

**In the National Company Law Tribunal
Division Bench, (Court-I), Kolkata**

CP (IB) No. 323/KB/2021

***A petition under section 7 of the Insolvency and Bankruptcy Code,
2016 read with Rule 4 of the Insolvency and Bankruptcy (Application
to Adjudicating Authority) Rules, 2016;***

In the matter of:

Adhunik Corporation Limited

[CIN: U27106WB1996PLC076992]

...Financial Creditor

Versus

Shivam India Limited [CIN: U23101WB1999PLC090748]

...Corporate Debtor

Date of Pronouncement of order: 22.08.2025

Coram:

Smt. Bidisha Banerjee

:Member (Judicial)

Cmde. Siddharth Mishra

: Member (Technical)

Counsel appeared physically / through video Conferencing

Mr. Joy Saha, Adv.] For the Financial Creditor

Mr. Shaunak Mitra, Adv.]

Mr. Siddhartha Sharma, Adv.]

Mr. Arjun Asthana, Adv.]

Mr. Pathik Choudhury, Adv.]

Mr. Saurav Jain, Adv.]

Mr. Rishav Banerjee, Adv.] For the Corporate Debtor

Mr. Aishwarya Kr. Awasthi, Adv.]

O R D E R

Per Bidisha Banerjee, Member (Judicial):

1. The Court convened through hybrid mode.
2. Ld. Sr. Counsel /Counsels for the parties were heard at length.
3. This Petition has been taken out for a fresh hearing on remand from Hon'ble NCLAT vide its order dated 19.02.2025.

4. Arguments advanced by the Financial Creditor (FC):

4.1. Limited Scope of Proceedings in light of decision of Hon'ble NCLAT.

4.1.1. Ld. Sr. Counsel for the Financial Creditor would submit that Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 1427 of 2023 dated 19th February, 2025 had already held that Adhunik Corporation Limited (ACL) is a financial creditor in accordance with I&B Code, 2016.

4.1.2. Further, the Hon'ble NCLAT has directed this Tribunal to satisfy itself only on the following issues:

- a) Whether the financial debt has crossed the threshold limit?
- b) Whether the financial debt has become due and payable?

4.2. Unpaid Financial Debt is more than INR 1 Crore

4.2.1. It is further submitted that a total financial debt of INR 42,47,32,067.00 (Rupees Forty Two Crore Forty-seven Lakh Thirty-two Thousand and Sixty-seven only) is due and payable by Corporate Debtor to the Financial Creditor and the same is arising out of the following:

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Sl. No.	Particulars	Amount (in INR)
1.	Direct financial assistance by fund infusion (Ref. Page Nos. 42-79 of the Petition)	23,49,11,000.00
2.	Direct financial assistance by supply of raw materials (Ref. Page Nos. 80-160 of the Petition)	4,35,58,197.00
3.	Interest @ 18% from 1 st March 2021 to 30 th September, 2021 on item nos. (1) and (2) above.	2,62,59,596.00
Total Financial Debt		30,47,29,153.00

4.2.2. Additional Financial assistance granted by Financial Creditor in the form:

Sl. No.	Particulars	Amount (in INR)
1.	Outstanding of raw materials supplied in credit from 3 rd parties (Ref. Page 171 of the Petition)	11,78,40,916.00
2.	Commission decided and agreed to between the parties as considered for time value of money (Ref. page No. 161-169 of the Petition)	11,54,602.00
3.	Outstanding TDS (Ref. page No. 170 of the Petition)	10,07,396.00
Total Financial Debt		12,00,02,914.00

4.2.3. Bank account statements of the SBI account of Corporate Debtor (in short CD) [Ref. Page Nos. 39-257 of IA 767 of 2025] clearly shows that only a sum of Rs. 2,95,37,441.38 (Indian Rupees Two

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Crore Ninety Five Lakh Thirty Seven Thousand Four Hundred and Forty-one and Thirty-eight paisa only) was received by the Financial Creditor towards sales commission in terms of the Agreement dated 23rd June, 2020 as under (Bank Statements of Financial Creditor at page Nos. 43-79 of the petition):

Date	UTR	Sender Name	Sender Account	Amount
03.09.2020	SBINR120200 90300001605	SHIVAM INDIA LIMITED 3 WOOD STREET GOVIND MAHAL 2ND F KOLKATA WEST BENGAL	36737 087161	39,78,304.14 (Ref. at Page No. 62 of the min CP)
21.09.2020	SBINR120200 92100121584	SHIVAM INDIA LIMITED 3 WOOD STREET GOVIND MAHAL 2ND F KOLKATA WEST BENGAL	36737 087161	44,04,785.00 (Ref. at Page No. 64 of the min CP)
20.10.2020	SBINR12020 102000045191	SHIVAM INDIA LIMITED 3 WOOD STREET GOVIND MAHAL 2ND F	36737 087161	39,56,539.00 (Ref. page No. 171 of IA (IB) 767 of 2025)

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Date	UTR	Sender Name	Sender Account	Amount
		KOLKATA WEST BENGAL		
10.11.2020	SBINR12020 111000083567	SHIVAM INDIA LIMITED 3 WOOD STREET GOVIND MAHAL 2ND F KOLKATA WEST BENGAL	36737 087161	52,77,510.24 (Ref. page No. 187 of IA (IB) 767 of 2025)
28.12.2020	SBINR12020 122803810560	SHIVAM INDIA LIMITED 3 WOOD STREET GOVIND MAHAL 2ND F KOLKATA WEST BENGAL	36737 087161	46,75,112.00 (Ref. page No. 226 of IA (IB) 767 of 2025)
12.01.2021	HDFCR52021 011268840781	SHIVAM INDIA LIMITED COSHIVAM INDIA LIMITED GOVIND MAHAL	069386 30000111	39,42,117.00 (Ref. page No. 100 of IA (IB) 767 of 2025)
11.02.2021	HDFCR520210 21175218325	SHIVAM INDIA LIMITED COSHIVAM INDIA LIMITED GOVIND MAHAL	069386 30000111	33,03,074.00 (Ref. page No. 107 of IA (IB) 767 of 2025)

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4.2.4. The Hon'ble Appellate Tribunal has at para 20 of its judgment dated 19th February, 2025 clearly observed that "*there is sufficient material on record to prove that there was disbursement of funds by the Appellant to the Corporate Debtor in their account. The bank transaction details have been placed at page 248-284 of Appeal Paper Book ("APB" in short) to substantiate their contention that money was actually disbursed to the Corporate Debtor, which was in dire financial straits, towards working capital to make the Corporate Debtor operational. Receipt of this amount has also not been denied by the Corporate Debtor.*" [Ref. para 20 of Hon'ble NCLAT judgment in Company Appeal (AT) (Insolvency) No. 1427 of 2023].

4.2.5. In view of the above, it is amply clear that Financial Debt in the present case has crossed the threshold limit prescribed under Section 4 of the I & B Code, 2016 and is well above the threshold of INR 1 Crore. Accordingly, the present petition under Section 7 of the I & B Code, 2016 is maintainable and in view of the failure of Corporate Debtor to repay the financial debt, the present petition is liable to be admitted.

4.3. **Default in payment of Financial Debt:**

4.3.1. It is undisputed that CD was in a poor financial condition and was unable to pay the electricity bills to continue operations and consequently, the plant was closed for 6 months.

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4.3.2. In view of the poor financial condition of CD, Financial Creditor agreed to extended financial assistance to CD on interim basis (Page Nos. 33-34 of petition). It was duly understood and agreed to between the parties that the said financial debt was to be refunded by the CD to the Financial Creditor on demand (Page Nos. 33-34 of petition).

4.3.3. The Financial Creditor recalled the financial assistance extended to CD and forthwith demanded repayment of the financial debt by its notice dated 11th October 2021 (Page No.190 of petition).

4.3.4. As CD failed to repay the financial debt owed to Financial Creditor in terms of the notice, the date of default in making repayment towards the financial debt is 11th October 2021 (Page No. 16 of petition).

4.3.5. In view of the above, there is no dispute on disbursement of financial assistance, as well as express demand made by Financial Creditor for repayment of the financial debt on 11th October, 2021.

4.3.6. It is urged that the Corporate Debtor, having failed to repay the financial debt, has committed default under the I & B Code, 2016 and consequently is liable to undergo CIRP.

4.4. **Scope of adjudication under admission of a Section 7 of I&B Code, 2016 application:**

4.4.1. It is submitted that in accordance with Section 7 (4) read with Section 7 (5) (a) of the I & B Code, 2016, once the Adjudicating

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Authority is satisfied that there is financial debt and default, an application under Section 7 of the I & B Code 2016 must be admitted. Reference is made to the celebrated decisions:

- a) (Refer Innovative Industries Limited v. ICICI Bank and Another lade (2018) I SCC 407)
- b) E.S. Krishnamurthy & Ors. vs. Bharath Hi-Tech Builders Pvt. Ltd. (2022) 3 SCC 161).

4.4.2. Further that, it is trite law that non-payment of even a part of debt when it becomes due and payable will amount to default on the part of a Corporate Debtor. In such a case, an order of admission under Section 7 of I & B Code, 2016 must follow (Refer para 11 of M. Suresh Kumar Reddy v. Canara Bank, (2023) 8 SCC 387).

4.5. **Belated filing of additional documents:**

4.5.1. Ld. Sr. Counsel would assert that while the Hon'ble Appellate Tribunal vide its judgment dated 19th February 2025, directed this Adjudicating Authority to satisfy itself only upon the issues the financial debt has crossed the threshold limit? and (ii) the financial debt has become due and payable? during the course of hearing, the Ld. Advocate for CD has traversed outside the scope and ambit determined by the Hon'ble Appellate Tribunal for adjudication of the present petition and despite refusal of this Hon'ble Tribunal to allow any additional document at the stage of final hearing of the

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petition, the Corporate Debtor has instituted I.A. (IBC) No. 767/KB/2025 to further derail the proceedings.

4.5.2. That the following dates would clearly show the mala fide of the Corporate Debtor:

Sl. No.	Date	Particulars
1.	03.11.2021	C.P. (IB) No. 323/KB/2021 was instituted before Adjudicating Authority
2.	21.02.2022	This Hon'ble Tribunal issued notice on CD and two weeks' time was granted for filing of reply
3.	25.03.2022	Despite delivery of notice, none appeared for CD. Further two weeks' time granted for filing reply
4.	04.05.2022	CD appeared before this Hon'ble Tribunal and prayed for three weeks' time for filing of reply
5.	07.06.2022	The reply of CD was taken on record
6.	08.06.2022 -20.03.2023	The matter was listed from time to time before this Tribunal
7.	17.01.2023	CD filed a sur-rejoinder before this Hon'ble Tribunal (not the defense raised now are there)
8.	21.03.2023	Final hearing of the matter commenced before this Hon'ble Tribunal
9.	06.06.2023	Arguments were concluded before this Hon'ble Tribunal and matter was reserved for passing of judgment.

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4.5.3. As such, I.A. (IBC) No. 767/KB/2025 has been sought to be instituted by Corporate Debtor almost after 3 years of filing of reply to the petition.

4.5.4. That without prejudice to the rights of Financial Creditor, in order to ensure that the matter is heard by this Hon'ble Tribunal and to further prevent the corporate debtor from further delaying the proceedings, the Financial Creditor did not object to the documents sought to be placed on record by I.A. (IBC) No. 767/KB/2025.

5. Arguments advanced on behalf of the Corporate Debtor:

5.1. At hearing Ld. Counsel Mr. Rishav Banerjee appearing for the Corporate Debtor would invite our attention to the memorandum dated 23.06.2020 entered between the Adhunik Corporation Limited, whether the Financial Creditor and Shivam India Limited, the Corporate Debtor. The said terms and conditions mentioned therein are as under:

“BY AND AMONGST

(1) ADHUNIK CORPORATION LIMITED, a company Incorporated under the Companies Act, 1956 and having its corporate office at Lansdowne Towers, 2/1A Sarat Bose Road, - Kolkata 700020, hereinafter referred to as the "Adhunik" (which expression shall mean and include its successors in interest and assigns) of the FIRST PART:

(2) EACH OF THE PERSONS MENTIONED IN THE FIRST SCHEDULE HERETO, hereafter jointly and severally referred to as "the

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Promoters" (which expression shall mean and include each of their legal heirs, successors and assigns) of the SECOND PART;

AND

(3) SHIVAM INDIA LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at "Govind Mahal", 3, Wood Street, 2 Floor, Room No-1, Kolkata-700016, hereinafter referred to as "Shivam", (which expression shall mean and include its successors in interest and assigns) of the THIRD PART:

Where as Shivam has a unit having manufacturing facility for Billets, and Rolling Mill for finished products like bar and rods in coil form, billets and other steel products and the same is located at Raturia, Angadpur Industrial Area, Dist-Paschim Bardhaman, Durgapur – 713 215, West Bengal, (hereinafter referred to as "the said Unit").

And whereas the management of Shivam, represented by the Promoters herein, is not in a position to operate the said Unit to financial constraints and the said Unit is now closed for over 6 (six) months.

*And Whereas the said **management of Shivam** has in deference to the desire expressed by Adhunik agreed to recommence the operations of the said Unit **with funds** in the interim to **be provided by Adhunik** since Shivam does not have the ability to infuse any further amount of funds mandatorily required to make the said Unit operative.*

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And Whereas Shivam has suggested that some amount of funding would be immediately required to recommence the operations of the said Unit.

*And Whereas Adhunik has, on an **interim** basis, **agreed** to infuse the said funds and to facilitate operations of the said Unit by effecting **supply of the raw materials** during the period of this MoA, all on the clear understanding of the Parties that the entire funds so infused by Adhunik is fully refundable.*

And Whereas the Parties are now desirous of recording their understanding in this regard.

NOW, THEREFORE, THIS MEMORANDUM OF AGREEMENT WITNESSETH and it is hereby agreed by and amongst the Parties hereto as follows:

- 1. Shivam shall forthwith, upon receipt of the first instalment of fund as mutually decided from Adhunik take immediate steps to recommence the operations of the said Unit and shall make the said Unit fully operative as soon as possible but not beyond 15 days from the date of such first infusion of fund. In case Shivam is unable to make the said Unit fully operative within the said period, the Parties shall jointly discuss the way forward failing which the total amount*

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Infused by Adhunik into Shivam shall become refundable
forthwith.

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4. The said Unit shall be run and operated in terms of this MoA by Shivam for such period(s) as may be decided by Adhunik subject to the maximum period of 5 (five) Years envisaged under this MoA, It is hereby clarified and agreed between the Parties hereto that during the term of this MOA, the said Unit shall be run and operated by Shivam in accordance with the recommendations made by Adhunik.

5. To enable Shivam to carry out operations of the said Unit, Adhunik shall supply raw materials as per the production schedule of the said Unit, which shall be agreed at the beginning of each month by and between Shivam and Adhunik.

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7. **Adhunik shall supply raw materials to Shivam for its said Unit at the prevailing market prices for manufacturing Hot Rolled Finished Products as well as for Billets through Induction furnace route to be subsequently charged in rolling mill in hot charging process and the left-out billet not charged, will be sold. During the term of this MoA, Adhunik shall remove the entire finished products, calls and billets made out of the raw materials supplied by**

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Adhunik, for disposal at the prevailing market prices and

Adhunik shall be entitled to the following charges/commission out of the sale proceeds:-

(i) For Hot-rolled finished products and coils -

Rs 600/- per ton; and

(ii) For Induction Furnace sale-able Billets Rs.

300/- per ton.

(iii) Adhunik shall also be fully entitled to

remove By-products like end-cutting etc.

*Thus, while removing the billets and hot rolled finished products including coils as above from Shivam, Adhunik will deduct from the sale proceeds the above mentioned Rs 300/- (for Billets) and Rs 600/- (for hot rolled finished products and coils), as the case may be. In addition, Adhunik shall also deduct **the raw-materials costs** as stated hereinabove, **the operational costs, the selling costs and all other associated expenses incurred by it** in the course of such manufacture and the balance, if any, remaining representing the surplus after meeting all costs provided and/or infused by Adhunik shall be made available to Promoters of Shivam for meetings **costs of the further operations** in the said unit.*

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8. Adhunik shall within the seventh day of each calendar month provide monthly statement of account to Shivam for the preceding calendar month which will reflect the total amount paid including the amount of raw materials, as well as details of all other materials supplied to Shivam for its operations as up to the date. Shivam undertakes to forthwith check and confirm the same in writing within maximum three days thereafter.

9. Subject to the above, the raw-materials supplied by Adhunlik and **the finished products** as stated in paragraphs 6 and 7 above made out of such materials **shall at all times be the property of Adhunik, and Adhunik shall be entitled to take all decisions over the raw materials, any others materials and the finished products.**

10. The Authorized share capital of Shivam as on the date is Rs. 13,00,00,000/- (Rupees thirteen crores only) and paid up share Capital is Rs.12,78,93,000/- (Rupees twelve crores twenty eight lacs ninety- three thousand only). The Authorized and paid up capital of Shivam shall not be changed without written consent of Adhunik.

11. Till such sums are fully repaid by Shivam to Adhunik, Adhunik shall be entitled to exercise lien over all raw-materials supplied by Adhunik to Shivam and also on all finished products manufactured at the said factory of Shivam including stores, and accordingly the parties do hereby agree and undertake that during the term of this MOA all goods, materials and Inventory at all the factory of Shivam shall remain hypothecated to Adhunik.

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12. As on the date of the signing of this MoA, the Promoters shall keep their 69.42 shareholding in Shivam which are free and unencumbered, and indicated more fully my In the First Schedule hereto, in a separate Demat Account to be operated Joint Court Adhunik and Mr. Piyush Kumar Pandey/ Mr. Pankail Kumar Pandey, being one of the Promoters acting for and on behalf of each of them.

This MoA shall remain valid for a period of 5 (five) years from the date the said units operative. This period may, however, be extended on mutually agreed terms. Till such time Adhunik agrees to continue the MoA, Shivam shall not be entitled to terminate the MoA during its validity period.

- 5.2. Placing the above, Ld. Counsel Mr. Rishav Banerjee would submit that it would evident from the Agreement above that the Financial Creditor had agreed to infuse funds in the interim to Shivam and to facilitate operations to make its unit operative. The said unit had manufacturing facility for Billets, Rolling Mill for finished products like bar and rods in coil form, billets and other steel products and the same

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is located at Raturia, Angadpur Industrial Area, Dist-Paschim Bardhaman, Durgaur 713 215, West Bengal.

5.3. It was further submitted that the Agreement mentions that the entire funds was infused by Adhunik Corporation Limited is fully refundable in the event of Shivam fails to earn from its operation.

5.4. The Agreement also states that the unit shall be run and operated in terms of MoA by Shivam as may be decided by Adhunik Corporation Limited subject to a maximum period of five (5) years. As per the Agreement Adhunik Corporation Limited shall supply raw materials to Shivam for manufacturing hot rolled finished products as well as billets through induction furnace route to be subsequently charged in rolling mill in hot charging process and the left-out billet not charged will be sold.

5.5. It was also agreed upon that during the term of the MoA, Adhunik Corporation Limited shall remove entire finished products, coils and billets for disposal at the prevailing market prices and it shall be entitled to the following charges / commission out of the sale proceeds:

5.5.1. For Hot-rolled finished products and coils – Rs. 600/- per ton;

and

5.5.2. For Induction Furnace sale-able Billets – Rs. 300/- per ton.

5.5.3. Adhunik shall also be fully entitled to remove By-products like MIS-Rolls and end-cutting etc.

5.5.4. Adhunik shall also be entitled to deduct from the sale proceeds the said commission and cost of raw materials. Operational costs

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and selling costs and after meeting all the costs provided, Adhunik Corporation Limited shall make available the surplus to Shivam for meeting the cost of further operation in the said unit.

5.5.5. Adhunik Corporation Limited shall also provide within the seventh day of each calendar month provide monthly statement of Shivam for its operations and upto date.

5.5.6. Further right of the Adhunik Corporation Limited on the basis of the Agreement encompasses that all finished product made out of such materials shall at all times be the property of Adhunik Corporation Limited even the authorised share capital of Shivam and paid up share capital shall be with written consent of Adhunik Corporation Limited. It further provides that till such sums are fully repaid by Shivam to Adhunik Corporation Limited, Adhunik Corporation Limited shall be entitled to exercise lien over all materials supplied by Adhunik Corporation Limited to Shivam and also on all finished products manufactured by Shivam.

5.5.7. Shivam shall not be permitted to effect sale of any finished goods made at its factory during the term of the MoA without specific written consent of Adhunik Corporation Limited. Adhunik Corporation Limited shall also keep their 69.42% shareholding in Shivam, however, Shivam will be in charge of plant and machinery and factory unit and operate the plant as per scheduled production given by Adhunik Corporation Limited even the men and workers of Shivam would act in terms of the instructions and supervision

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of Adhunik Corporation Limited and Shivam shall not be entitled to terminate the MoA during its validity period.

- 5.6. Placing the above, Ld. Counsel Mr. Rishav Banerjee would submit that by way of this agreement Adhunik Corporation Limited has already agreed to get the entire share of profits by way of commission from sale and costs of raw materials. In addition to above, Adhunik Corporation Limited has sold the finished product to its related concerns for unlawful gain and therefore, in absence of any clause that Shivam shall be obliged to repay Adhunik Corporation Limited in any manner other than through commission from sale and costs of raw materials and other operational costs, Shivam is not obligated to repay Adhunik Corporation Limited in any other manner whatsoever.
- 5.7. Mr. Banerjee further submits that amounts infused by the Financial Creditor has been adjusted against the sale proceeds as well as commission already earned by the Financial Creditor and therefore, Corporate Debtor is not entitled to make any further repayment to the Financial Creditor. Referring to para 13 of the Petition where an amount of 23.13 Crores is shown as profit earned from sale, again received from sale and profit earned of Rs. **46.22 Crores**. It is submitted that the Corporate Debtor earned not a single farthing and therefore, the Petition is speculative and oppressive, the figures given in the part (iv) of the Petition are imaginary and the petition should be dismissed as no debt is due and payable by the Corporate Debtor to Financial Creditor.

However, adjustment of commission left against repayment done to Adhunik on account of infusion of funds and supply of raw materials has not been provided to substantiate the claim of Corporate Debtor that the amount to be repaid stands fully adjusted against sale proceeds and commission.

6. Submission of the Financial Creditor to counter the allegations of the Corporate Debtor

6.1. Agreement dated 23rd June, 2020 is not a business partnership agreement:

6.1.1. It is urged that the Hon'ble Appellate Tribunal by its judgment dated 19th February 2025 has categorically held that Agreement dated 23rd June 2020 is **not a business agreement** (para 27 of the said Judgment) between the parties and as such "the infusion of funds was a transaction which has direct bearing on the business carried out by the Corporate Debtor, raising of the amount through the above agreement has the commercial effect of borrowing. The clauses of the MoA contain clear indication that the infusion of funds was being done with the intent of earning profits and the investments was therefore for consideration for the time value of money. Therefore, this transaction has the contours of a borrowing as contemplated under Section 5(8) of IBC. The investments made by the Appellant-Financial Creditor was with an eye for

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consideration for time value of money and therefore the transaction had commercial effect of borrowing." (para 26 of judgment).

6.1.2. Under the terms of Agreement dated 23rd June 2020, the plant, machineries, and factory unit were all under the control (Clause 17 of MoA, Page No. 37 of petition) and as such Financial Creditor cannot be held liable for any losses or damages on account of business operations of Corporate Debtor, if any.

6.1.3. In accordance with the express understanding recorded in Clause 18 of MoA dated 23rd June 2020 (Page No. 37 of petition), it was duly agreed and decided that the FC shall have no liabilities with regard to the operations of the plant, machineries and factory of CD.

6.1.4. In accordance with the terms and conditions of the MoA dated 23rd June 2020, CD was obligated to:

- a) Fully refund the financial assistance rendered by FC (last recital at page no. 33-34 of the Petition)
- b) Pay commission charges (Clause 7 at page No. 35 of petition);
- c) Pay costs, infusions and charges spent for supply of raw materials to CD (Clause 7 at page Nos. 35-36 of petition).

Thus, the dishonest claims alleged by CD are not maintainable and are mere ploy to mislead the Tribunal.

6.2. **False and misleading case of the Corporate Debtor:**

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6.2.1. Reliance over Clause 7 of MoA dated 23rd June, 2020 (Page No. 35 of the Petition) has been made in order to make out a baseless case that the Financial Debt owed to FC has been repaid upon sales conducted in furtherance of MoA.

6.2.2. A miserable attempt has been made by CD to interpret a phrase of Clause 7 of MoA dated 23rd June 2020 (Page Nos. 35-36 of petition) in isolation, contrary to the trite principles that a document has to be read as a whole.

6.2.3. Heavy reliance has been placed on the following portion of Clause 7 of MoA dated 23rd June 2020 (Page Nos. 35-36 of petition):

*"Thus, while removing the billets and hot rolled finished products including coils as above from Shivam, Adhunik will deduct from the sale proceeds the above mentioned Rs 300/- (for Billets) and Rs. 600/- (for hot rolled finished products and coils), **as the case may be. In addition, Adhunik shall also deduct the raw materials costs as stated hereinabove, the operational costs, the selling costs and all the associated expenses incurred by it in the course of such manufacture and the balance, if any, remaining representing the surplus after meeting all costs provided and/or infused by Adhunik, shall be made available to Promoters of Shivam for meeting costs of the further operations in the said Unit.**"*

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6.2.4. It is the fraudulent case of CD that in terms of the above, FC has deducted the entire financial debt owed to CD and as such, nothing is due and payable to FC in as much as CD has not been paid even a single penny from the sale proceeds (Para 3 (r) of reply).

6.2.5.27. In order to appreciate costs, infusions and expenses mentioned in Clause 7 of MoA dated 23rd June 2020 (Page No. 35-36 of petition), it is crucial to read Clause 5, 6 & 7 in entirety.

6.2.6. The only limited role of FC in terms of MoA dated 23rd June 2020 was to "supply raw materials as per the production schedule of the Unit" (Clause 5 Page No. 34 of petition).

6.2.7. On a conjoint reading of Clause 5, 6 and 7 of MoA dated 23rd June 2020 (Page Nos. 34-36 of petition) it is apparently clear that Clause 7 of MoA (Page Nos. 35-36 of petition) refers to costs, expenses and infusions made by FC in order to supply the raw materials to CD.

6.2.8. The said portion of Clause 7 of MoA (Page Nos. 35-36 of petition) in no manner mean to include repayment of financial debt.

6.2.9. The MoA dated 23rd June 2020 is silent on repayment of the financial debt, debt was extended on an interim basis and the same shall be fully refundable save and except the clear understanding between the parties that the financial (last recital page Nos. 33-34 of petition).

6.2.10. It is no more *res integra* that by "Commercial Practice", any Loan, Loan term or otherwise, in the absence of any Agreement for

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Repayment', falls due and payable on demand', made by the 'Creditor" (**para 65 of Mahmud Alam Khan, Shareholder and Suspended Director of M/s. Golconda Textiles Pvt. Ltd. vs. Mahmud Alam Khan & Anr. (Company Appeal (AT) (CH) (Ins) No. 30 of 2023)**].

6.2.11. In the present case, notice for demand of repayment of financial debt was issued to CD on 11th October, 2021 (page 185-191 of the petition) and as such, CD defaulted in making repayment of the financial debt.

6.3. SBI Bank Account in exclusive control of FC:

6.3.1. It is the whimsical case of CD that the SBI Bank account bearing number as 36737087161 is still in exclusive control of FC (para 3 (q) of reply). However, no evidence has been placed on record by CD to substantiate or prove such baseless allegations.

6.3.2. It is an admitted position of fact that the State Bank of India (SBI) Bank Account bearing number as 36737087161 is in the name of CD. It is further not in dispute that the said bank account was already in existence at the time of execution of MoA dated 23.06.2020 (para 3(q) of the reply).

6.3.3. Pursuant to execution of MoA dated 23rd June 2020, one Mr. Jugal Kishore Agarwal, official of FC, was one of the joint signatory with one Mr. Pandey of CD in the said bank account, however, at no point in time did FC had unilateral/singular control over the said bank account bearing number as 36737087161.

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6.3.4. On the contrary, CD had unilateral and exclusive control over the SBI Bank Account bearing number as 36737087161 through Net Banking, in as much as the said SBI Bank Account was already in existence prior to execution of MoA dated 23rd June 2020.

6.3.5. The fact that Net Banking Facilities were availed for the said SBI Bank Account bearing number as 36737087161 is evident from the fact that online payments have been remitted from the said SBI Bank Account to FC's bank account for initial period of sales commission as under:

Sl. No.	Date	UTR Number	Amount (in INR)
1.	03.09.2020	SBINR120200090300001605	39,78,304.14
2.	21.09.2020	SBINR12020092100121584	44,04,785.00
3.	20.10.2020	SBINR12020102000045191	39,56,539.00
4.	10.11.2020	SBINR12020111000083567	52,77,510.00
5.	28.12.2020	SBINR12020122803810560	46,75,112.00

6.3.6. In view of the above, it is amply clear that:

- a) SBI Bank Account bearing number 36737087161 was already in existence and under the exclusive control of CD prior to execution of MoA dated 23rd June 2020; and
- b) Net-Banking Facility of the said SBI Bank Account was being used or transactions made by CD towards sales commission for initial period of MoA dated 23rd June 2020.

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6.3.7. On perusal and examination of the bank statements, i.e., (a) HDFC Bank Statement for the period between 2020 2021 (Page Nos. 39-122 of LA 30 767 of 2025); and (b) SBI Bank Statement for the period between July 2020 to March 2021 (@pg. 123-257 of IA 767 of 2025), except a few transactions, all the transactions have been done through RTGS/ NEFT/online-payment mode by the CD.

6.3.8. CD has falsely deposed on affidavit in its reply (para 3(u) of reply) that CD never received any payment from FC out of the sale proceeds. the bank statements clearly go on to show that CD has transferred a sum of INR 30,05,88,069 (Indian Rupees Thirty Crore Five Lakh Eighty-Eight Thousand and Sixty Nine only) in its HDFC Bank Account from the SBI Bank Account by way of 116 online transactions. A chart of payments made from SBI Account of CD to HDFC account of CD is annexed and marked as Annexure-A.

6.4. Appropriation of sale proceed in control of FC:

6.4.1. It is alleged that submissions of CD that FC was in possession of the entire sale proceeds in furtherance of to were under the control of the FC is baseless and deserves to be dismissed and set aside *in limini* for the following reasons:

- a) It is not disputed that all GST invoices were raised in the name of CD
- b) It is further not in dispute that all statutory and indirect taxes pertaining to the sales are attributable to CD; and

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c) All sale proceeds came into the Bank Accounts in the name of CD;

d) All sale and purchases done by CD and duly recorded in the books of accounts of CD.

6.4.2. Clause 4 of the MoA dated 23rd June, 2020 (Page 34 of the Petition) expressly stipulates that “the said Unit shall be run and operated in terms of this MoA by CD”. The unit was to be run and operated by CD in accordance with recommendations made by FC.

6.4.3. In accordance with the MoA, FC was obligated to only "supply raw materials as per the production schedule of the Unit” (Clause 5 pp. 34 of petition).

6.4.4. The role of FC was that of a mere observer (Clause 6 page No. 35 of petition) in order to secure its financial exposure. Clause 6 of MoA dated 23 June 2020 (page No. 35 of petition) clearly shows that FC did not have any or decision making power in CD and the limited the scope of FC was to only observe, monitor or oversee the operations of CD.

6.4.5. The CD has failed to place on record even an indirect evidence to support its baseless and whimsical submissions which are only an afterthought in order to wriggle out of its obligations.

6.5. **No money received by CD from the sale proceeds of goods in furtherance to Agreement dated 23rd June, 2020:**

6.5.1. CD has further vehemently argued that no sums have been received by CD in furtherance to Agreement dated 23 June 2020.

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6.5.2. However, it is a matter of record, as apparent from the statements (Page Nos. 123-257 of IA 767 of 2025) that a cumulative sum of INR 219,10,11,939.00 (Indian Rupees Two Hundred and Nineteen Crore Ten Lakh Eleven Thousand Nine Hundred and Thirty Nine only) has been received in the SBI Bank Account of CD after execution of the Agreement dated 23 June 2020 until March 2021, , i.e. in accordance with the statements placed on record by CD. A chart indicating payments received in SBI Barik Account of CD as attached and marked as Annexure-B.

6.5.3. In accordance with the GST Returns filed on behalf of the CD, cumulative sales to the tune of INR 232,72,21,221.00 (Indian Rupees Two Hundred and Thirty-Two Crore Seventy-Two Lakh Twenty-One Thousand Two Hundred and Twenty One only) has been reported by the CD itself. As such, CD is estopped from raising such false and fraudulent misrepresentation.

6.6. Reliance over Board Resolution dated 11th November 2024 and Letter dated 1st November, 2024:

6.6.1. It is submitted that the CD has relied upon Board Resolution dated 11th November 2024 (Page 304 of IA 767/25) as well letter issued to SB dated 18th November 2024 (Page No. 305 of LA 767/25), wherein request for change is authorized signatories for the Bank Account tearing under a 36737087161. At the relevant point in time, the following were joint signatories:

a) Jugal Kishore Agarwal('FC' representative)

- b) Shivansh Pandey ('CD' Representative)
- c) Aakash Pandey ('CD' Representative)

6.6.2. All transactions from the said bank account were made through online mode and the user-id and password of the account were always in the control of CD and all transactions were made through such user-id and password without OTP transactions. Therefore, it is the baseless and incongruent case of CD that FC had complete control over the said SBI Bank Account bearing number as 36737087161.

In view of the above, it is amply clear that:-

- a. Authorized representative of FC was only a joint signatory for namesake and did not have any unilateral or exclusive control over the SBI Bank Account bearing number as 36737087161;
- b. All transactions were made through user-id and password in exclusive control of CD.

6.7. No bar on initiation of CIRP during subsistence of arbitral proceedings:

6.7.1. CD has relied upon the pending arbitral proceedings as defence to admission of Corporate Insolvency Resolution Process.

6.7.2. It is well established principle of law that presence of an arbitration clause does not prevent commencement of CIRP under Section 7 of the 1 & B Code, 2016. (**Dinesh Chand Jain and Ors v. Fabulous Buildcon (P) Ltd. and Ors. ((IB)-37 (PB)/2018)** and

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Reliance Commercial Credit Limited v. Ved Cellulose Ltd (C.P. No. (IB)-156(PB)/2017).

6.7.3. Further, It is trite law that a pre-existing dispute between the Financial Creditor and Corporate Debtor does not bar a petition under Section 7 of the I & B Code, 2016 to be entertained [(para 11 of **Punjab National Bank (International) Limited us. M/s. MBL (MP) Toll Road Company Limited (C.P. (IB) No. 423/PB/2023)** and para 11 of **Karan Goel Vs. Pashupati Jewellers [2019] 156 SCL 653 (NCLAT)**).

6.7.4. In view of the above, it is prayed that Corporate Insolvency Resolution Process of Shivam India Limited be commenced by this Tribunal.

7. The parties were heard at length and perused the records.

8. The relevant extract of the judgment of Hon'ble NCLAT would be as under:

*“27. Therefore, seen in totality, the disbursements clearly display commercial effect of borrowing. In our considered opinion the Adjudicating Authority committed an error in holding the transaction to be a business arrangement and non-suiting of the Appellant on the ground of not being a financial creditor. The Appellant has been wrongfully ousted by the Adjudicating Authority on the ground that the Appellant was not a financial creditor and the infusion of fund was not in the nature of financial debt. **We have no hesitation to observe that this is a case of financial debt and the Appellant***

is clearly a financial creditor in terms of statutory provisions of IBC.

28. Having been convinced that the disbursal) made by the Appellant has all the trappings of a financial debt which falls within the purview of Section 5(8) of IBC and the Appellant is squarely covered by the definition of 'Financial Creditor', on the issue of default, we, however, notice from the pleadings and submissions made by the Respondent that the Appellant had already realised and recovered the funds infused and as such there is no default. Capturing some of their other related submissions, it is their case that the Appellant also made wrongful gains by their illegal act of supply of raw materials through their own chosen suppliers at price higher than the prevailing market price. The Appellant had allegedly benefitted themselves by clandestinely making profits while increasing the liability of the Corporate Debtor. Moreover, the invoices relied upon by the Appellant show that they fell due for payment within the period excluded by Section 10A of the IBC. The Appellant had also acted in complete breach of their obligations having stopped the supply of raw materials and infusion of funds though the agreement was for a period of five years. All this had led to the erratic functioning of the Corporate Debtor causing damages to the Respondent which became the subject matter of arbitration proceedings. It has been pointed out by the Respondent that they had invoked clause 21 of

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the MoA on 23.09.2021 for resolution of their interse disputes which eventually led to the filing of Arbitration Petition No. 360 of 2022 under Section 11 of the Arbitration and Conciliation Act before the Hon'ble High Court of Calcutta. It is also the case of the Respondent that the Appellant had filed the application under Section 7 as a counterpoise. Further, as the Appellant was supplying raw material under Clause 5 of the MoA, the amount involved was an operational debt and not a financial debt and clubbing of operational and financial debt in a single application is not permissible under IBC. Hence the application of the Appellant is defective and not maintainable.

29. On the other hand, we also notice that the Appellant has brought on record the Section 7 application filed by them. In Part-IV of the Section 7 application, the amount claimed to be in default as well as date of default has been clearly depicted therein. Part-IV also contains the pleadings and submissions made pertaining to debt and default. In Form-1 filed by the Appellant under Section 7 of IBC read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, we find that the principal amount of loan advanced as 'Financial Assistance' by the Appellant is shown as Rs.39,84,72,111/- and the amount claimed in default to be Rs.42,47,32,067/- including interest. The Appellant along with the Section 7 application has also submitted schedule of payment along with supporting bank Statement; schedule of raw materials

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along with invoices; statement along with commission bills; statement regarding TDS and schedule of outstanding claims of different suppliers of raw materials as well as a chart showing calculation of outstanding dues. It has also been contended that the financial debt which is above the threshold limits has not been repaid by the Corporate Debtor despite a demand notice.

30. The Adjudicating Authority is obliged to determine whether default has occurred and whether the debt which was due and payable has remained unpaid. Clearly enough, the rival contentions of the two parties with respect to default in repayment of debt has not been considered and adjudicated upon by the Adjudicating Authority. We also do not wish to express our opinion on this aspect at this stage.

31. Given this backdrop, we set aside the impugned order and allow the Appeal. Having arrived at our finding that the present is a case where the financial assistance given by the Appellant has a clear element of commercial effect of borrowing and therefore qualifies to be treated as financial debt and the Appellant is a financial creditor in terms of the statutory provisions of IBC, **we remand the matter to the Adjudicating Authority to exercise its satisfaction as to whether financial debt has crossed the threshold limits and has become due and payable** and basis these findings decide to accept or refuse admission of the Section 7 application of the Appellant.

9. It transpires from a bare perusal of the order passed by this Appellate Forum that it has already found:

9.1. Existence of debt which was “due and payable”

9.2. The “debt” is in nature of a “financial debt” and the Appellant (The Petitioner herein) is a Financial Creditor.

10. What is left to be determined is whether “the Financial Debt has crossed the threshold limit and has become due and payable.

11. We have considered the rival contentions and perused the records.

12. Analysis and findings:

12.1. As this Petition is being heard on remand, it would be useful to quote an extract of the Judgment of the Hon’ble NCLAT as under:

“Coming to the brief facts of the case, the Appellant-Adhunik Corporation Limited was approached by Shivam India Limited-Respondent for financial assistance towards operationalization of their factory which had been shut down for financial constraints and want of working capital. The Appellant and the Respondent entered into an agreement dated 18.05.2015 by which the Appellant through one of its sister concerns-Adhunik Industries Limited provided financial assistance. Later a fresh Memorandum of Agreement ('MoA' in short) was executed on 23.06.2020 for a further period of five years which was entered into between Adhunik Corporation Limited, Shivam India Limited and promoters of Shivam India Limited. In terms of the MoA, the Appellant

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provided a sum of Rs. CD 27.85 crore to the Respondent out of which Rs.23.49 crore was direct financial assistance and another sum of Rs.4.36 crore was towards raw material. The financial assistance was also secured by depositing 69.42% equity shares of the Respondent with Trans Scan Securities Pvt. Ltd., a depository participant on behalf of the Appellant. The Appellant in return of the financial assistance was to also receive sales commission. However, since the Appellant did not receive back the financial assistance given to the Respondent and there was an outstanding amount due in respect of sales commission due from the Respondent, the financial creditor issued a notice dated 11.10.2021 to the Corporate Debtor demanding the return of an amount of Rs. 27.85 crore along with interest @18% per annum effective from 01.03.2021. Subsequently, on 30.10.2021. the Appellant filed Section 7 application and the total amount claimed to be in default in the Section 7 application was Rs.42,47,32,067/- (as on 30.09.2021) with the date of default shown as 11.10.2021. In the interim, the Respondent had given a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 09.12.2021 and subsequently filed an arbitration petition No. 360 of 2022 under Section 11 of the Arbitration and Conciliation Act, 1996 before the Hon'ble High Court of Calcutta on 20.05.2022. The Respondent also filed a Reply to the Section 7 application on 04.06.2022. The Section 7 application was dismissed by the Adjudicating Authority

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on 11.10.2023 by holding that the purported debt claimed by the Appellant was not a financial debt and that the Appellant was not a financial creditor. Aggrieved by the impugned order, the Appellant has come up in appeal.

3. Making his submissions, the Ld. Senior Counsel for the Appellant, Shri Ramji Srinivasan submitted that the Adjudicating Authority had erroneously failed to appreciate that the credit facility provided by the Appellant to the Respondent was in the nature of a financial debt falling within the meaning of Section 5(8) of the IBC. The MoA executed between the parties had clearly provided for infusion of funds by the Appellant to the Respondent which amount was fully refundable and in pursuance of the MoA, direct fund transfer/infusion of Rs.23.49 crore had been made by the Appellant to the account of the Respondent which is corroborated by the statement of account of the two parties. It was also contended that the Appellant having provided financial assistance/credit to the Respondent which was required to be repaid by the Respondent and this outstanding financial debt was not paid back and which sum was beyond the threshold limit of Rs. 1 crore stipulated by the Section 4 of the IBC, this was a fit case for attracting Section 7. Further since the MoA provided for collection of sales commission from the sale of finished products, there was a clear element of commercial effect of borrowing which constituted time value for money. Hence in the present case, the

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basic ingredients of financial debt of disbursement of money against consideration of time value of money stood met. The Appellant clearly fell in the category of Financial Creditor under Section 5(7) of IBC and therefore been wrongly non-suited by the Adjudicating Authority. Assailing the impugned order, it was submitted that the Adjudicating Authority had wrongly held that the financial assistance advanced to the Respondent was in the nature of business arrangement and not a financial debt.

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In the present facts of the case, there is sufficient material on record to prove that there was disbursement of funds by the Appellant to the Corporate Debtor in their account. The bank transaction details have been placed at page 248-284 of Appeal Paper Book ("APB" in short) to substantiate their contention that money was actually disbursed to the Corporate Debtor, which was in dire financial straits, towards working capital to make the Corporate Debtor operational. Receipt of this amount has also not been denied by the Corporate Debtor. Further, invoices have been placed on record from pages 287 to 365 of APB to prove that Rs 4.35 Cr was paid towards direct supply of raw material by the Appellant to the Corporate Debtor. Details have also been furnished at page 376 of APB for an amount of Rs 11.78 Cr. towards outstanding amount to be paid by Corporate Debtor to third party vendor for supply of raw

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material. Besides this, an abstract of commission on sales received by the Appellant from the Corporate Debtor for Rs 2.95 Cr. along with tax invoices have been placed from pages 366 to 375 of APB. It has also been indicated that an amount of Rs 11.54 lakhs was still due from the Corporate Debtor towards commission. This leaves no doubts in our mind that there was fund infusion into the Corporate Debtor by the Appellant.”

12.2. The order passed by this Tribunal on 11.10.2023 in the first round records the following:

*“35. Further, in para 5 of the reply affidavit, **the Corporate Debtor has denied that the Financial Creditor has provided it with a loan of Rs. 39,84,72,111/- or any part thereof.** It has also denied the last disbursement date as provided by the Financial Creditor as also the fact that it gained 20% profit from the sale or manufacture of finished products.”*

13. However, this time in course of hearing neither the financial assistance given by the Financial Creditor Adhunik Corporation Limited to the Corporate Debtor Shivam India Limited nor the supply of raw materials by the Financial Creditor Adhunik Corporation Limited to the Corporate Debtor Shivam India Limited has been specifically denied by the Corporate Debtor. As such on both the counts, Adhunik Corporation Limited dons the hat of Creditor and on both the counts the debtor Shivam India Limited was liable to repay its Creditor, the Adhunik Corporation Limited.

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14. The Financial Creditor had provided the following chart to demonstrate computation of dues Corporate Debtor owes to the Financial Creditor:

Sl. No.	Particulars	Amount (in INR)
1.	Direct financial assistance by fund infusion (Ref. Page Nos. 42-79 of the Petition) which is supported by Bank Statement.	23,49,11,000.00
2.	Direct financial assistance by supply of raw materials (Ref. Page Nos. 80-160 of the Petition) which are supported by Invoices.	4,35,58,197.00
3.	Outstanding of raw materials supplied in credit from 3 rd parties	11,78,40,916.00
4.	Outstanding sales commission	11,54,602.00
5.	Outstanding TDS	10,07,396.00
6.	Interest @ 18% from 1 st March 2021 to 30 th September, 2021 on direct financial assistance by fund infusion and by supply of raw materials.	2,62,59,596.00
Total		42,47,32,067.00

- 14.1. There is nothing on record to show that the Financial Creditor has got its entire loan satisfied from commission out of sales. The

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Corporate Debtor has not produced sufficient bank statements to show that the commission earned by the Financial Creditor from sales meets the entire loan disbursed and cost of raw materials supplied by the Financial Creditor. Hence, we are not in a position to arrive at any figures different from what has been projected by the Financial Creditor. Hence an amount much more than threshold is unpaid and there is a debt and default in repayment.

15. We have noted that the chart of disbursements furnished by the Financial Creditor has not been disputed. Supporting bank statements are available on record. Since, the date of disbursements do not give a course of action, and it is the demand that gives the cause of action which is 11.10.2021, the petition is not hit by the bar of Section 10A.
16. Given the fact that “debt” and “default” stands already established, there is nothing on record to demonstrate that the Corporate Debtor has already repaid the Creditor, and the “debt” is duly discharged or that the “debt” and “default” does not meet the threshold.
17. Since the order passed by this Adjudicating Authority in CP(IB)No. 323/KB/2021 on 11.10.2023 was set aside, it would be relevant to quote an extract of the said order passed by this Adjudicating Authority on the said date.

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“57. After having accorded consideration to the aforementioned conditions of the MoA, we are of the view, the MoA was a business agreement wherein admittedly, the Financial Creditor infused the funds. However, this infusion was not against any consideration for the time value of money. In Swiss Ribbons Pvt Ltd & Anr. v. Union of India & Ors. the Supreme Court held as follows:

A perusal of the definition of financial creditor and financial debt makes it clear that a financial debt is a debt together with interest, if any, which is disbursed against the consideration for time value of money. It may further be money that is borrowed or raised in any of the manners prescribed in Section 5(8) or otherwise, as Section 5(8) is an inclusive definition. On the other hand, an –operational debt would include a claim in respect of the provision of goods or services, including employment, or a debt in respect of payment of dues arising under any law and payable to the Government or any local authority.”

58. In the present case, it was a business arrangement and somehow, this business arrangement could not fructify.

59. We are not inclined to accept the contention of the Financial Creditor with regard to debt or default within the meaning of Section 7 of the Insolvency and Bankruptcy Code, 2016 in view of the above position based on the terms of the agreement and the law.

60. Hence, C.P.(I.B.) No. 323/KB/2021 stands rejected.

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61. In view of the above observations, I.A.(I.B.) No. 778/KB/2022 is accordingly disposed of.”

18. It transpired at hearing that Hon’ble NCLAT has already given its finding that “the financial assistance given by the appellant” Adhunik Corporation Limited, the Financial Creditor in CP(IB)No. 323/KB/2021 “has a clear element of a commercial effect of borrowing and therefore qualifies to be treated as financial debt and the appellant is a Financial Creditor in terms of statutory provisions of IBC”.
19. Thus the exercise that had to be undertaken by this Adjudicating Authority is only to determine
- 19.1. Whether default has occurred;
 - 19.2. Whether the “debt which was due and payable” has remained unpaid and
 - 19.3. Whether the “financial debt has crossed the threshold limit”;
20. At hearing, Ld. Sr. Advocate Mr. Joy Saha appearing for the Financial Creditor would submit that there are two components to the debt, one being financial assistance and the other being supply of raw materials. The financial assistance is of Rs. 34 Crores. This Adjudicating Authority in its order dated 11.10.2023 has already held that there is a debt and default but it found that the debt was not a financial debt.

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Hon'ble NCLAT has discarded the finding of this Adjudicating Authority and hold that the debt is a financial debt. The findings of Hon'ble NCLAT on being challenged before the Hon'ble Apex Court, the challenge to the findings met with dismissal and hence have attained a finality.

21. Ld. Counsel Mr. Rishav Banerjee appearing for the Corporate Debtor submitted that after invoking the arbitration Clause, the Financial Creditor had filed this Section 7 Petition. As already noted, it does not impose a bar in considering a Petition filed under Section 7 of the Code.

22. Accordingly, the Petition deserves to be admitted.

23. In terms of the foregoing discussions, we **ALLOW** the application bearing **Company Petition (IB) No. 323/KB/2021** filed under Section 7 of the I&B Code, and accordingly, we order the initiation of Corporate Insolvency Resolution Process (CIR Process) in respect of the Corporate Debtor and pass the following Orders:

(a) This application being **C.P.(IB)/323(KB)2021** filed by **Adhunik Corporation Limited, the Financial Creditor**, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Shivam India Limited, the Corporate Debtor, is admitted.**

(b) There shall be a moratorium under Section 14 of the IBC.

(c) The moratorium shall have effect from the date of this Order till the completion of the CIRP or until this Adjudicating Authority

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approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC.

- (d) Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (e) The Applicant has proposed the name of **“Mr. Jitendra Lohia”**, **Address: Vasundhara Apartment, 2/7, Sarat Bose Road, 2nd Floor, Kolkata – 700 020 and having Registration no. IBBI/IPA-001/IP-P00170/2017-18/10339**, Email ID: jitulohia@knjainco.com as the “IRP”. We have perused that there is a written communication and consent of IRP in Form 2, as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or IIIP of ICAI. In addition, further necessary disclosures have been made by “Mr. Jitendra Lohia” as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint “Mr. Jitendra Lohia” as the Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his

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functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

- (f)** During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. No separate notice for cooperation by the suspended management should be expected.
- (g)** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned Police Authorities and/or the Officer-in-Charge of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- (h)** The IRP/RP shall submit to this Adjudicating Authority periodical report about the progress of the CIRP in respect of the Corporate Debtor.
- (i)** The Financial Creditor shall deposit a sum of **Rs. 3,00,000/- (Rupees Three Lakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (j)** In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and

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email immediately, and in any case, not later than two days from the date of this Order.

(k) The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

(l) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this Order.

24. C.P.(IB)/323(KB)2021 to come up on **24.09.2025** for filing the progress report.

25. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

26. Urgent certified copies of this Order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

Siddharth Mishra
Member (Technical)

Bidisha Banerjee,
Member (Judicial)

Signed on this, the 22nd day of August, 2025

M. Jana (P.S.)