal (AT) (Insolvency) No. 426 of 2022**, wherein it was held that:

> *5. Admittedly, the amount was given, as per the case of the Appellant, as a Share Application Money on which no share was allotted. Under some 3 Comp. App. (AT) (Ins.) No. 426 of 2022 settlement, the principal amount was refunded and thereafter, the Application under Section 7 was filed by the Appellant. We are of the view that the Adjudicating Authority rightly took the view that the amount which was given by the Appellant as Share Application Money cannot be treated to be a financial debt so as to enable the Appellant to trigger the Insolvency Process under Section 7 of the Code.*

36. Applying the aforesaid settled principle to the present case, the funds admittedly infused as an investment do not qualify for initiation of proceedings under Section 7 of the IBC. Accordingly, the amount of Rs. 1,98,61,990/- cannot be treated as a financial debt.

37. In the second instance, the Respondent under the MoA is stated to have promised to pay Rs. 3,00,00,000/- as a premium in recognition of the "investment made, loans raised, and other value additions" made by the Petitioner. The issue that arises for consideration is whether such a promise to pay a premium would fall within the definition of "financial debt" under Section 5(8) of the IBC.

38. As per Section 5(8) of IBC, for any amount to qualify as a "financial debt", there must be a disbursal of money against consideration for the time value of money. This essential requirement has been reiterated by the **Hon'ble NCLAT, New Delhi, in *M/s Meck Pharmaceuticals and***

***Chemicals Pvt. Ltd. vs. M/s Accurate Infrabuild Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No. 544 of 2024**, wherein it was held that:

> *12. Having taken cognizance of the above-cited statutory provisions of IBC and the two landmark judgements of the Hon'ble Apex Court, we can safely conclude that for any debt to be treated as financial debt, the pre-requisite is disbursal of money to the borrower for utilization by the borrower and that the disbursal must be against consideration for* ***time value of money*** *even if it is not interest-bearing. As to when a Financial Creditor who has disbursed money to a Corporate Debtor against consideration for time value of money can trigger the insolvency resolution process against the Corporate Debtor, as per the scheme of IBC, that stage arises when a default arises in that a debt which has become due, in fact and in law, but has not been paid in whole or part thereof.*

(emphasis supplied)

39. However, in the present case, the promise to pay a premium of Rs. 3,00,00,000/- does not qualify as financial debt as the amount has not been disbursed by the Petitioner for the use of the Respondent. Rather, it is a promise made by the Respondent in recognition of the investment, loan and other value additions made by the Petitioner. Therefore, Rs. 3,00,00,000/- does not satisfy the requirements of Section 5(8) of IBC.

40. In view of the foregoing discussion and findings, it is unequivocally established that the sum of Rs.1,98,61,990/-, along with the alleged interest @ 24% per annum (for which there has been no agreement between the parties), having been infused as an investment and not disbursed against consideration for the time value of money, does not fall within the ambit of "financial debt" as defined under Section 5(8) of IBC. Similarly, the amount of Rs. 3,00,00,000/-, being a mere promise to pay a premium in recognition of investment and other value additions, and not arising out of any disbursal for time value of money, also fails to satisfy the essential ingredients of a financial debt.

41. In the absence of any amount qualifying as a "financial debt," the Petitioner cannot be regarded as a "Financial Creditor" under Section

5(7) of the Code, and consequently, the initiation of proceedings under Section 7 is not maintainable.

42. Accordingly, the present Petition is dismissed and disposed of.

Sd/-	Sd/-
Sanjay Puri	**Rajeev Bhardwaj**
Member (Technical)	**Member (Judicial)**