



**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

CP (IB) No.37/CB/2022

In the Matter of:

An application 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.

-And-

In the Matter of:

Pancham Studios Private Limited, having its registered office: Plot No-149, National Highway-156, Opp. Highway Honda, Rudrapur, Bhubaneswar, Khorda , Orissa- 752 101;

... Petitioner/Financial Creditor

-Versus-

Konark Aquatics and Exports Private Limited, having its registered office at Plot No-1, Saheed Nagar, Bhubaneswar, Khorda, Odisha- 751 007.

... Respondent/ Corporate Debtor

Appearances (through video conferencing)

For the Petitioner : Mr. Saswat K. Acharya, Adv.
argued for
Mr. Abhishek Dash, Adv.
Mr. Ayush Khandelwal, Adv.

For the Respondent : Mr. L. D. Sahoo, Adv.

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Kaushalendra Kumar Singh : Member (Technical)

**Order reserved on: 08.11.2023
Order pronounced on: 29.11.2023**



ORDER

1. This petition is filed to initiate Corporate Insolvency Resolution Process against the Corporate Debtor under Section 7 of Insolvency and Bankruptcy Code, 2016 R/w Rule 4 of Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016.

2. **Brief facts of the petition are as follows:** The corporate debtor is in the business of sea foods processing and exports. After the demise of one of the promoters of corporate debtor the business of the corporate debtor suffered and it leads to classify the accounts of the corporate debtor with secured creditors as NPA. In the financial year 2013-14 at the request of corporate debtor the petitioner agreed to disburse inter corporate loan to discharge the loans of the secured financial creditors. The loan amount was disbursed in different dates and the corporate debtor utilized the amount to discharge the loans under the OTS. As per the arrangement the loan advanced by the petitioner bears no interest shall be repaid after settled the secured financial loans of corporate debtor under the one-time settlement scheme. When the corporate debtor failed to repay the loan after settled the secured loans, the petitioner issued notice on 20.08.2019 and recalled its loan and requested the corporate debtor to return the loan amount of Rs.4,43,50,000/- within 15 days. In respect of limitation is concern, it is stated that this petition is filed within three years from the date of recall notice, dated 20.08.2019 after excluding the period from 15.03.202 to 28.02.2022 as directed by the Supreme Court of India in Suo moto case. Further, the petitioner in part IV (1) of the petition stated that the respondent admitted the debts in its financial statement also accordingly rely upon the Balance sheet for financial year 2020-2021. When the respondent not paid the loan amount this petition has been filed on 11.08.2022.

Brief contents of the reply are as follows: The loan if any advanced without interest will not financial debt as defined under section 5(8) of IBC 2016. There is no agreement between the parties for disbursement and no due date for repayment of amount. The amount was released to Mr. Devprakash Mahapatra, managing



director of the corporate debtor against the sale consideration of a joint family property transferred in favour of petitioner M/s Pancham Studios Private Ltd by sale deed dated 15.03.1999 and for development of commercial complex. The petitioner and respondent companies are family owned and are in the same management under common directors. Mr. Debasis Mahapatra and Mr. Devprakash Mahapatra are brothers. The amount stated to have paid due to mutual cooperation and support without any agreement and without any terms and conditions. In the balance sheet for the year 2020-2021 the amount has been shown as Current assets and under the head short term Loans and Advances. Section 185 of companies Act 2013 not adhered. The joint family property owned by Mr. Debasish Mahapatra, Mr. Devprakash Mahapatra, and Ms.Sonali Mahapatra at Plot No.149,khata No.596, Mouza Rudrapur, Bhubaneswar, measuring an area of Ac.2.610Acs. The said land was transferred in the year 1999 to the petitioner M/s.Pancham Studios Private Ltd with mutual understanding to develop a commercial project and equally distribute the sale proceeds profits proportionately being 1/3rd each, among the land owners in future. The project was negotiated in the presence of brothers who were shareholders as well as directors of both the companies. It was also agreed between the parties that the proceeds received from the sale of the commercial project Symphony Mall by the financial creditor are to be released in phases as and when received, in favour of the other group companies for their revival and growth. A sale deed was executed on 15.03.1999 between the land owners and M/s. Pancham Studios Private Ltd. Thereafter on 22.10.2012 a joint development agreement was executed between the M/s Pancham Studios Private Ltd and M/s Oorijita Projects Pvt Ltd, Hyderabad for development of a commercial complex on the said land. As per joint development agreement clause 6 an amount of Rs.1,53,00,000/- as interest free refundable/adjustable deposit paid by developer was distributed shared as follows. A sum of Rs.37,50,000/- in favour of Mr. Debasish Mahapatra, managing director of M/s.Pancham studios Pvt Ltd, a sum of Rs.37,50,000/- in favour of Mr. Devprakash Mahapatra, director of M/s. Pancham studios Pvt Ltd, a sum of Rs.25,00,000/- in favour of M/s. Pancham Studios Pvt Ltd, a sum of Rs.53,00,000/- in favour of M/s.Pancham Studios Pvt



Ltd, at the time of registration of development agreement and irrevocable Power of Attorney. The first party acknowledged the receipt of above-mentioned payment. The amount receivable by Mr. Devprakash Mahapatra, on the development project was not less than Rs.50 crores. It was decided by the sellers of the property that instead of proportionate distribution among the brothers and sister equally, the entire proceeds were to be held by the petitioner and to be transferred to the group companies including the corporate debtor in phases as and when received out of the sale proceeds of the commercial complex. The share of Mr. Devprakash Mahapatra Managing Director, Konark Aquatics and Export Pvt Ltd comes around Rs.17 crores. Out of which a sum of Rs.37,50,000/- paid to Mr. Devprakash Mahapatra and a sum of Rs.4,43,50,000/-paid to Konark aquatics and Export Pvt Ltd, during 2013 to 2017, the balance amount due from the petitioner is Rs.12,19,00,000/- Mr. Devprakash Mahapatra vide his letter dated 23.11.2017 requested the managing director of petitioner to release the said balance amount. The section 7 IBC petition has been filed on 11.08.2022 after ten years from the first disbursement dated 28.06.2013 and after five years from the last date of disbursement dated 03.07.2017 hence the petition is barred by limitation. The letter dated 16.10.2017 *annexure M* of petition relied by the petitioner in part IV of application to save the limitation is circulation minutes written former director of the petitioner will not amount to acknowledgement of debt. The contention of the petitioner that the amount is repayable after the full and final settlement of secured financial creditors through OTD is denied. There is no default as defined under section 3(12) IBC 2016. The present application is not maintainable and liable to be dismissed.

3. Brief contents of the rejoinder are as follows: The financial debt amount of Rs.4,43,50,000/- is admitted by the corporate debtor in its own balance sheets for the financial year 2017-18 and 2020-21 as unsecured loans. The respondent approached the petitioner and sought financial assistance in term of an inter-corporate 'interest-free loan of around Rs.4,50,00,000/- repayable within two years from the last date of disbursement or after complete of debt settlement and



acquisition of plant and machinery from bank or six years from the first date of disbursement or on demand whichever is earlier. Accordingly, resolution was passed by petitioner company on 20.06.2013. It is incorrect to say that there was neither any request from the corporate debtor nor there was a due date of payment which is evident from the Board resolution dated 20.06.2013. The contents of the reply affidavit pertaining to section 185 and 186 of the Companies Act is misconceived and irrelevant. The joint development agreement dated 22.10.2012 entered between petitioner and Oorjita Project Projects Pvt Ltd is an independent nothing to do with this transaction.

4. **Brief contents of the sur-rejoinder are as follows:** The contention in rejoinder is that the respondent approached for inter companies' loan to clear off its NPA with secured creditors is completely false. The financial statements of the petitioner shows that it's paid-up capital and free reserves were not adequate to provide any inter company's loan. The financial statements of the petitioner show that during the corresponding period, the funds were received from Oorijita Private Ltd for development of project on the common property shown as unsecured loan in their balance sheet. There is no provision in Memorandum of Association of the petitioner to provide inter-corporate loans for any purpose other than where they have got business relations. The money given by the petitioner was not inter corporate loan but was only sharing of the funds received it from OOPL. It is a game play to avoid further payment to the director of the respondent. No board meeting was held on 20.06.2013, the minutes of the meeting enclosed as annexure's' of rejoinder is totally false. The alleged resolution passed to give loan has not been filed with ROC. There is no mention about the minutes of the board meeting in the petition, a sum of Rs.5,00,000/- in the year 2012-13 disbursed much prior to decision of board. The petitioner company started to set up a film studio, the company not started its business, as per the balance sheet for the year 2011-12 the cash in hand was Rs.10,869/- and bank balance was Rs.7,894/- The equity share capital is Rs.61,00,000/- The petitioner company not shown the source of fund, therefore the source of fund was the amount received from the developer of



land and disbursed hence the amount paid was not a loan. In the petitioner company auditor's report, it was mentioned that company violated sections 185 and 186 of the Companies Act 2013, but does not mention about the board meeting held on 20.06. 2013. The business of the corporate debtor has been closed from the year 2008-2009 onwards, hence money was not given for business operation of the respondent. The family members decided to sell the personal property through petitioner company for benefit of all the companies promoted by Mr. Tarakant Mahapatra, accordingly, land was transferred during the year 1999 for construction of a commercial complex as "Symphony Mall" In the year 2012 the project started through receipt of funds from OOPL which has been shown a unsecured loan by the petitioner company and disbursed the proceeds among the other group companies. The petitioner to avoid the distribution of profits among the original land owners as per family arrangement has filed this petition.

The points for consideration are:

- (i) Whether Corporate Debtor owed a financial debt of Rs.4,43,50,000/-to the petitioner in the facts of the present case?
- (ii) Whether loan given in violation of section 186 of companies Act 2016 is void ?
- (iii) Whether the petitioner has not complied the requirements of section 7(3)(a) 7 IBC 2016? If yes what is its consequence?

5. Point No.1: This petition is appearing on outward that the dispute is between two corporate entities calling as financial creditor and corporate debtor, but in fact and reality this is the dispute between two of own brothers.

6. The case of the petitioner is it has granted interest free corporate loan of Rs.4,43,50,000/-to the corporate debtor between 01.04.2013 and 03.07.2017 in 36 instalments to bail out the corporate debtor from the clutches of secured financial creditors under the OTS on condition to repay the amount just after the full and final settlement of secured financial creditors. When the corporate debtor failed to repay the amount as agreed the petitioner filed this petition.



7. The corporate debtor admitted the disbursement of Rs.4,43,50,000/- to the account of corporate debtor by the petitioner, but stated that this amount was not given as loan, but this was part of sale consideration receivable by Managing director of corporate debtor Mr. Devprakash Mahapatra against the sale of joint family property conveyed to petitioner by sale deed dated 15.03.1999 and development agreement dated 22.10.2012 entered with M/s Oorjita Projects Private Limited. The petitioner company was incorporated in the year 1999 with main object to set up a film studio. The petitioner not yet commenced its commercial operation, in the situation on the petitioner side not explained about the source how the petitioner had an amount to give loan to the respondent. The petitioner conveniently not produced its financial statement for the relevant periods. Further the Managing director of corporate debtor by his registered letter dated 23.11.2017 *Annexure R3* demanded the balance sale consideration amount of Rs.12,19,00,000/-out total share amount of Rs.17,00,00,000/- after giving credit to Rs.4,43,50,000/-,the petitioner not sent any reply to this letter and kept silent, in the petition also the petitioner not whispered anything about this letter, but curiously after about five years filed this petition. No prudent man/creditor will remain silent without responding to the letters like *Annexure R3* for five years, when such a person had really given the loan.

8. The one another irrational contention of the petitioner in page 1 of the petition is ***“it was specifically agreed that such loan, though bears no interest, shall be repaid to the financial creditor in near future, i.e., just after the full and final settlement with the secured financial creditor of the corporate debtor through OTS.”***

9. The case of the petitioner is that it had given the loan to the corporate debtor to enable the latter to clear/discharge its secured financial debts. Simply stated it means that the corporate debtor will discharge its existing financial debts by borrowing from the petitioner. While so, the wherewithal as to how the corporate debtor could discharge the dues of the petitioner “just after” the financial debts are discharged is incomprehensible, when the liabilities of the former are far exceeding the amount borrowed from the latter. Thus, patently there is a fallacy in the



argument of the petitioner that the loan was given on such assurance, which hence is unacceptable.

11. On the petitioner side not filed any special resolution passed by the petitioner company to grant loan to the corporate debtor. On the petitioner side belatedly produced the *Annexure's*' said to be the extract of the minutes of the Meeting of Board of Directors held on 20.6.2013. On the respondent side denies this document and objected stating that this is the document subsequently created for the purpose of the case. The submission of the respondent is appearing reliable, the document is not an extract from the original minutes, this is copy of the extract, i.e., copy to copy, the same is not admissible in evidence. Mr. Devprakash Mahapatra, managing director of the corporate debtor, was also one of the directors of the petitioner company during the relevant period 2013, if the copy of entire minutes of meeting of Board of Directors of petitioner company held on 20.06.2013 is produced, it will establish the genuineness of Annexure 's' because it will reveal, whether all the directors inclusive of Mr. Devprakash Mahapatra, were participated in the meeting and passed the said resolution. On the petitioner side for the reasons best known to the petitioner, the entire minutes of meeting of Board of Directors of petitioner company allegedly held on 20.06.2013 is not produced. The one more thing which leads to doubt the genuineness of *Annexure 's'* is the resolution runs as follows:

“RESOLVED THAT M/s Pancham Studios Pvt. Ltd., and M/s. Konark Aquatics & Exports Pvt. Ltd stand each other at the time of need of mutual co-operation and in order to liquidate the its bank liabilities/loan outstanding, our Company (Pancham Studio Pvt. Ltd., shall extend interest free intercorporate financial assistance/ loan around Rs. 450 Lakhs which shall be due for repayment /recovery 2 years from last date of disbursement (OR) after complete debt settlement and acquisition of plant & machinery (assets free) from Bank (OR) 6 years from first date of disbursement (OR) on demand, whichever is earlier.



12. The repayment of loan period is quite contrary to what sated in page 1 of the petition referred supra. As per this resolution, petitioner company agreed to extend loan facility to the respondent. The date of resolution is 20.06.2013 but as per the *Annexure 'H'* schedule of payments, it started from 01.04.2013 even prior to the date of resolution. These factors falsify the case of the petitioner that amount was paid by the petitioner as loan to the respondent to discharge the secured financial debts.

13. The case of the petitioner is the loan was granted as interest free. The mere absence of interest will not change the character of the financial debt. This is observed by the Apex court in *Orator Marketing Pvt. Ltd. Versus Samtex Desinz Pvt. Ltd. SCC OnLine SC 513*. The definition of 'Financial Debt' in Section 5(8) of IBC does not expressly exclude an interest free loan. 'Financial Debt' would have to be construed to include interest free loans advanced to finance the business operations of a corporate body.

14. For financial debt the following elements are necessary (i) Disbursement and (ii) the disbursement must be against the time value of money and for commercial purpose. In our case as discussed above it is proved by the respondent that no loan was given by the petitioner to the respondent company, the amount of Rs.4,43,50,000 is not a loan amount, this was the amount payable to the managing director of the corporate debtor towards his 1/3 share in the joint family property sold in the name of the petitioner. There are no elements of commercial transaction, only the amount paid by the developer Oorjit Projects Private Limited was disbursed to the respondent through the petitioner, because of an internal family arrangement arrived among the siblings of Late Tarakanta Mahapatra. In these circumstances it is answered that amount given by the petitioner to the respondent is not a debt, in particular it is not a financial debt; hence the respondent is not owed to pay the petitioner; thus, this point is answered.

Point No.2: On the respondent side submitted that since the alleged loan was given in violation section 186 of Companies Act 2013 the petition shall be dismissed. For this on the petitioner side relies upon NCLAT -New Delhi order



dated 14.10.2019 passed in Company Appeal (AT) (Insolvency) No. 1025 of 2019, **Padmaiah Vuppu Vs Reliance Capital AIF Trustee Company Pvt. Ltd.** and argued that non-compliance section 186 Companies Act is not fatal to the petition. In this order it is observed as follows:

4. It is submitted that the Corporate Guarantee was given by the Managing Director of the Corporate Debtor against the provisions of Section 185 of the Companies Act, 2013 and no Board or Special Resolution was passed. However, it is not in dispute that the Corporate Guarantee was executed on 2nd September, 2014 and since then the matter was not challenged by any of the Shareholder / Director of the Corporate Debtor before any competent authority or Court of Law.

5. In such circumstance, it is not open to any Shareholder/ Director/ Managing Director to raise such issue in petition under Section 7 of the I&B Code, as the Adjudicating Authority has no jurisdiction to decide the question of legality and propriety of the Corporate Guarantee executed by the Corporate Debtor.

15. The above citation deals with section 185 of the Companies Act 2013 not with section 186 of Companies Act, 2013. Further there the executant of guarantee document admitted the execution of guarantee but only questioned its validity in the absence of special resolution, in such situation it was held that the persons who were entitled to oppose such acts remained silent for long time, then cannot agitate during the IBC proceedings. In our case the validity of alleged debt is challenged under section 186 of the Companies Act 2013, hence this citation is not relevant to our case. Section 186 of Companies Act 2016 runs as follows;

186. Loan and investment by company



(1) Without prejudice to the provisions contained in this Act, a company shall unless otherwise prescribed, make investment through not more than two layers of investment companies:

Provided that the provisions of this sub-section shall not affect, —

(i) a company from acquiring any other company incorporated in a country

outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country.

(ii) a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.

(2) No company shall directly or indirectly —

(a) give any loan to any person or other body corporate.

(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and

(c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more.

(3) Where the giving of any loan or guarantee or providing any security or the acquisition under sub-section (2) exceeds the limits specified in that sub-section, prior approval by means of a special resolution passed at a general meeting shall be necessary.

(4) The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.



(5) No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained:

Provided that prior approval of a public financial institution shall not be required where the aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given does not exceed the limit as specified in sub-section (2), and there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution.

(6) No company, which is registered under section 12 of the Securities and Exchange Board of India Act, 1992 and covered under such class or classes of companies as may be prescribed, shall take inter-corporate loan or deposits exceeding the prescribed limit and such company shall furnish in its financial statement the details of the loan or deposits.

(7) No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three-year, five year or ten-year Government Security closest to the tenor of the loan.

(8) No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.

(9) Every company giving loan or giving a guarantee or providing security or making an acquisition under this section



shall keep a register which shall contain such particulars and shall be maintained in such manner as may be prescribed.

(10) The register referred to in sub-section (9) shall be kept at the registered office of the company and —

(a) shall be open to inspection at such office; and

(b) extracts may be taken therefrom by any member, and copies thereof may be furnished to any member of the company on payment of such fees as may be prescribed.

(11) Nothing contained in this section, except sub-section (1), shall apply—

(a) to a loan made, guarantee given, or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities;

(b) to any acquisition—

(i) made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities:

Provided that exemption to non-banking financial company shall be in respect of its investment and lending activities;

(ii) made by a company whose principal business is the acquisition of securities;

(iii) of shares allotted in pursuance of clause (a) of sub-section (1) of section 62.

(12) The Central Government may make rules for the purposes of this section.

(13) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine



which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Explanation. —For the purposes of this section, —

(a) the expression “investment company” means a company whose principal

business is the acquisition of shares, debentures, or other securities.

(b) the expression “infrastructure facilities” means the facilities specified in Schedule VI.

16. Section 186 clause (2) prohibits granting loan to any person or body corporate exceeding sixty percent of its paid-up share capital, clause (7) of the Act speaks about the minimum rate of interest chargeable to the loan, it denotes this clause prohibits granting interest free loans and clause (9) of the Act deals with the keeping of registers relating to the loans given, this impliedly prohibits granting loan without any written instrument.

17. In our case on the petitioner side admitted that the loan was given free of interest without any written loan document. In respect of quantum of loan allegedly granted is concern, on petitioner side not filed financial statement for the relevant period, but the Balance sheet of the financial year 2020-21 is produced as *Annexure O* but on the respondent side along with sur-rejoinder produced the financial statement of the petitioner for the relevant period 2013-2014. There it is mentioned that (a) share capital was Rs.661,00,400/- (b) Reserve & Surplus Rs.1,26,07,552/- (c) cash and Bank Balance Rs.305/-. According to the petitioner by resolution dated 20.06.2013 petitioner company resolved to give loan of Rs.4,50,00,000/-. The loan amount disbursed is Rs.4,35,50,000/- this is much exceeding the 60% of its paid-up share capital, free reserves and securities and exceeds its 100% free reserves. Thus, even according to the case of petitioner loan was granted in violation section 186 of Companies Act, 2013. The effect of violation section 186 is discussed by NCLT-Principal Bench- Delhi and held in



IB.No.1050(PB)2020 M/S.UKG Steel Private Ltd vs Erotic Buildcon Private Ltd
order dated 31.05.2020 as follows:

12. To calculate whether the Petitioner-financial creditor has given loan in terms of Section 186 of Companies Act 2013 we refer to Page 50 of the Petition, wherein the Balance Sheet of the Financial Creditor has annexed which depicts that the Paid-Up Share Capital of the Petitioner-financial creditor company is of Rs. 97,75,020 and Reserves and Surplus are of Rs 66,58,072. The information of Security Premium Account has not been separately provided in the Balance Sheet. That the aggregate of Paid-Up Share Capital and Reserves and Surplus amounts to Rs. 1,64,33,092 and 60% of that amount is Rs 98,59,855.2. If we compare both the amounts, then we observe that the loan amount disbursed by the Financial Creditor is more than 3 Crore which is much more than 60% of aggregate of Paid-up Share Capital and Reserve and Surplus.

13. That the Petitioner has neither made the disclosure of such Inter Corporate Loan in its Balance Sheet nor it had produced the Special Resolution passed in the EGM of Shareholders for the purpose of compliance of Section 186(3) of Companies Act 2013. Further, the Loan Agreement does not speak about any such resolution passed by the shareholders.

14. Therefore, the material available on the record suggest that the borrowing given by the Petitioner is contrary to the limit prescribed under Companies Act 2013 which amounts to an ultra vires act committed by the Petitioner. Hence the loan advanced by the Petitioner is not a legally enforceable debt.

Therefore, the bench finds no merit in the petition and the same is hereby dismissed as misconceived.



The NCLT-Delhi Bench No. II followed and reiterated the same in IB.No.447(ND) 2021 Jambudwip Exports and Imports Limited Vs U P Bone Mills Private Limited, by order dated 25.03.2022.

18. Section 23 of the Indian Contract Act 1872 deals with the effect of consideration paid in violation of any of law. The section runs as follows:

*23. What considerations and objects are lawful, and what not. —
The consideration or object of an agreement is lawful, unless—
it is forbidden by law; or
is of such a nature that if permitted, it would defeat the provisions of
any law; or is fraudulent; or
involves or implies injury to the person or property of another; or t
the Court regards it as immoral, or opposed to public policy.
In each of these cases, the consideration or object of an agreement is
said to be unlawful. Every agreement of which the object or
consideration is unlawful is void.*

19. In this case the loan was given in violation section 186 of Companies Act 2013, so the consideration allegedly disbursed by the petitioner in violation clause 1 of Section 23 of the Indian Contract Act 1872 is void.

20. The Importance of compliance of Section 186 of Companies Act can be inferred from sub-section (13) of the said section, by which, if a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than Rs.25,000/ but which may extend to Rs.5 lacs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than Rs.25,000/ but which may extend to Rs.1,00,000/. Even if, any money was transferred by the petitioner company to the account of the corporate debtor, the same was not in accordance with the provisions of companies Act 2013 and thus, the same cannot be stated to be a valid or legal transaction.



21. In the circumstances it is answered that the loan allegedly given by the petitioner in violation section 186 of Companies Act 2013 is void, and in consequence it is unenforceable.

Point No.3: The petitioner has not filed a record of default recorded with the information utility. On the respondent side submitted that the respondent not comply with Section 7(3) of the IBC 2016 and prayed since the presentation of petition itself is defective the same shall be rejected. On the petitioner side not filed NeSL certificate along with the petition. On the respondent side relies upon Section 7(3) of IBC 2016 and circular of NCLT-Principal Bench. dated 12.05.2020. In respect of circular referred above is concern it was struck down by the *Hon'ble High Court of Calcutta in Univalve Projects Private Limited Vs. The Union of India & others vide order dated 18.08.2020 in W.P. No.5595 (W) with C.A. No.3347 of 2020* and allied matters. As such the above plea is of no avail to the corporate debtor. But now the position is changed after the insertion of Regulation 20(1A) of IBBI (Information Utilities) Regulation 2017, the Regulation runs as follow:

"20. Acceptance and receipt of information.

(1A) Before filing an application to initiate corporate insolvency resolution process under section 7 or 9, as the case may be, the creditor shall file the information of default, with the information utility and the information utility shall process the information for the purpose of issuing record of default in accordance with regulation 21."

22. This Regulation came into effect on 14.06.2022. The present petition in our hands was filed on 11.08.2022, hence the inserted Regulation is applicable to this case. Section 7(3) of IBC 2016 emphasis the production of a record of default from information utility or other record or evidence of record. In this case, the petitioner filed Bank statement but the same is not in accordance with law. Regulation 2A of IBBI (Resolution Process for Corporate Persons) Regulation 2016 runs as follow:

[2A. Record or evidence of default by financial creditor.



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For the purposes of clause (a) of sub-section (3) of section 7 of the Code, the financial creditor may furnish any of the following record or evidence of default, namely: -

(a) certified copy of entries in the relevant account in the bankers' book as defined in clause (3) of section 2 of the Bankers' Books Evidence Act, 1891 (18 of 1891);

23. The certified copy referred in the above regulation is defined in section 2(8) of the Bankers' Books Evidence Act 1891, but the printout filed by the petitioner in this case as *Annexure'o' page 118 of petition* without certificate is not in accordance with section 2A of the Bankers' Books Evidence Act 1891.

24. From the records it is made clear that the petitioner has not complied the requirement of section 7(3)(a) of IBC 2016, in consequence, the petition is liable to be rejected as provided under section 7 (5) of IBC 2016. Thus, this point is answered.

25. In view of answers arrived to the points framed this petition is **dismissed**.

26. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

**KAUSHALENDRA
A KUMAR SINGH**

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KAUSHALENDRA KUMAR SINGH
Date: 2023.11.29 12:39:50
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**PANDIAN MOHAN
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MOHAN RAJ
Date: 2023.11.29 15:36:37 +05'30'

Kaushalendra Kumar Singh
Member (Technical)

P. Mohan Raj
Member (Judicial)

Signed on this, 29th day of November, 2023.

Supriya_P.S