NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1145 of 2024

IN THE MATTER OF:

Imdadali M Momin,
61, Jafari Tower, B/H. Tagore Hall, Kochrab Paldi,
Ahmedabad – 380006. **...Appellant No. 1**

Abasali Mohmmadau Momin,
61, Jafari Tower, B/H. Tagore Hall, Kochrab Paldi,
Ahmedabad – 380006. **...Appellant No. 2**

Abidali Mohmedali Momin,
61, Jafari Tower, B/H. Tagore Hall, Kochrab Paldi,
Ahmedabad – 380006. **...Appellant No. 3**

Mohsinali MumtazalI Momin,
61, Jafari Tower, B/H. Tagore Hall, Kochrab Paldi, **...Appellant No. 4**
Ahmedabad – 380006.

Mumtazali Jamalbhai Momin,
61, Jafari Tower, B/H. Tagore Hall, Kochrab Paldi, **...Appellant No. 5**
Ahmedabad – 380006.

Shabbirali Jamalbhai Momin Shelia,
61, Jafari Tower, B/H. Tagore Hall, Kochrab Paldi, **...Appellant No. 6**
Ahmedabad – 380006.

Versus

Pellucid Lifesciences Pvt. Ltd.
Having Reg. Office at Plot No. 3538,
Phase – 4, GIDC Industrial Estate, Chhatral, **...Respondent**
Gandhinagar, Gujarat – 382 729.

Present:

For Appellants:	**Mr. Pavan Godiawala, Mr. M.S. Vishnu Sankar, Mr. Aditya Santosh, Ms. Athira G. Nair, Ms. Anjali Singh, Ms. Isha Singh, Advocates.**
For Respondent:	**Mr. Navin Pahwa, Sr. Advocate, Mr. Himanshu Satija, Ms. Neha Mehta, Mr. Harsh Saxena, Mr. Shevaaz Khan, Advocates.**

J U D G M E N T
(9th September, 2024)

INDEVAR PANDEY, MEMBER (T)

This appeal arises from the order passed by the National Company Law Tribunal, Ahmedabad Bench, the Adjudicating Authority (AA), in CP (IB) No. 74 (AHM) 2023 in the matter of Imdadali M Momin & Ors. (Financial Creditor) Vs. Pellucid Lifesciences Pvt. Ltd. (Corporate Debtor) for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor under Section 7 of the Insolvency & Bankruptcy Code (IBC), 2016 (in short 'Code'). AA vide its order dated 25.04.2024 had rejected the prayer of the Petitioners to initiate the CIRP against the Corporate Debtor/ Respondent. The financial creditors have filed this appeal under Section 61 of the Code, challenging the order by AA.

2. The order passed by AA in brief is given below-
Six financial creditors filed an application against the CD, claiming a debt of ₹1,25,44,997.25 with interest @ 12% per annum. The date of default is mentioned as 30.11.2022. However, no record of the default was filed with the Information Utility. The Corporate Debtor argued that the application was not maintainable due to non-compliance with IBBI regulations and claimed the loan was an unsecured advance from the applicants, who were also the promoters, with no agreement on repayment or interest. After the application was filed, the Corporate Debtor repaid Rs.99,07,375.48, but the petitioners insisted that the petition should proceed since the full amount was unpaid.

3. The AA rejected the application, because it found that there was no clear agreement between the creditors and the Corporate Debtor regarding the loan terms, including the repayment schedule and the interest rate. Without such an agreement, it was unclear, whether interest was payable and at what rate. The AA emphasized that the Insolvency and Bankruptcy Code (IBC), 2016, is meant for insolvency resolution and not for recovering disputed debts. Since the Corporate Debtor had already repaid a significant portion of the loan and raised a valid dispute regarding the interest, the AA determined that the application was not appropriate for the IBC process and rejected it.

4. The brief facts of the case are as follows:

(i) The CD was incorporated on August 30, 2013, with an authorized capital of Rs.3 crore and a paid-up share capital of Rs. 2.1 crore. The Appellant No. 1 was one of the Promoter Director of the CD.

(ii) Between 2013 and 2022, the Corporate Debtor (CD) approached the appellants for financial assistance, resulting in the appellants advancing loans over this period. The cumulative amount of the loans provided by the appellants totaled Rs. 1,25,44,997.25. The specific details of each loan disbursement are given in the demand notice under Section 7 of the Code dated November 12, 2022. The notice also highlighted that for the financial year ending March 31, 2022, the CD paid Rs. 6,53,661.30 as interest and TDS was also deducted in respect of Appellant 1 and 3 in compliance with the Income Tax Act. Despite these payments, the CD failed to pay interest

to Appellant 4 to 6 from April 1, 2019, onwards, leading to an outstanding interest liability of Rs. 20,36,880.79 by October 30, 2022.

(iii)There is no formal loan agreement giving the amount of principal, rate of interest per annum and frequency of interest payable, if any.

(iv)The demand notice under section 7 of the Code was received by the CD on 15.11.2022. The appellants claimed the date of default as 30.11.2022, 15 days after the receipt of the demand. The ledgers of the CD had acknowledged that it had availed loans from the appellants, with the ledgers also reflecting the interest calculations for the period between April 1, 2021, and March 31, 2022. On March 7, 2023, the appellants filed an application under Section 7 of the Code to initiate insolvency proceedings against the CD.

(v) During the pendency of CIRP proceedings on January 17, 2024, the CD made partial repayments totaling Rs.99,07,375.48 through RTGS and subsequently filed an affidavit before AA, asserting that they have paid the principal in full and interest for which TDS was paid and there was no contractual obligation to pay interest and that the appellants' claim for interest was unjustified. The CD argued that the appellants were inflating their claims to meet the threshold required for initiating insolvency proceedings.

(vi)The AA, in its order, noted the CD's repayment of Rs. 99 lakhs and concluded that the insolvency proceedings could not be used solely for the

recovery of money, leading to the dismissal of the appellants' petition. However, the Authority did not make any findings on the issues of debt and default.

5. **Submission of the Appellant**

The appellant has assailed the impugned order dated 25.04.2024 on the following grounds:

i. The appellant has argued that the AA erred in dismissing the application under Section 7 of the Code. The primary basis for dismissal was the view that the forum is unsuitable for money recovery, which the appellant contends misinterprets the Code's purpose. Section 7 of the Code is meant to address insolvency and corporate debt issues, not merely serve as a debt recovery mechanism. The appellant asserts that the tribunal's failure to address the core issues of debt and default and its reliance on an incorrect interpretation led to an unjust dismissal of the application.

ii. The appellant has contended that the AA did not properly evaluate the existence of debt and default, which are fundamental prerequisites for admitting a petition under Section 7 of the IBC. It's their case that the facts of the case clearly demonstrate both elements. The respondent's payment of Rs.99,07,375.48 on 16.01.2024 was partial and made under the threat of the petition's admission, which does not nullify the default. According to the appellant, the AA should have concentrated on confirming whether a debt existed and whether there was a default, rather than

whether the debt was fully settled. They reference established legal principles that a partial payment or payment made under pressure does not negate a default, as supported by numerous judicial precedents.

iii. The appellants have further stated that the respondent engaged in significant suppression of material facts, which misled the tribunal. For instance, the respondent allegedly did not disclose the No Dues Certificate from HDFC dated 06.02.2021. Additionally, they misled the tribunal about the status of the credit facility with Bank of Baroda (BOB), and suppressed information related to a letter dated 07.03.2023 requesting not to renew the credit facility. The appellant argues that these omissions and misrepresentations skewed the tribunal's understanding of the case, affecting its judgment.

iv. The appellants have disputed the respondent's claim that petitions under Sections 241 and 242 of the Companies Act, 2013, were filed, arguing that this was done to mislead the tribunal. The Appellant 1 clarified that he had actually filed an application under Section 169 of the Companies Act, 2013, challenging his wrongful removal as Director and not under Sections 241 and 242. This misrepresentation by the respondent allegedly distorted the tribunal's perception of the case's context.

v. The appellants highlighted inconsistencies in the respondent's statements regarding the nature of the unsecured loan and interest payments. The respondent's claims of the loan being an investment, rather than a

financial debt, are contradicted by the financial statements and other evidence.

vi. The appellants have cited several judicial precedents to support their challenge against the impugned order. They have cited a judgment of Coordinate Bench of this Tribunal in Company Appeal (AT) (Ins) No. 1336 of 2019 '*Shrem Residency Pvt. Ltd. V. Shraman Estates Pvt. Ltd.'* (dated 11.01.2023) which emphasizes that under Section 7 of the Code, the NCLT must admit a petition if there is clear evidence of debt and default, without addressing the merits of the dispute. Similarly, Hon'ble Supreme Court in ***Civil Appeal No. 7121 of 2022, N. Suresh Kumar Reddy vs. Canara Bank* (dated 09.08.2022)** reaffirmed that once a default is established, the application under Section 7 must be admitted, focusing solely on the occurrence of default rather than on any disputes regarding the debt. Additionally, the Supreme Court's judgment in ***Innoventive Industries Ltd. vs. ICICI Bank Ltd.* [(2018) 1 SCC 407, dated 31.01.2018**] further reinforces that the AA is mandated to admit a petition if a default is proven, regardless of any contested issues related to the debt itself.

6. **Submission of the Respondent**

The Respondent has made the following submissions before us:

i. The Respondent submits that the AA properly dismissed the Section 7 application on 25.04.2024, citing the absence of a formal loan agreement

and the use of IBC not as a recovery tool but for resolving insolvency issues. The Respondent also notes that a payment of Rs. 99,07,375.48 was made, covering the claimed debt, but the Appellants failed to provide proof of the loan disbursement.

ii. The Respondent contends that it paid Rs.99,07,375, which includes both principal and interest, to resolve the dispute. The Respondent further submitted that the Appellants' claims regarding additional interest are unfounded, as TDS deductions do not entitle the Appellants to further interest. The payment and its calculation were detailed in an affidavit filed on 16.01.2024, and no objections were raised by the Appellants.

iii. Respondent asserted that the proceedings under the IBC are not appropriate for claiming interest in the absence of a formal loan agreement.

iv. The respondent further stated that the appellants are all members of the same family. When the respondent company was incorporated in 2013, Appellants Nos. 1, 5, and 6 served as its promoters, shareholders, and directors. In January 2018, Appellants Nos. 5 and 6 were removed as directors. Following a family dispute in 2019, the shares held by Appellants Nos. 4 to 6 were transferred to Appellants Nos. 2 and 3. Appellant No. 1, who has been a director since the company's inception, was removed from the board. He has contested this move through a

petition before the NCLT, Ahmedabad. The appellants have not provided any counter arguments to these facts.

v. The respondent has cited the decisions of this Tribunal in cases such as ***VRG Healthcare vs. VRG Infrastructure., [(2024) 243 Comp Cas 769: 2023 SCC Online NCLAT 1156 (2023) 3 BC 70]*** and ***Rohit Motwat vs. Madhu Sharma [CA (AT)(Ins.) No. 1152/22 decided on 03.02.23]***, that the IBC's purpose is debt resolution, not interest recovery. Thus, the claim for interest is not maintainable. A similar position was adopted by this Hon'ble Tribunal in ***S.S. Polymers vs. Kanodia Technoplast*** **[CA (AT) (Ins) No. 1227/19**, decided on 13.11.2019] and in *Permali Wallace vs. Narbada Forest Industries* [CA(AT)(Ins) No. 36/23, decided on 17.01.2023].

vi. The Respondent argues that any funds provided were investments, constituting part of the promoter's contribution, rather than loans. As there was no formal loan agreement or contract stipulating the terms of a loan, the Appellants' claims do not qualify as financial debt under the IBC. Relevant case law, including ***Nidhi Rekhan vs. Samyak Projects Private Limited [CA (AT) (Ins.) No. 1035/20 decided on 31.01.20]***, supports the position that investors cannot claim to be financial creditors.

vii. The Respondent claims that the Section 7 application is a retaliatory measure following the removal of Appellant No. 1 as director of CD. The timing of the application, filed shortly after the director's removal, suggests

that it was an attempt to extort money rather than a genuine insolvency claim.

Analysis and findings

7. We have heard the counsels in detail and examined the records submitted by the parties. Before proceeding further, we have a look at some of the key definitions from the Code:

Section 3 (11) 'debt' means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

Section 3 (12) 'default' means a non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be

Section 5 (8) 'financial debt' means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes-

(a) money borrowed against the payment of interest

8. The key question to be decided is whether the aforesaid loan qualifies as financial debt to meet the requirements of Section 7 of the code and whether the default has occurred as per the provisions of the code.

9. In the present case, there is no loan agreement between the appellants and the CD. There is no document which provides the tenure of the loan, rate of interest prescribed and frequency of payment of interest i.e. whether monthly, yearly or any other interval. The only document in this regard relied by

appellants is the ledger accounts of the appellants maintained by the CD. Regarding payment of interest by the CD to the appellants the only document in this regard is TDS certificates for the financial year 2021-2022.

10. We also observe that no interest has ever been demanded by appellants from the respondent before the demand notice under Section 7.

11. As per definition of the financial debt, such debt should have consideration for time value of money which *inter alia* means that the interest is to be paid at regular interval or the same accumulates and is paid back along with principal after a particular period as specified in the agreement.

12. We also observe that in the present case the Appellant 1 was promoter director of CD and was getting salary from CD till his removal from the board of CD. A company petition against such removal is also pending in the Tribunal. The present company petition for CIRP against CD was filed after the Appellant 1 was removed from the CD.

13. The loan has been provided to the CD by appellants since 2013 i.e. since the inception of the CD as a company and appear to be more in nature of investment than financial debt as it does not fulfill the conditions to be classified as financial debt. In the instant case, we see absence of any written loan agreement or any other document showing the tenure of the loan or the rate of interest or periodicity of interest payment. In view of the same the aforesaid loans to CD by appellants cannot be classified as financial debt as defined under

Section 5 (8) of the Code. The question of default would only arise if the aforesaid amount is classified as financial debt.

14. We have also seen that the respondent has paid an amount of Rs.99,07,375.48 to the appellants towards full and final payment of the claim of appellants. Details of the payment made are shown in the table below:-

	Principal (Rs.)	**Interest (Less TDS)**
Petitioner No.1	36,64,273	3,95,741.48 (payable for FY 2021-22 because TDS is deducted for said FY)
Petitioner No.2	Nil	Nil
Petitioner No.3	16,28,250	1,75,851 (payable for FY 2021-22 because TDS is deducted for said FY)
Petitioner No.4	13,57,590	NIL (No TDS is deducted and therefore, there is no question of interest)
Petitioner No.5	8,29,120	NIL (No TDS is deducted and therefore, there is no question of interest)
Petitioner No.6	18,56,550	NIL (No TDS is deducted and therefore, there is no question of interest)
Total	**93,35,783**	**5,71,592.48**

The Corporate Debtor has also raised dispute regarding further claim of interest. The appellant has also not disputed the receipt of the aforesaid amount nor did they raise any objection at that stage.

15. In this regard we also have a look at the objects of IBC 2016

"The objective of the Insolvency and Bankruptcy Code, 2015 is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development."

16. It is clear from the aforesaid objectives of the IBC that it's a forum for resolution of insolvency and not for recovery of debt. It has been laid down by the Hon'ble Supreme Court in "Swiss Ribbon Pvt. Ltd. Vs. Union of India" ((2019) 4 SCC 17), that IBC is not a recovery proceeding and the Application which has been filed by the appellant in the present case is only the application for recovery of balance amount of interest. The Corporate Debtor has already paid the amount of principal and interest for the amount for which TDS was paid. The aforesaid application for initiation of CIRP process against CD was not filed for resolution of insolvency of the Corporate Debtor.

17. In his legal submission the appellant had cited cases involving existence of debt and default thereafter and submitted that the AA has no discretion but to order CIRP if debt and default is proven. In this regard, they have cited relevant

Judgments: *Innoventive Industries Ltd. v. ICICI Bank Ltd. (supra), M. Suresh Kumar Reddy V. Canara Bank & Ors.*

18. We are of the view that the present case is not covered by aforesaid judgments of Hon'ble Supreme Court as the debt here cannot be classified as financial debt and therefore the AA is well within its powers not to allow CIRP under Section 7 of the Code against CD.

19. The present case is covered by the decisions of the coordinate Benches of this Tribunal in *VRG Healthcare P. Ltd. Vs. VRG Infrastructure P. Ltd.* (supra), *Rohit Motwat vs. Madhu Sharma [CA (AT)(Ins.) No. 1152/22 decided on 03.02.23]* which lay down the criteria for classifying a particular debt as a financial debt and also clearly state that proceedings under IBC are for corporate insolvency resolution and not for recovery of debt.

20. After considering the arguments and reviewing the pleadings presented by both parties, we concur with the AA findings. The appellant has not submitted any agreement showing that the respondent, or corporate debtor, was obligated to pay interest on the alleged loan. Additionally, the AA correctly determined that, for a debt to qualify as a "financial debt," the amount advanced to the corporate debtor must be in consideration of the time value of money, which is clearly absent in this case. It was also rightly concluded that the appellant does not qualify as a financial creditor, since, no money was disbursed with consideration for time value. Further, the CD's claim to have paid the entire amount of principal and interest for which TDS has been deducted, has not been

disputed by the appellant. Now the dispute is only about recovery of balance amount of claimed interest. As already held this Appellate Tribunal is not a debt recovery forum. The appellant is free to raise such dispute before appropriate forum for recovery of balance claim, if any.

21. Based on the above, we find no grounds to interfere with the order passed by the AA. The appeal is dismissed. Any interim applications, if pending, are also disposed of. No order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

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