

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

**MA-1387/2018 In CP No. 2051/I&BC/NCLT/MB/MAH/2018**

Nityank Infrapower & Multiventures Private Limited ..... Applicant

In the matter of

The Invex Private Limited .....Financial Creditor

V/s

Dome-bell Electronics India Private Limited .....Corporate Debtor/Respondent

**MA-2163/2019 In CP No. 2051/I&BC/NCLT/MB/MAH/2018**

Balmukh Goldjewel and Multitrading Private Limited ..... Applicant

V/s

Rakesh Rathi .... Respondent.

In the matter of

The Invex Private Limited .....Financial Creditor

V/s

Dome-bell Electronics India Private Limited .....Corporate Debtor

**Coram :**

Hon'ble M.K. Shrawat, Member (J)

Hon'ble Chandra Bhan Singh, Member (T)

**For the Applicants :** Mr. Aayesh Gandhi i/b Wadia Gandhi & Co. a/w Kunal Vaishnav  
i/b M/s. N.N.Vaishnava & Co.

**For the Respondents :** Zal Andhyarujina a/w Faran Khan a/w Ishani Khanvilkar  
a/w Harshad Gada.

**Per: M.K. Shrawat, Member (J)**

**ORDER DELIVERED ON 09.12.2019**

**(A) MA-1387/2018**

1. This Application is submitted by Nityank Infrapower & Multiventures Private Limited (hereinafter in short '**Nityank**') on 16.11.2018 and the main prayer which is argued is reproduced below :-

"(a) *That this Hon'ble Tribunal be pleased to direct the Respondent or any other insolvency professional appointed for conducting the Corporate Debtor's insolvency resolution to admit the Applicant's claim of Rs. 936,59,00,000/- (Rupees Nine Hundred Thirty-Six Crore Fifty Nine Lakhs), as set out more particularly in the Applicant's Proof of Claim dated 7<sup>th</sup> September 2018, Exhibit-Q hereto, and thereupon induct the Applicant in the Committee of Creditors with voting share proportionate to its amount of claim;*

- (b) *That this Hon'ble Tribunal ascertain the constitution of the purported Committee of Creditors and thereafter disqualify / remove such members from the purported Committee of Creditors with voting share proportionate to its amount of claim ;*
- (c) *That pending hearing and final disposal of this Application, this Hon'ble Tribunal be pleased to stay the insolvency resolution proceedings in relation to the Corporate Debtor."*

2. **DECISIONS IN THE PAST :-** Before we proceed to discuss on merits this Application, it is necessary to place on record the past history of this case happened on the occasion when the Petition filed by the Financial Creditor The Invex Private Limited (hereinafter in short **Invex**) submitted under section 7 of the I&B Code pending for Admission to take decision for commencement of Corporate Insolvency Resolution Process against the Corporate Debtor Dome Bell Electronics India Private Limited (hereinafter in short **Dome Bell**). As per the sequence, before the start of the hearing on Section 7 of I&B Code Petition, a mention was made to restrain the Corporate Debtor in dealing with any of its assets. Under exceptional circumstances an Interim Order was passed on 21.06.2018 wherein it was directed as under :-

**ORDER**

1. *The Learned Representatives of both sides are present.*
2. *A Petition under section 7 of the I&B Code submitted on 11.06.2018 by the Financial Creditor. The Invex Pvt. Ltd. Pertaining to an alleged financial debt of Rs. 30,68,78.974/- (Rupees Thirty Crores Sixty-eight Lakhs Seventy-eight Thousand Nine Hundred Seventy-four only) stated to be outstanding against Dome Bell Electronics India Pvt. Ltd. Ahmednagar the Corporate debtor.*
3. *The Learned Counsel of the Petitioner has mentioned this Petition out of turn for early hearing on the ground that there is an apprehension of transfer of assets by the Corporate debtor, as a consequence, matter was listed on 20.06.2018 and partly heard. Thereafter the matter was listed on 21.06.2018 i.e. today.*
4. *Today before the Petition could be heard on merits a Learned Senior Counsel Mr. Janak Dwarkadas objected the adjudication on this Petition and informed that against this Corporate debtor a Petition is pending for disposal filed by Financial Creditor stated to be M/s. Nityank Infra Power and Multiventures Pvt. Ltd. (C.P.No.1238/2018). The said Petition is stated to be submitted under section 7 of the Code against the Financial Debtor Dome-Bell Electronics India Pvt. Ltd. for the financial debt of Rs. 1626,00,00,000/- (Rupees One Thousand Six Hundred and Twenty-six Crores only). The Respondent debtor in that case before Court Room No. 1 has sought adjournment, however, in Court Room No. 2 appeared without raising any objection of this Petition or without intimating that matter is sub-judice before another Bench.*
5. *One more Order is placed bearing M.A. No. 357/2018 in CSP-462/2017 & CSP-471/2018 (MB) dated 26.04.2018 wherein the name of the parties are Dome-Bell Electronics India Pvt. Ltd. V/s Dish TV India Ltd. & Ors. under section 230-232 of the Companies Act which stood adjourned to 21.06.2018 and by consent further adjourned to 01.08.2018 by NCLT Bench in Court Room No. 1. The Learned Senior Counsel has informed that even in that case the Corporate debtor has consented for the adjournment but on the other hand appeared in this case without giving any information of the proceedings sub-judice before Court Room No. 1.*
6. *On hearing all the parties present this Bench hereby places on record an observation that the litigants are expected to be just, fair and truthful while representing a case by placing on record the complete information specially if any case is sub-judice before any Court of law. The Petitioner as well as the Respondent being duly represented by the Learned Counsels have concealed those facts which is unexpected from the responsible counsel.*
7. *Be that as it is, all the parties are in agreement that the Corporate debtor be restrained from dealing with any of its assets so that the rights and interest of the Financial Creditors be protected. Under exceptional circumstances narrated supra, this Bench hereby directs the Corporate Debtor M/s. Dome-Bell Electronics India Private Limited not to deal in any manner by transferring or alienating any of its assets as appearing in the Books of Accounts till further orders.*

8. Matter be listed for hearing on **11.07.2018**.

2.1 Thereafter main Petition (CP-IB-2051/NCLT/MB/2018), moved by 'Invex' in the capacity of 'Financial Creditor' seeking commencement of Insolvency Proceedings against 'Dome Bell' a 'Corporate Debtor', was heard and Corporate Insolvency Resolution Process (CIRP) had commenced by pronouncement of "Moratorium" as well as by appointing IRP vide an **Order dated 21.08.2018**. In the said Order a Misc. Application (MA-695/2018), moved by Nityank had also been considered and a detailed Order was passed wherein the Applicant's ( Nityank) request i.e. to be made party as an Intervener, was rejected, only relevant paragraph are extracted below from the said Order :-

**ORDER**

4. A **Miscellaneous Application (M.A. 695/2018)** was moved dated 11/07/2018 by an Applicant M/s Nityank Infrapower & Multiventures Pvt. Ltd. (formerly known as Dreamline Manpower Solutions Pvt. Ltd.), wherein the Invex Private Limited is Respondent No.1 as Financial Creditor and Dome-Bell Electronics India Private Limited is Respondent No.2 as Corporate Debtor.

4.1) In the Miscellaneous Application it is stated that a Petition has been filed under section 7 of the code to initiate insolvency proceedings by the Applicant (Nityank) against Respondent (Dome-Bell). This Misc. Application moved from the side of the alleged Intervener has also referred a Misc. Application No.377 of 2018 ( informed that pending for adjudication in Court Room No.1) therein also Nityank is the Applicant and the Respondent Parties are: Dome-Bell Electronics (R.1), ECL Finance Ltd. (R.2), Hindustan Oil Ventures Ltd. (R.3) and Dish TV India is (R.4.). In the impugned Application further it is informed that there was a fraudulent share pledge transaction entered into by the M/s Invex Pvt. Ltd. (Financial Creditor) in favour of the M/s Dome-Bell (Corporate Debtor) with the intent to defeat the legitimate claim of the Applicant against the First Respondent (Invex). There is reference of a Third entity i.e. Hindustan Oil Ventures, Chennai Tamil Nadu. Narrating the facts in brief, it is a Public Limited Company engaged in the business of oil extraction. With the purpose to raise finances the Hindustan Oil proposed to issue on private placement 16,260 nonconvertible debentures of ₹10 lakhs each having aggregate nominal value of ₹1626 crores. In the aforesaid transition the Hindustan Oil Trusteeship Ltd [the debenture trustee] executed a Debenture Trust Deed dated 30 December 2016 [debenture trust deed]. Pursuant to the said debenture trust deed the Hindustan Oil issued nonconvertible debentures having face value of ₹10 lakhs each at par aggregating to ₹1626 crores by the debenture trustee in favour of the applicant Nityank. The applicant Nityank has become the beneficial owner of the said debentures within the meaning of Debenture Trust Deed. It was agreed that the Hindustan Oil will be liable to pay default interest at the rate of 18% which have not been paid on the respective dates. In order to secure the payment obligation, the M/s Dome-Bell i.e. the Corporate Debtor executed a corporate guarantee deed dated 30 December 2016 in favour of the Applicant M/s Nityank. As a result, the M/s Dome-Bell had guaranteed the payment obligation of the M/s Hindustan Oil in relation to the debentures. Additionally, the payment obligation was partly secured by a share pledge agreement also dated 30 December 2016, entered into between the debenture trustee and certain shareholders of Videocon D2H Ltd, including the Dome-Bell in the said share pledge agreement. Under the said share pledge agreement M/s Dome-Bell had pledged 44,38,400 equity shares of Videocon D2H Ltd in favour of the debenture trustee. Later on by a letter dated 13 September 2017 the Hindustan Oil informed the applicant that there had been changes in the corporate structure of certain companies which had also executed similar agreement and pledged shares in favour of the Applicant. Similarly, the Hindustan Oil also acknowledged, inter alia, that certain shareholders of Videocon D2H entered into a share pledge agreement dated 30 December 2016 for creation of a pledge on an agreed number of 11,34,34,303 shares of Videocon D2H. The Hindustan Oil had also stated that there was a pledger in respect of 44,38,400 equity shares of Videocon D2H. Therefore, according to the Applicant the Hindustan Oil's payment obligation towards the Applicant/ Nityank was undeniable. Further, vide an order dated 27 July 2017 the Hon'ble NCLT Tribunal approved a scheme of arrangement for amalgamation of Videocon D2H and M/s Dish TV India Ltd. The said scheme provides for allotment of certain number of equity shares of the Dish TV to the shareholders of the erstwhile Videocon D2 is limited. Subsequent to the execution of said transaction document, the Hindustan Oil committed defaults in its payment obligation. The

*details of the impugned defaults have also been elaborated in this miscellaneous application. Due to occurrence of events of defaults notices were issued and other correspondence was made. Despite reminders the Hindustan Oil as well as the Dome-Bell failed to pay the amount due in contravention of payment obligation in relation to the said debentures. In a reminder notice once again called upon to pay the outstanding sum of Rs. 1873,39,20,000/-. In view of the said default and in view of the indebtedness of the M/s Dome-Bell, the Applicant/ Nityank was constrained to file a company Petition. In this Application further information is given that the Dome-Bell was the owner of 4,08,90,000 shares of Videocon D2H. Pursuant to an oral agreement it was agreed that the Dome-Bell shall issue additional security to the Applicant of those identified shareholding. It was found by the Applicant that the M/s Dome-Bell had pledged some of those shares to a third party after the default committed of non-payment. Through a correspondence it was found that the Dome-Bell had pledged 3,40,00,000 equity shares out of the identified shareholding. According to the applicant the impugned transaction was entered fraudulently to defeat the Applicant's (Nityank) claim. In a reminder notice the Applicant (Nityank) had called upon the Dome-Bell to pay outstanding amount of Rs. 2035,83,00,000/-.*

4.2. *The allegation is that although the Company was fully conscious of its obligation towards the Applicant (Nityank) under the said Corporate Guarantee it had fraudulently entered into the impugned transaction. According to the Applicant, it was a sham transaction for the purpose of delaying Applicant's claim against the M/s Dome-Bell under the said Corporate Guarantee. An apprehension has been expressed that Dome-Bell may create a Third Party right. The submission is that the Dome-Bell be restrained from creating any Third Party right in respect of its Assets. The Applicant has learnt that the Dome-Bell had made claim before the Dish TV for allotment of Equity Shares in exchange for identified Shareholding. The apprehension is that on receipt of the shares, the Dome-Bell may alienate shares or deal with those shares to defeat the recovery. In the light of the aforementioned background, this Application has been moved so that the Applicant be made an Intervener, or in the alternate, the Debtor Company be restrained not to pledge 3,40,00,000 shares in Videocon D2H in favour of the ECL Finance Ltd.*

4.3. ----

4.4. ----

5. ----

5.1. ----

5.2. ----

6.1. *At number of occasions in the pleadings as also during the arguments a terminology "fraud" or "fraudulent" has been used. This term is specifically defined under Indian Penal Code (Section 25) and Cheating is defined U/s. 415 of IPC. A 'Fraud' is a knowing misrepresentation of the truth for concealment of a material fact to induce another to act to his detriment. A person is said to do a thing "Fraudulently" if he does that thing with intent to defraud, but not otherwise. A false representation of a matter of fact whether by words or by conduct, or concealment of what should have been disclosed with the intention to deceive another so that the individual will act upon is called as "Fraud". In Indian Contract Act, 1872 vide Section 17 "Fraud" means and includes an act committed by a party to a contract with his connivance to deceive another party or to induce another party to enter into a contract. These allegations are serious in nature. A heavy burden to establish is on the person who is raising these serious allegations. These allegations should not be expected to be raised lightly or in an irresponsible manner. Transactions which were recorded among the parties, as discussed at some length in the foregoing paragraphs are in the nature of a complex business transaction involving few parties. Those parties are expected to be vigilant at the time of entering into the contract. A normal business decision having several cross-transactions not to be alleged as a 'fraudulent transaction' if both the sides are watching their interest legally. It is a common feature of a business model to have cross-holdings among several companies as an independent entity. It is a well-known view of the Hon'ble Courts, specially in Tax matters that a business transaction among related parties if transacted at arm's length must not be held as a transaction to evade tax. So a trite law is that every transaction among the connected parties cannot be viewed as a shady transaction if it is transparent, straight forward and bona fide. As far as the present case is concerned, the nature of the Financial Debt, on the face of it, is simple casting no doubt being a single debit entry in the Bank Account of the Financial Creditor through which an amount of Rs.8,58,00,000/- was transferred on 16.03.2011 through RTG in the account of Corporate Debtor (Dome-Bell). In respect of this transaction the Intervener is totally silent without casting any doubt. Rest of the transactions which are reported are complex dovetailed transactions, but merely because of their complexity do not put this transaction within the ambits of a "Fraudulent transaction". It is worth to make an observation that the Applicant was legally required to establish a direct nexus of his debt with the debt of the present Petitioner. No such nexus*

*is established to conclusively prove that the Debtor Company Dome-Bell has any connection with regard to this very Debt with the Debt of Nityank. For granting intervention this should be a fundamental legal requirement. In the absence of direct connection or nexus of Nityank with the Debt in question in this Petition it is absolutely unfair to allow as an Intervenor. There could be business link in the past but that itself is no ground to allow Intervention because this Insolvency Code revolves around the Debt is question and the Default committed in repayment. So the requirement is that an Intervener ought to establish that undisputedly a debt is recoverable form this very Debtor. Insolvency enactment is a code dealing with the actual commercial money transaction hence mere verbosity has no role to play. The allegations being unsupported and bald in nature hereby not fit to be entertained.*

6.2. *An argument is that the Intervener had demanded for the copy of the Petition filed u/s. 7 of The Code. Question is that at what stage of a Court proceedings in a Suit a Third Party or an Intervener can be granted permission to get a copy of the Plaint. Here in this case, it is a Petition u/s. 7 of the Insolvency Code. The Law is trite in this regard that only after being admitted as a 'Party to the Litigation' an **Intervener** can get entitlement for demand of a copy of a pleading. If a Third Party is not made "Party to the Litigation", then in that situation he is a stranger to the Litigation being not permitted to join the Litigation. As a result, at present being an unconnected outsider, not entitled for a copy. Otherwise also, financial dealings always have a clause of "confidentiality", either written or implied. The proceedings under Insolvency Code fall within this ambit. Parties to the "Lis" under the Insolvency Code are Financial Creditor or Operational Creditor on one hand, and on the order hand Corporate Debtor. Until a Petition is not admitted either under section 7, 9 or section 10 of The Code, the condition of "confidentiality" is implied. But once a Petition is admitted, then upon commencement of CIRP, public at large is informed through advertisement. Since the Insolvency Code has provided this mechanism, therefore, at this stage, prior to admission an Intervener being not a party to the "Lis" so far, not legally authorized, hence must not demand a copy.*

6.3. ----

6.4. ----

6.5. ----

6.6. *As far as the two case laws submitted from the side of the Intervener are concerned, both have been carefully perused and found to be distinctive on facts as well as on Law. In case of M/s. Jeevan Credit & Leasing Vs. M/s. King Airways Limited (CA No. IB 13/PB/2017) Order dated 08.03.2017, a finding on fact was that the defects in filing displayed glaring inconsistencies which had gone to the root of the Application's 'Maintainability'. According to the finding, it was puzzling as to how the Applicant and Respondent could be categorized as "Corporate Persons". A finding was given that the Applicant had also failed to furnish necessary Board Resolution affirming grant of Loan. The acknowledgements have raised questions about the bona fide of the parties and according to the Hon'ble Principal Bench, the transaction was stage managed with an ulterior motive. Since the present Petition has contained all such relevant information and transaction is duly corroborated by several evidences and confirmations, therefore, the case law as relied upon **on all fours** is not applicable. Likewise, the decision of Hon'ble NCLAT in the case of SREI Infrastructure Finance Ltd. Vs. Right Tower Pvt. Ltd. & Anr. (Company Appeal (AT) Insolvency) No. 38 of 2018) Order dated 20.02.2018 is on the issue of Privity of Contract on the part of the Intervener. The facts being not clear the Hon'ble NCLAT had restored the matter back to the file of the Adjudicating Authority by leaving the question open to decide the issues as raised, keeping in mind the question of "Maintainability" as well. Since there was no 'Finding' either on Law or on Fact, hence the reliance on this case law is misplaced. On the other hand, the Press release as well as the facts narrated in the reply have put the Intervener's intention under suspicion. An allegation of involvement in misutilization of Demonetization Scheme as also the allegation of branding as a "Shell Company" are presently not rebutted.*

7. *In the light of the detailed discussion held in foregoing paragraphs I am of the view that there is no substance in this Misc. Application, therefore, the request to allow as an Intervener is hereby rejected. Misc. Application No. 695 of 2018 stands dismissed.*

2.2 It is also worth to place in this Judgment a previous Order in respect of C.P. No. IB/1238/(MB)/2018 which was filed by M/s Nityank in the capacity of Financial Creditor against M/s Dome Bell as Corporate Debtor, however, that Petition filed under section 7 of I&B Code was held as '**Redundant**' vide **Order dated**

**04.10.2018** on the ground that in respect of the Corporate Debtor Insolvency Proceedings have already commenced in CP No. IB/2051/NCLT/(MB)/2018 (supra) Order dated 21.08.2018. While dismissing this Applicant's Petition it was held as under :-

" Order Sheet dated 04.10.2018 in C.P. No. (IB) 1238(MB)/2018 (MA-377/2018)

Shri V.P. Singh Member (J)

Shri Ravikumar Duraisamy Member (T)

Nityank Infracore & Multiventures Pvt. Ltd.

V/s

Dome-Bell Electronics India Pvt. Ltd. & Ors.

**ORDER**

**16. MA-377/2018 IN C. P. No. (IB) 1238(MB)/2018 (MA-377/2018)**

*Ld. Counsel for the Financial Creditor and Ld. Counsel for the Corporate Debtor is present in the Court. Ld. Counsel for the Financial Creditor has informed that after filing this Petition in the Court, another Petition against the same Corporate Debtor was filed in the Court which was later admitted against which Company Appeal (AT) (Insolvency) No. 499/2018 is pending in the Hon'ble NCLAT.*

*Ld. Counsel for the Financial Creditor has submitted that his claim has not been admitted by the Resolution Professional.*

*Since the Corporate Debtor is undergoing CIRP, this Petition is not maintainable against the same Corporate Debtor.*

*However, Petitioner may file his claim before the Resolution Professional. It is further clarified that if his claim is not admitted, he can challenge the same before this Adjudicating Authority. The second petition against the same Corporate Debtor, after admission of the first petition is not maintainable."*

2.3 The purpose of reproduction of the Orders passed in the past is that the alleged claim of this Applicant M/s Nityank was duly considered and stood rejected as far as the Insolvency Proceedings are concerned. It is strange that the Applicant is moving again this Application at the stage when the **Insolvency Proceedings have reached upto the stage of considering approval of a 'Resolution Plan'**. Although this Applicant is indulged in repetitive litigation, nonetheless, this Bench can not do much but to express displeasure by cautioning the Applicant to avoid multiplicity of legal proceedings by filing Applications after Applications.

3. **MERITS/FACTS OF THE CASE :-** On merits the date wise summary as produced in the list of events can be summarised as under :-

*" 30.12.2016 – The Corporate debtor had, by and under the Corporate Guarantee and Share Pledge Agreement both dated 30<sup>th</sup> December 2016 and other related transaction documents, secured the payment obligations of one Hindustan Oil Ventures Limited ("HOVL") under a Debenture Trust Deed dated 30<sup>th</sup> December 2016 ("said DTD"), whereunder the Applicant had subscribed to Non-Convertible Debentures ("HOVL Debentures") amounting to a sum of Rs. 1626,00,00,000/- (Rupees One Thousand Six Hundred and Twenty-six Crores only).*

*20.12.2017 - On occurrence of Events of Default under the said DTD, the Applicant through the Debenture Trustee, one Catalyst Trustseeship Limited, addressed a notice dated 20 December 2017 ("the Default Notice") to HOVL and the Corporate Debtor inter alia notifying them of the same and calling upon HOVL and the Guarantors, including the Corporate debtor to make payment of an amount of Rs. 1858,48,50,000/- (Rupees One Thousand Eight Hundred Fifty-eight Crores Forty-eight Lakhs Fifty Thousand only) accrued / outstanding as on 20<sup>th</sup> December 2017, under the said DTD, Corporate Guarantees and the Share Pledge Agreement.*

*The Debenture Trustee sold the pledged shares and recovered an amount of Rs. 1683,63,08,775/- (Rupees One Thousand Six Hundred Eighty-three Crores Sixty-three Lakhs Eight Thousand Seven Hundred Seventy-five only) which was remitted to the Applicant in partial discharge of its dues.*

*The Applicant entered into a separate transaction with Edelweiss for acquiring the debentures under the Edelweiss DTD by making a payment of approximately Rs. 303.81 Crore to Edelweiss on 31<sup>st</sup> May, 2018. The Applicant has, thus, stepped into the shoes of Edelweiss and has become absolutely and completely entitled to the amounts due under the Edelweiss DTD and the said Shares, which were pledged/agreed to be pledged by and under a Deed of Pledge dated 5<sup>th</sup> January 2018 to secure the payment obligations under the Edelweiss DTD.*

*21.06.2018 – The Applicant subsequently and fortuitously became aware of the captioned Company Petition, which was filed by the Petitioner as a purported Financial Creditor of the Corporate Debtor.*

*The Applicant, therefore, filed an Application in the captioned Company Petition, being Miscellaneous Application No. 695 of 2018, under sections 65 and 75 of the Code for inter alia dismissing the captioned Company Petition.*

*21.08.2018 – This Hon'ble Tribunal was pleased to reject the Applicants Miscellaneous Application No. 695 of 2018 and admitted the captioned Company Petition.*

*29.08.2018 – Being aggrieved by the Admission Order, the Applicant has filed an Appeal against the Admission Order before the Hon'ble National Company Law Appellate Tribunal, being Company Appeal (Insolvency) No. 499 of 2018. The Hon'ble Appellate Tribunal heard the matter on 29<sup>th</sup> August 2018, and reserved it for orders after giving liberty to the parties to file their written submissions.*

*7<sup>th</sup> September 2018 – In accordance with the Public Announcement, and without prejudice to the Applicant's rights and contentions in respect of its challenge to the admission of the captioned Company Petition and the consequent appointment of the Respondent as the IRP, the Applicant submitted to the Respondent its claim and proof of claim, in Form C, by way of the Applicant's email dated 7<sup>th</sup> September 2018 addressed to the Respondent.*

*Despite submission of the Applicant's claim against the Corporate Debtor, the Corporate Debtor has failed to verify and admit the Applicant's claims.*

4. In this Misc. Application the Applicant has stated in the light of the foregoing discussion that on the date when Insolvency Proceedings commenced in respect of the Corporate Debtor viz. Dome Bell vide Order dated 21.08.2018 (supra), on that date an amount of ₹ 936 Crores (in round figure) was due hence claim was lodged on Form-C within time after the public announcement i.e. 07.09.2018 in accordance with Regulation 8 of Corporate Insolvency Resolution Process Regulation. Despite completion of all the formalities the claim was not entertained. Therefore, the **grievance of the applicant is that the direction be issued to admit the claim** and till then the Corporate Insolvency Resolution Process be stayed.
5. **REPLY BY R.P.** :- From the side of the RP of the Corporate Debtor a Reply has been submitted wherein the reasons for rejection have been explained in detail summarized as under :-

*3. At the further outset, it is submitted that the Applicant has come before this Hon'ble Tribunal with unclean hands. The Applicant is well aware that the alleged 'claim' claimed by it is subject matter of **dispute before the Hon'ble Bombay High Court in Suit (L) No. 1033 of 2018 and before the Hon'ble Delhi High Court.***

*4. The Corporate Debtor is one of the Plaintiff in the said suits. In the said suits, the Corporate Debtor has challenged the same transactions, on the basis of which the Applicant has tried to lodge the claim. It is apparent from the perusal of documents,*

*deeds, date of execution and after going through the pleadings and communications exchanged between the parties the alleged claim of the applicant is not the loan advanced to the respondent company but for some other transactions, details of which are pleaded in the said suits which are pending for adjudication before Hon'ble Delhi High Court and Hon'ble Bombay High Court.*

5. *The Corporate debtor, apparently, since inception has been disputing the alleged debt of Applicant on various grounds as mentioned in the said suits, which are presently sub-judiced and pending before the Hon'ble Delhi High Court and the Hon'ble Bombay High Court.*

6. *It is important to note that vide an order dated **August 2, 2018**, passed in the said Suit No. 1056 of 2018, the Hon'ble Delhi High Court has recorded a prima facie finding that the transaction entered into inter alia between the Applicant and the Corporate Debtor is **not in the nature of debt**. The Applicant had even preferred appeal bearing No. FOA(OS) (COMM) 185 of 2018 before Hon'ble Division Bench of Delhi High Court against the said finding of Hon'ble Single Judge of Delhi HC, the same was not entered and disposed of by order dated August 21, 2018.*

7. *The Applicant has suppressed this material fact in the present Application filed before this Hon'ble Tribunal. It is submitted that on this ground alone the present Application needs to be dismissed in limine. A copy of the said order dated August 2, 2018, passed by the Hon'ble Delhi High Court is annexed hereto and marked as **Exhibit-"DD"**. Further, the Respondent craves leave to refer to and rely upon the said order dated August 21, 2018 passed in appeal No. FAO(OS) (COMM) 185 of 2018 when produced."*

5.1 The Respondent RP has vehemently pleaded that numerous frivolous attempts have been made but the Applicant was always unsuccessful before several Judicial Authorities including the Hon'ble High Court. According to the Learned Counsel of the RP, the **Applicant is a "Faux Company" facing investigation by SFIO for suspicious deposits and withdrawals of about ₹ 3178 Crores during demonetization period.** As per the Reply the Applicant is part of the Essel Group and is wrongly interfering in the Corporate Insolvency Resolution Process of the Corporate Debtor with an attempt to succeed in a commercial dispute ensuing in relation to sale-purchase/acquisition of shares of erstwhile Vidocon d2h Ltd. which is now merged in to Dish TV India Ltd. which is an the Essel Group Company. It is also apparent and there is every reason to believe that Applicant is closely related or is an Essel Group company. The said issue is *subjudice* in a suit.

5.2 As per RP on September 7, 2018 the Respondent received the Applicant's email to which was attached a filled and executed Form C, wherein the Applicant claimed that there existed two separate 'financial debts' which were owned by the Corporate Debtor to the Applicant as on the Corporate Insolvency Commencement Date. The first claim allegedly arises under a corporate guarantee dated December 30, 2016, issued by the Corporate Debtor in respect of certain debentures issued by Hindustan Oil Ventures Limited ("**HOVL Debentures**"), where in it is alleged that even after enforcement of the pledge securing such HOVL Debentures, certain amounts remain due and payable, and therefore the Corporate Debtor is liable for such amounts ("**Claim A**"). The second claim arises in respect of a share pledge agreement executed by the

Corporate Debtor in respect of certain debentures issued by Goldenarch Digital Solutions Private Limited ("GDSPL Debentures") ("**Claim B**"). According to RP in the Reply it is stated that Claim A and Claim B do not constitute "Financial debt". In respect of Claim A the statement of accounts submitted were not verifiable despite several opportunities given to the claimant. In respect of Claim B because the Corporate Debtor had not provided any guarantee or indemnity in respect of GDSPL Debentures, therefore, Claim-B do not fall within any of the categories of "debt" as set out in Section 5(8) of the Code. Rather the Corporate Debtor had pledged shares in favour of Debenture Trustee to secure the GDSPL Debentures pursuant to a "Share Pledge Agreement". The said Share Pledge Agreement does not constitute a contract of Guarantee or Indemnity but is merely a contract of Pledge.

- 5.3 Besides above reasons, Learned RP has also drawn our attention through a Reply in writing that Nityank itself had filed a Misc. Application before NCLT (MA-377/2018) in Company Petition No. 1238 of 2018 wherein it is alleged that the transaction of Claim-B was a fraudulent transaction and therefore, prayed for cancellation of the same. Therefore, now said Claim-B cannot be demanded as a genuine transaction that too, a financial debt. According to Learned RP it is a very complex situation and not a case of clear financial debt, therefore, rightly rejected. In the Reply the details of the transaction were narrated as it has already been narrated by Nityank Applicant.
- 5.4 The Learned RP has also drawn our attention on an Order of Respected NCLAT New Delhi titled as *Nityank Infrapower & Multiventures Pvt Ltd. V/s Invex Pvt. Ltd. & Anr. in Company Appeal (AT) (Insolvency) No. 499 of 2018 dated 30<sup>th</sup> November 2018*, wherein the entire transaction was discussed in detail and thereafter it was concluded that the Appellant (Nityank) had failed to suggest that the Application under Section 7 filed by Invex was with malicious intent. The Appeal of Nityank was dismissed, for ready reference relevant paragraphs are reproduced below :-

**" JUDGEMENT**  
**SUDHANSU JYOTI MUKHOPADHAYA J.**

*The Respondent 'Invex Pvt. Ltd.' – ("Financial Creditor") filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (' I&B Code' for short) for initiation of 'Corporate Insolvency Resolution Process' against 'Dome-Bell Electronics India Pvt. Ltd. ' (Corporate Debtor).*

2. *M/s Nityank Infrapower & Multiventures Private Limited' – Appellant moved an intervention application impleading 'M/s Invex Private Limited' - as 'Financial Creditor' And Corporate Debtor' and Dome-Bell Electronics India Pvt. Ltd. as 'Corporate Debtor' 1<sup>st</sup> and 2<sup>nd</sup> Respondent respectively). The said Miscellaneous Application has been filed under Section 7 of the 'I&B Code' for initiation of insolvency proceedings by the 'Nityank Infrapower & Multiventures Pvt. Ltd.' – Appellant against Dome-Bell Electronics India Pvt. Ltd. ' (Corporate Debtor).*

3. *In the intervention application, the Appellant has also preferred a Misc. Application No. 377 of 2018 wherein 'Nityank Infrapower & Multiventures Pvt. Ltd.' is the Applicant and Dome-Bell Electronics India Pvt. Ltd. 'along with 'ECL Finance Ltd.', 'Hindustan Oil Ventures Ltd' and 'Dish TV India' are the Respondents.*
4. *The Applicant in the intervention application alleged that there was a fraudulent share pledge transaction entered into by the 'M/s. Invex Pvt. Ltd.' – ('Financial Creditor') in favour of Dome-Bell Electronics India Pvt. Ltd. ('Corporate Debtor') with the intent to defeat the legitimate claim of the Applicant against the 1<sup>st</sup> Respondent - M/s. Invex Pvt. Ltd.' There is reference of a third entity i.e. 'Hindustan Oil Ventures', Chennai, Tamil Nadu.*
5. *According to the Applicant, it is a Public Limited Company engaged in the business of oil extraction. With the purpose to raise finances the 'Hindustan Oil' proposed to issue on private placement 16,260 nonconvertible debentures of Rs.10 Lakhs each having aggregate nominal value of Rs. 1626 Crores. In the said transaction the 'Hindustan Oil Trusteeship Ltd.' (the debenture trustee) executed a 'Debenture Trust Deed' dated 30<sup>th</sup> December 2016 (debenture trust deed). Pursuant to the said 'Debenture Trust Deed', the 'Hindustan Oil' issued nonconvertible debentures having face value of Rs. 10 Lakhs each at par aggregating to Rs. 1626 Crores by the debenture trustee in favour of the Applicant- 'Nityank Infrapower & Multiventures Pvt. Ltd. The Applicant- 'Nityank Infrapower & Multiventures Pvt Ltd.' has become the beneficial owner of the said debentures within the meaning of 'Debenture Trust Deed'. It was agreed that the 'Hindustan Oil' will be liable to pay default interest at the rate of 18% which have not been paid on the respective dates. In order to secure the payment obligation, 'M/s. Dome-Bell Electronics India Private Limited'- ('Corporate Debtor') executed a corporate guarantee deed dated 30<sup>th</sup> December 2016 in favour of the Applicant- 'Nityank Infrapower & Multiventures Pvt. Ltd.' As a result, 'M/s. Dome-Bell Electronics India Private Limited'- ('Corporate Debtor') had guaranteed the payment obligation of 'M/s. Hindustan oil' in relation to the debentures. Additionally, the payment obligation was partly secured by a share pledge agreement also dated 30<sup>th</sup> December 2016 entered into between the debenture trustee and certain shareholders of 'Videocon D2H Ltd.' including the 'M/s Dome-Bell Electronics India Private Limited'- ('Corporate Debtor') in the said share pledge agreement. Under the said share pledge agreement 'M/s. Dome-Bell Electronics India Private Limited'- ('Corporate Debtor') had pledged 44,38,400 equity shares of 'Videocon D2H Ltd.' in favour of the debenture trustee. Later on by a letter dated 13<sup>th</sup> September 2017, the 'Hindustan Oil' informed the Applicant that there had been changes in the corporate structure of certain companies which had also executed similar agreement and pledged shares in favour of the Applicant. Similarly, the 'Hindustan Oil' also acknowledged, inter alia, that certain shareholders of 'Videocon D2H' entered into a share pledge agreement dated 30<sup>th</sup> December, 2016 for creation of a pledge on an agreed number of 11,34,34,303 shares of 'Videocon D2H'. The 'Hindustan Oil' had also stated that there was a pledger in respect of 44,38,400 equity shares of 'Videocon D2H'. Therefore, according to the Applicant, the 'Hindustan Oil's' payment obligation towards the Applicant – 'Nityank Infrapower & Multiventures Pvt. Ltd.' was undeniable. Further vide an order dated 27<sup>th</sup> July, 2017, the National Company Law Tribunal approved a scheme of arrangement for amalgamation of 'Videocon D2H' and 'M/s. Dish TV India Ltd.' The said scheme provides for allotment of certain number of equity shares of the Dish TV to the shareholders of the erstwhile 'Videocon D2' limited. Subsequent to the execution of said transaction document, the 'Hindustan Oil committed defaults in its payment obligation. The details of the impugned defaults have also been elaborated in the Misc. Application. Due to occurrence of event of defaults notices were issued and other correspondence was made. Despite reminders the 'Hindustan Oil' as well as the 'M/s. Dome-Bell Electronics India Private Limited'- (Corporate Debtor) failed to pay the amount due in contravention of payment obligation in relation to the said debentures. In a reminder notice once again called upon to pay the outstanding sum of Rs. 1873,39,20,000. In view of the said default and in view of the indebtedness of M/s. Dome-Bell Electronics India Pvt. Ltd. ` (Corporate Debtor), the Applicant – 'Nityank Infrapower & Multiventures Pvt. Ltd.' was constrained to file a Company Petition. In this Application further information is given that the 'M/s. Dome-Bell Electronics India Pvt. Ltd. ` (Corporate Debtor) was the owner of 4,08,90,000 shares of 'Videocon D2H'. Pursuant to an oral agreement, it was agreed that the 'M/s. Dome-Bell Electronics India Pvt. Ltd. ` (Corporate Debtor) shall issue additional security to the Applicant of those identified shareholding. It was found by the Applicant that 'M/s. Dome-Bell Electronics India Pvt. Ltd. ` (Corporate Debtor) had pledged some of those shares to a third party after the default committed of non-payment. Through a correspondence it was found that the 'M/s. Dome-Bell Electronics India Pvt. Ltd. ` (Corporate Debtor) had pledged 3,40,00,000 equity shares out of the identified shareholding. According to the Applicant, the impugned transaction was entered fraudulently to defeat the Applicant's – 'Nityank Infrapower & Multiventures Pvt. Ltd.' claims. In a reminder notice the Applicant – 'Nityank Infrapower & Multiventures Pvt. Ltd.' had called upon 'M/s. Dome-Bell Electronics India Pvt. Ltd. ` (Corporate Debtor) to pay outstanding amount of Rs. 2035,83,00,000/-.*

6. *The allegation was that although the Company was fully conscious of its obligation towards the Applicant – 'Nityank Infrapower & Multiventures Pvt. Ltd.' under the said corporate guarantee it had fraudulently entered into the impugned transaction. According to the Applicant, it was a sham transaction for the purpose of delaying Applicant's claim against 'M/s. Dome-Bell Electronics India Private Limited'- ('Corporate Debtor') under the said corporate guarantee. An apprehension has been expressed that 'M/s. Dome-Bell Electronics India Private Limited'- ('Corporate Debtor') may create a third party right. The submission is that 'M/s. Dome-Bell Electronics India Private Limited'- ('Corporate Debtor') be restrained from creating any third party right in respect of its assets. The Applicant has learnt that the 'M/s/ Dome-Bell Electronics India Private Limited' ('Corporate Debtor') had made claim before the 'Dish TV' for allotment of equity shares in exchange for identified shareholding. The apprehension is that on receipt of the shares, 'M/s. Dome-Bell Electronics India Private Limited'- ('Corporate Debtor') may alienate shares or deal with those shares to defeat the recovery. In the light of the aforementioned background, the application was moved so that the Applicant be made an Intervener, or in the alternate, prayer was made that the Debtor Company be restrained not to pledge 3,40,00,000 shares in 'Videocon D2H' in favour of the 'ECL Finance Ltd.'*
7. *The Adjudicating Authority by impugned order dated 21<sup>st</sup> August, 2018 while admitted the application under Section 7 filed by 'Invex Pvt. Ltd.'- ('Financial Creditor') and initiated 'Corporate Insolvency Resolution Process' against 'M/s. Dome-Bell Electronics India Private Limited'- ('Corporate Debtor'), rejected the allegation of 'collusiveness', the Appellant having failed to establish the same.*
8. *The Appellant was the Intervener had taken plea that the copy of the petition under Section 7 was not served on it, but such submission cannot be accepted. The Adjudicating Authority has rightly rejected the plea as the law is settled law is that only after being admitted as a party to the litigation an Intervener can get entitlement for demand of a copy of a pleading. It is also a settled law that the 'Corporate Insolvency Resolution Process' is not a litigation as held in "**Binani Industries Limited Vs. Bank of Baroda & Anr.- Company Appeal (AT) (Insolvency) No. 82 of 2018 etc.**"*
9. *Therefore, supply of copy of pleading to an intervenor does not arise. This apart, in fact no affidavit or pleading is filed before the Adjudicating Authority but the requisite form such as, (Form-1) is filed for application under Section 7 or (Form-5) for filing application under Section 9. In the said format the applicants only provide the details as required as per the format which includes the name of the 'Corporate Debtor', 'Creditors', amount of 'debt' and debt of 'default' etc. along with relevant enclosures thereto.*
10. *For a petition under Section 65 of the 'I & B Code' or for alleged allegation of 'collusiveness', the party moving the application is required to prove the same. The Adjudicating Authority cannot pass any order in absence of any corroborating evidence or statement.*
11. *Section 65 of the 'I & B Code' deals with 'fraudulent or malicious initiation of proceedings' whereas Section 66 relates to 'Fraudulent trading or wrongful trading'. As per sub-section (1) of Section 65, if any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may pass appropriate order of penalty in terms with the said provision. The word 'collusiveness' have not been mentioned there but one can prove collusion to suggest that the proceeding relating to insolvency resolution process was initiated fraudulently in collusion or with malicious intent.*
12. *Learned Counsel appearing on behalf of the Appellant referred to different agreements between 'Dome-Bell Electronics India Pvt. Ltd.', Appellant and other third parties as also 'Share Pledge Agreement'. According to the Appellant, the 'Dome-Bell Electronics India Pvt. Ltd.' Pledged 44,38,400 equity shares in 'Videocon D2H Limited' and also executed a corporate guarantee by way of further security. He has referred to order dated 27<sup>th</sup> July, 2017 passed by the National Company Law Tribunal, Mumbai, sanctioning the Scheme of Arrangement for Amalgamation of 'Videocon D2H Ltd.' into and with 'Dish TV India Ltd.' Due to defaults in repayment of the debentures, the debenture trustee sent a demand notice to 'Hindustan Oil Ventures Limited' on 20<sup>th</sup> December, 2017. All those facts were brought on record but the Appellant has failed to suggest that an application under Section 7 was filed by 'Invex Private Limited' fraudulently or with malicious intent, for the purpose of rejecting the application or for imposing penalty under Section 65 of the 'I&B Code'.*
13. *In view of the findings aforesaid and in absence of any merit, no relief can be granted. The appeal is dismissed. No costs.*
6. **In the Rejoinder filed by one of the Director of Nityank/Applicant it is reiterated that the Applicant being a Debenture Holder for which the Corporate Debtor had**

stood surety therefore the claim is nothing but "financial debt". The Civil Suits filed by the Corporate Debtor are false and merely a moonshine. In the rejoinder it is denied that there was existence of two separate financial debts. Placing reliance on the claim Form-C it is informed that there was no bifurcation of claims but an amount of ₹ 936,59,00,000/- were demanded and there was no bifurcation in the said Form dated 07.09.2018.

7. Both the sides were heard at length and the voluminous pleadings have also been discussed in detail in the light of annexed evidences and case laws relied upon. At the outset this Bench is of the view that the issue of the alleged claim has already been considered not only by this Bench but also by Hon'ble NCLAT, however, the nature of claim viz-a-viz Insolvency Proceedings was rejected. The entire matter is also subject to challenge before Hon'ble High Courts as referred in above paragraphs, thus demonstrating that the claim of the Applicant/Nityank is disputed one. All the judicial forums have gone in depth to understand the nature of transaction and several agreements to analyse the complexity of the dealings between number of parties involved in these transactions, however, almost unanimously denied the relief.

7.1 As far as the procedure laid down in Insolvency Code, 2016 is concerned, the same is simple and straight. A Financial Creditor is to submit a claim in respect of a Financial debt which is an ascertained liability due from the debtor. There are several types of "financial debts", as defined in section 5(8) of the Code. There should be an apparent "default" for non-payment of an ascertained and definite liability. Therefore a debt should be a clear, definite and ascertainable and must not be in dispute or doubtful. A doubtful or disputed debt is a subject matter of Civil Proceedings and therefore, within the domain of Civil Courts to decide the dispute about the debt contested by both the sides. As far as the scope and ambit of Insolvency Code is concerned, this Bench is not having jurisdiction to settle a disputed debt. This Bench is also not enshrined with the duty to pass a Decree on the Ownership of a debt. The scope of Insolvency Code is to proceed in respect of an undisputed debt, the payment of which is defaulted. This Bench under Insolvency Code is not constituted to settle Civil disputes. Only in respect of a defined and unambiguous debt the Insolvency Proceedings are to be commenced.

7.2 A view has already been expressed by this Bench in the case of *Shailesh Savla V/s Good Value Financial Services Private Limited in C.P.(IB)-429/(MB)/2018 by Order delivered on : 25.11.2019* as under :-

" 9. On hearing this case as well as on due examination of other precedents one thing is clear that all type of money transaction could not be held as "financial debt" as defined under section 5(8) of the I&B Code. Mere transfer of money from one bank account to the account of another party ipso facto not a financial debt. There should be corroborative evidence to establish that the transaction in fact was between a **lender** on one hand and **borrower** on the other hand. This relationship of lender and borrower is mandatory. To establish that a particular transaction is a "financial debt" some specific document or corroborative evidence is a must. On the other hand, if a transaction is related to a business deal or it pertains to a joint venture having the element of profit/loss must not compulsorily be treated as "financial debt". One of the fundamental requirement is that the money borrowed must be against the payment of interest. Facts of this case are complex as well as depending upon various terms and conditions or happening of certain events, therefore, in plain terms the transaction did not appear to be that the said transfer of money was only for the purpose of earning interest. It has also not been established that the money was transferred to get a fixed value of the money, that too, without element of risk or loss. Interestingly against the transfer of total amount of Rs. 11,08,00,000/- almost 50% was returned as per the terms of the business deal narrated supra. This fact itself has proved that the money was not exchanged between the parties to earn interest but it was a convoluted business deal amongst the parties. The business deal was admittedly in respect of a Real Estate Project. The Petitioner had failed to complete the project. During the progress of the project initially, a sum of Rs. 50,00,000/- (Rupees Fifty Lakhs) was paid by the Respondent on 26.10.2010 vide a Cheque of Bank of India. Since the Respondent had also invested and in lieu 16 flats were to be purchased by the Respondent, therefore, further mutual arrangements have been entered between the parties. As per the Respondent Company there was negotiation and re-negotiation, as it generally happens in a business, among the parties which involved other business settlement as well. In this regard our attention was drawn on some previous transactions which involved Civil and Criminal Proceedings took place among the parties now again in litigation before us. Therefore, in terms of a part of the settlement the amount in question was paid back by the Petitioner to the Respondent and thus on the face of it was not a loan transaction. The Petitioner had neither annexed in the Petition any Agreement or evidence executed between the parties to demonstrate that the transaction in question was interest bearing transaction, nor placed any corroborative documentary evidence in the pleadings to establish that the transaction had fallen within any of the category laid down under section 5(8) of the I&B Code. The Petitioner has only submitted bank statements and nothing more. A Bank Statement simply demonstrate transfer of money from one hand to another hand. It did not establish the nature of transaction or the purpose for which such transfer took place. Therefore, mere submission of bank account is not suffice to establish that the transfer of money through banking channel was in fact a financial deal having the element of either 'interest' or 'time value of money'.

10. A 'business' deal or transaction has an ingredient of joint contribution to enter into a joint venture where the parties are required to perform their respective part of performance so as to earn profit jointly. Repayment on an Investment in a business venture is not the responsibility or duty of any of the party, but the earning of profit is an outcome of joint effort of the parties who have joined hands to run the business. Moreover there is also an element of risk involved in a business. It is suffice to add that an investment is of two types (i) business investment, or (ii) financial investment. So in a business investment it is not a must that the money put-in should get a fixed return in the form of interest or dividend. By joint effort profit is to be

*earned. It may be a loss sometimes. As against that, in a pure financial transaction an investor simply put-in his money but do not participate in any activity to earn dividend or interest. Investment of funds automatically itself earn interest. Such investor is not even concerned about the business profit or loss of the borrower, but only concerned about his time value of money lent. A fine line of distinction is very much in existence between the two. These are few points, not exhaustive, nevertheless distinguishing a business deal with a financial deal. On these parameters at present in this case the transfer of money was nothing but a business transaction and not a financial debt as defined in the Code.*

*10. Keeping brevity in mind the case laws are not reproduced, however, on careful reading it is legally sustainable that, every business transaction is not a loan transaction so as to be held as "financial debt". Resultantly, following the law already laid down we find no force in this Petition. Hence Petition is dismissed, to be consigned to records."*

8. It is important to note in this case that the impugned transaction between the two parties was in fact not a direct transaction in the nature of a transaction where the relationship between the two parties is of "borrower" and "lender". Rather as per the facts narrated hereinabove, even the transaction do not fall under any of the categories of list of Financial Debts as defined under sub-sections (a) to (i) of Section 5(8) of the Insolvency Code. Rather time and again during the proceedings it was asked to inform this Bench about the specific sub-section of Section 5 of the Code under which the Applicant is demanding the impugned transaction to be held as "financial debt". It is worth to note that the transaction as narrated in the above paragraphs was a very complex transaction involving other parties as well, therefore, from any corner of law this transaction cannot be considered as a "financial debt" as defined under the Code. As narrated before us as well before several other authorities there were several agreements such as Share Holder Agreement, Debenture Trust Deed, Share Pledge Agreement etc. etc. All these evidences have thus clearly demonstrated that this Applicant was not entering into a pure and simple "financial transaction" to earn interest or to earn "time value of money" but the transaction involved business risk coupled with business dividend. In all such transactions where the investment is made in a business having element of profit must not be held as an investment for "time value of money". At the end we can conclude that in the past on several occasions the alleged claim of this Applicant had already been rejected by several Judicial Forums, therefore, respectfully following the reasoning of rejection already assigned therein, we hereby conclude that this transaction has rightly been rejected by the RP and as a consequence this Application is also **rejected**.

**(B) MA-2163/2019**

1. Almost on the same lines this Applicant viz. Balmukh Goldjewel and Multitrading Private Limited has filed this Misc. Application on 13.02.2019 for the relief that the

Respondent i.e. Resolution Professional be directed to admit the claim of ₹ 348,43,00,000/- as per claim lodged dated 07.09.2018 as a "financial debt".

2. The Applicant through a Debenture Trustee subscribed non-convertible debentures amounting ₹ 1684,10,00,000/- issued by HOVL under Debenture Trust Deed ("DTD") dated 01.02.2018. In order to guarantee HOVL's payment obligation under the said DTD the Corporate Debtor Dome-Bell Electronics India Pvt. Ltd. had executed a Corporate Guarantee Deed in favour of the Applicant. Thereafter there was a Share Pledge Agreement ("SPA") executed on 01.02.2018 entered into between Debenture Trustee and Share Holder of Videocon D2H Ltd. As per the SPA the Corporate Debtor had pledged 50,900 equity shares of Videocon D2H Limited in favour of the Debenture Trustee (for the benefit of the Applicant herein) and agreed to pledge further 4,08,00,000 equity shares of Videocon D2H Limited. The grievance is that HOVL and the Corporate Debtor had committed default in respect of the impugned payment obligation. However, one more event took place that on occurrence of default on 12.04.2018 the Applicant invoked the pledge of 50,90,000 shares in Videocon D2H Limited. The Debenture Trustee sold the pledged 50,90,000 shares and remitted to the Applicant an amount of ₹ 1560.04 Crores realized through such sale, but leaving behind an amount of ₹ 348,43,00,000/-, alleged to be payable by the Corporate Debtor as on 21.08.2018. In respect of the said claim on Public Announcement under section 15 of the Insolvency Code this Applicant had lodged a claim before RP on Form-C dated 07.09.2018. Further it is informed in this Application that certain letters were exchanged however the RP kept the claim undecided. **Meanwhile it has come to the notice of the Applicant that the Resolution Plan is pending for approval, hence moved this Misc. Application.**
3. In Reply the RP has submitted an Affidavit wherein given several reasons justifying the rejection of the claim. In this affidavit it is submitted that the Corporate Debtor had in this regard, pledged its shares by a Share Pledge Agreement dated February 1, 2018, in favour of the Debenture Trustee to secure the non-convertible debentures issued by Hindustan Oil Ventures Limited ("HOVL"). The Share Pledge Agreement does not constitute security interest. According to Learned RP the arrangement so made between the parties, wherein other parties were also involved, has no element of "financial debt". According to Learned RP, otherwise also, the liability of the Corporate Debtor under the Corporate Guarantee dated 01.02.2018 was limited and restricted to the value of security provided i.e. pledge of shares, under the Share Pledge Agreement. That security was invoked and the amount recovered stood settled against the outstanding debt against the alleged liability. Further it is vehemently argued that

the entire transaction involving Share Pledge Agreement, Debenture Trustee Agreement and other Pledge Agreements are very much complex in nature and do not fall within any of the categories as listed under sub-section (a) to (i) of section 5(8) of the Insolvency Code.

4. Having heard the submissions this Bench is of the view that the entire issue involved is squarely covered by our decision as discussed in MA-1387/2018 (supra) on facts as well as on Law. The reasoning assigned therein shall *mutatis mutandis* apply on the facts of this Application. On the same lines this Application is also **rejected**.

SD/-

**CHANDRA BHAN SINGH**  
**MEMBER (TECHNICAL)**

09.12.2019  
Aah

SD/-

**M. K. SHRAWAT**  
**MEMBER (JUDICIAL)**