NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 587 of 2025

[Arising out of the Order dated 21.01.2025, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Chandigarh Bench) in I.A. No. 1523 of 2024 in C.P(IB) No. 420/CHD/PB/2019]

IN THE MATTER OF:

Intec Capital Limited
CIN: L74899DL1994PLC057410
708, Manjusha Building, 57,
Nehru Place, New Delhi-110010
IBC@inteccapital.com
Phone No. 7838777046 **...Appellant**

Versus

Rakesh Phull
Resolution Professional
Shivam Continental Pvt Ltd
IBBI/IPA-003/IP-N00122/2017-18/11305
P-602, Jalandhar Heights, 66 FT Road,
Jalandhar, Punjab **...Respondent**

Present:

For Appellant	:	Mr. Rachit Mittal, Manish Kumar, Parish Mishra, Kanishk Raj, Adarsh Srivastava, Abhishek Sinha, S. Bansal, Advocate.
For Respondent	:	Ms. Mayuri Raghuvanshi, Advocate.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present Appeal under Section 61 of Insolvency and Bankruptcy Code, 2016 has been filed by the Appellant against dismissal of IA/1523/2024 by the

Adjudicating Authority (Chandigarh Bench) dismissing the claim rejection application. Appellant prays to allow the present Appeal and set aside order dated 21.01.2025 passed by the Chandigarh Bench in IA/5431/2024 in CP(IB)/420/(CHD)/2019 and direct the Respondent to admit the claim of the Appellant as Secured Financial Creditor as already admitted by Corporate Debtor in their Audited Balance Sheet.

<u>Appellant's case:</u>

2. The Appellant – Financial Creditor is a Non-Banking Financial Institution ("NBFC") incorporated on 15th February, 1994 and is in the business of financing small and medium enterprises for acquisition of Machinery, Loans against Machinery or other business purposes. Primary security for loan is exclusive charge on the machine(s) purchased by the Debtors using the funds or any other movable asset. The Appellant also obtains Corporate Guarantees from the borrowers in order to secure the credit facilities advanced to the Borrowers. In the year 2012 Shivam Continental Private Limited has taken over the running business of M/s Shivam International with all its assets and liabilities and further recorded the same in the amended MOA. In the same year 2012, M/s Shivam International had availed the loan facilities for their business from the Appellant. The Appellant had sanctioned the loan facility for the sum of Rs.1,42,00,000/- (Rupees One Crore Forty-Two Lakhs Only) by issuing the Sanction Letter dated 24th September, 2012. Pursuant to the aforesaid Sanction Letter dated 24.09.2012, the Appellant and M/s Shivam International (now Shivam Continental Private Limited) had duly executed the Loan Agreement

dated 27.09.2012 along with other transitional documents. Further in order to secure the financial facility, M/s Shivam International had created the first charge by way of exclusive hypothecation lien mark on the Invoice in favour of Intec Capital Limited covering the entire assets. Meanwhile in the Year, 2013 the Corporate Debtor/Shivam Continental Private Limited had approached the Appellant for availing the fresh financial facility for financing the assets. Pursuant to that, the Appellant had sanctioned the fresh Loan facility for the sum of Rs.43,00,000/- (Rupees Forty-Three Lakhs Only) vide Sanction Letter dated 28.03.2013. Pursuant to the aforesaid Sanction Letter dated 28.03.2013, Appellant and the Corporate Debtor had duly executed the Loan Agreement dated 30.03.2013 along with other transitional documents. Further in order to secure the financial facility, the Corporate Debtor had created the first charge by way of equitable mortgage in Plot measuring 5 Marlas and 100 sq. ft. out of Plot 16 (Marla and 100 sq. ft.) comprised in Khasra No. 733, 734, 735, 738, 739, 736, 737, 740 falling within the revenue estate at the Village Basti Danghmanda, Mandi.

3. In the year 2015, M/s Shivam International failed to meet its obligations towards repayment of loans as per its schedule. Subsequently, in the year 2015 the Appellant was constrained to issue the Notice of Termination dated 07.04.2015 calling for initiation of Legal Action. However, M/s Shivam International failed to honour the loan recall notice. Soon thereafter, an

Arbitration Proceedings were initiated and an Arbitral Award dated 25.09.2015 was passed by the Ld. Sole Arbitrator in favour of Appellant.

4. Further in the Loan Account bearing No. LNJAL01112-130001689 in the name of Shivam International the Appellant has received the last payment of Rs.31,37,250 on 16.12.2013 vide Cheque Instrument No. 000254 and in the Loan Account No. LNJAL01112-130002238 in the name of Shivam Continental Private Limited.

5. Out of two loan facilities one was closed by the Appellant i.e. of Corporate Debtor after receiving the balance payment and the Appellant has issued the "No Dues Certificate" dated 04.11.2016 with respect to the loan account of Shivam Continental Private Limited (Corporate Debtor herein) in the Loan Agreement No. LNJAL01112-130002238 dated 30.03.2013 mentioning the detail of another active loan bearing Loan Agreement No. LNJAL01112-130001689 with respect to M/s Shivam International merged with Shivam Continental Pvt. Ltd. The said "No Dues Certificate" was duly acknowledged by the Respondent.

6. The Appellant on 01.03.2023 had received the intimation letter from IRP with respect to the commencement of Corporate Insolvency Resolution Process of Shivam Continental Private Limited along with Form-A i.e., paper publication from Ms. Shalu Khanna (Interim Resolution Professional) requesting for the submission of claim if any. Subsequently, the Appellant had filed its Claim Form-C on 11.04.2023 along with all the supporting documents. Later vide Email

dated 21.04.2023 the Interim Resolution Professional had requested for certain documents for verifying the claim. Subsequently IRP was changed/replaced with another RP vide order dated 13.04.2023 by Adjudicating Authority. Thereafter, another Email dated 02.05.2023 was sent by present Resolution Professional for certain clarification/documents and the same was duly replied by the Appellant on 09.06.2023. Even after submitting the required details/documents an email dated 11.06.2023 was received from the Resolution Professional commenting his opinion that the Appellant do not qualify as a Financial Creditor in respect to the Corporate Debtor and has not included the Appellant as a member of COC till date.

7. Resolution professional opinion that the claim filed by appellant/INTEC capital limited is erroneous on the following grounds:

7.1. Assets and liabilities of M/s Shivam International was taken over by the Corporate Debtor and the same is recorded in amended MOA.

7.2. The loan was granted to proprietorship firm on 27th September, 2012, therefore, there was no need for the registration of charge on the MCA.

7.3. The loan liability of M/s Shivam International was taken over by Shivam Continental Private Ltd. and the same has been acknowledged by the CD company (Shivam Continental Private Ltd.) in the Balance Sheets for the year 2012-13, 2013-2014.

7.4. In the Balance Sheet for the year 2012-13, 2013-2014, two loans were reflected one in the name of Intec Capital Limited which was taken by M/s Shivam International for the sum of Rs. 1,42,00,000/- and another in the name of Intec Capital Limited 2 which was taken by Shivam Continental Private Limited for the sum of Rs. 43,00,000/-.

7.5. In the "No Dues Certificate" dated 04.11.2016 it is clearly mentioned that one loan is active and will be continued and the same was duly acknowledge by the Respondent.

7.6. Upon rejection of the claim by the Resolution Professional, Appellant preferred an Application before the Adjudicating Authority. Vide order dated 21.01.2025 Hon'ble Adjudicating Authority had dismissed the IA/1523/2024 filed by the Appellant.

7.7. Adjudicating Authority had duly acknowledged the fact in its findings that Balance sheet of the Corporate Debtor that collateral security has been reflected in the balance sheet as on 31.03.2013 and the balance sheet of the Corporate Debtor as on 31.03.2014 also reflects both the loans as well as collateral security. The relevant para of the findings of the Adjudicating Authority is reproduced here:

> *"Thus both the loans as well as collateral money has been reflected in the balance sheet of the corporate debtor as on 31.03.2013. The next year balance sheet of the Corporate*

Debtor as on 31.03.2014 also reflects both the loans as well as collateral security for it."

7.8. Adjudicating Authority in its finding at para 15 of the impugned order had inferred that the loan extended by the Appellant was taken over by the Corporate Debtor, para 15 of the findings of Adjudicating Authority is reproduced hereunder:

> *"It is worthwhile to note that neither the terms of the takeover agreement dated 01.04.2012 nor the balance sheet of Shivam International as on 31.03.2012 has any mention about the loan, which was subsequently extended by the Applicant to Shivam International, from which it can be inferred that the loan extended by the Applicant was taken over by the Corporate Debtor."*

7.9. Adjudicating Authority in its finding in para 16, stated that Adjudicating Authority is not inclined to accept the argument of the Appellant that loan extended by the Applicant to Shivam International, was taken over by the Corporate Debtor, and hence rejected the claim of the Appellant as Financial Creditor of the Corporate Debtor.

7.10. Adjudicating Authority in its finding has duly acknowledged the fact that balance Sheet of the Corporate Debtor for the year 2013 and 2014 has dismissed the appeal on ground that claim filed by the Appellant filed before the Resolution Professional is beyond the period of 90 days from the commencement of CIRP as per Regulation 12(2) of IBBI 2016; before the

Second Amendment dated 18.09.2023 that Regulation 12(2) of the IBC, 2016 is reproduced herein for bare perusal:

> *"Regulation 12(2) A Creditor, who fails to submit claim with proof within the time stipulated in public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date."*

8. In the present case Appellant had duly filed its claim on 11.04.2023, along with all documents before the Interim Resolution Professional, further Interim Resolution Professional as well as, Resolution Professional raised certain queries which was duly replied by the Appellant vide email dated 09.06.2023. It is claimed that Appellant had filed its claim along with proof within the limitation period as per IBC Code, 2016 and therefore the Appeal be allowed.

<u>Respondent-RP's case</u>

9. Respondent-RP contends that the Appellant has been concealing the material documents. The Appellant claims that M/s Shivam International was taken over in the year 2011 by the Corporate Debtor by a Memorandum of Association [Pgs. 117-126, Volume I]. However, the Appellant did not place on record the copy of the <u>takeover agreement dated 01.04.2012</u> that clearly states:

> *"2. That the consideration for vesting of the said business has been settled at Rs.103.38 lacs being the net worth as computed as per the balance sheet of the first party completed as on 31.03.2012 whereby all its assets and liabilities have been evaluated at book values thereof. The company shall satisfy this consideration by issuing to the proprietor of the party of first part equity shares of*

Rs.10/- each at par to the value of the sum of Rs. 103.38 lacs in the share capital of the company credited as fully paid up. Nothing will be payable hereafter on another count or pretext and this consideration encompasses absolute and total consideration for all the obligations of the erstwhile business known as M/s Shivam International."

10. Pertinently, the aforementioned clause was reproduced in paragraph 13 [Pg. 57, APB] in the impugned order and the NCLT took note that neither the takeover agreement dated 01.04.2012 nor the balance sheet of M/s Shivam International as on 31.03.2012 mentioned the loan, which was subsequently extended by the Appellant to M/s Shivam International and the business of M/s Shivam International was taken over by the Corporate Debtor along with all assets and properties for a consideration of Rs.103.38 lakh being the net worth as computed as per the balance sheet of Shivam International as on 31.03.2012. As per clause 2 of the Takeover agreement dated 01.04.2012, the liability of the Corporate Debtor towards M/s Shivam International was restricted upto 31.03.2012 and that nothing thereafter stood payable by the Corporate Debtor encompassing absolute and total consideration for all the obligations of the erstwhile business known as M/s Shivam International till the date 31.03.2012. Thus, the NCLT held that there was no document on record from which it can be inferred that the loan as extended by the Appellant to the Shivam International was taken over by the Corporate Debtor. Despite the fact that the takeover agreement dated 01.04.2012 formed the basis of the impugned

judgment, the Appellant suppressed the takeover agreement and did not place it before this Hon'ble Tribunal.

11. The takeover agreement was also relied upon by the erstwhile Resolution Professional while rejecting the claim of the Appellant. By an email dated 11.06.2023 [Pg. 419, APB], the Appellant was duly informed by the erstwhile Resolution Professional that as per the takeover agreement M/s Shivam International was taken over by the Corporate Debtor along with all assets and properties for the net worth and liabilities as computed as per the balance sheet of M/s Shivam International as on <u>31.03.2012</u>. However, the subsequent loan extended by the Appellant to M/s Shivam International did not exist in the financial statements of the M/s Shivam International for the Financial Year 2011-2012 and was therefore not a part of the assets and liabilities taken over by the Corporate Debtor. Despite this, the Appellant did not place the aforementioned take over agreement before this Hon'ble Tribunal.

12. Further, a demand promissory note dated 27.09.2012 was executed by M/s Shivam International in favour of the Appellant. The said demand promissory note clearly reflects that the proprietor is the guarantor for the loan extended to the Shivam International and the Corporate Debtor is neither the borrower nor guarantor even when it is executed after the takeover agreement dated 01.04.2012. The impugned judgment has extracted the aforementioned demand promissory note dated 27.09.2012 in paragraph 9(iii) [Pg. 54 APB].

However, the Appellant also did not place on record the said promissory note. Thus, the Appellant has failed to approach this Hon'ble Tribunal with clean hands, by concealing the documents that were interpreted against the Appellant by the NCLT.

13. Respondent-RP also claims that the Claim of the Appellant is rightly rejected. Neither the clauses of the Takeover Agreement dated 01.04.2012 nor the balance sheet of M/s Shivam International as on 31.03.2012 has any mention about the loan, which was subsequently extended by the Appellant to M/s Shivam International, from which it cannot be inferred that the loan extended by the Appellant was taken over by the Corporate Debtor. More specifically, Clause 2 of the takeover agreement dated 01.04.2012 provides that no further payment will be incurred by the Corporate Debtor for any reason, as the agreement fully settles all obligations of the former business known as M/s Shivam International. In view of the same, the loan sanction provided to M/s Shivam International by the Appellant was never part of the takeover agreement dated 01.04.2012 and the Corporate Debtor had never intended to take over any liability of M/s Shivam International (proprietorship concern) after 01.04.2012. Even the IRP of the Corporate Debtor informed the Appellant on 11.06.2023, [Pg. 419, APB] that no entry of the loan granted by the Appellant existed in the financial statements of FY 2011-12 of Shivam International, and therefore the said loan was not a part of the assets and liabilities taken over by Corporate Debtor from Shivam International. The reliance on the balance sheets by the

Appellant [Pg. 420-442, APB] is misplaced in view of the takeover agreement dated 01.04.2012 and in the demand promissory note dated 27.09.2012 only the proprietor is the guarantor for the loan extended to the Shivam International. The Corporate Debtor was neither the mortgagor nor the guarantor of the loan extended by the Appellant and therefore the balance sheets relied upon the Appellant cannot be taken as a conclusive proof to establish the status of Appellant as financial creditor of the Corporate Debtor. In view of the above, the Resolution Professional as well as the impugned order rightly rejected the claim of the Appellant.

14. Even the Arbitral Award dated 05.09.2015 [Pgs. 231-250, APBI] held that Shivam International and its sole proprietor along with the guarantors who were arrayed as Respondents in the arbitral proceedings were jointly and severally liable to refund the amount of Rs.1,71,27,755/- to the Appellant [Pg. 248-249, APB]. The Corporate Debtor was not a party to the said arbitral proceedings [Pg. 231-232, APB]. The impugned judgement in paragraph 16 held that the loan extended by the Appellant is at best the liability of the sole proprietor of the M/s Shivam International and the Appellant may resort to appropriate legal remedies to recover the same [Pg. 58-59, APB]. Thus, the claim of the Appellant cannot be included as the claim against the Corporate Debtor as admittedly legal remedies are available to the Appellant against the sole proprietor of the M/s Shivam International.

15. Respondent-RP has also canvassed the arguments of delay. The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor on 23.02.2023 [Pgs. 99-113, APB] and a moratorium was imposed in accordance with Section 14 of the IBC. In compliance with the provisions of IBC, the then Interim Resolution Professional issued a public announcement in Form-A on 25.02.2023, inviting claims from the creditors of the Corporate Debtor, with the last date for submission being 09.03.2023. The Appellant submitted its claim to the Interim Resolution Professional on 11.04.2023 [Pgs. 410, APB], asserting its status as a financial creditor of the Corporate Debtor on the basis of a credit facility allegedly sanctioned to M/s Shivam International on 24.09.2012 [Pgs. 127-130, APB], subsequent to the purported takeover of M/s Shivam International's business by the Corporate Debtor. In view of the above, the erstwhile IRP/Resolution Professional, upon receipt of the claim, sought clarifications from the Appellant, particularly in light of the fact that the alleged business takeover occurred on 01.04.2012, while the basis of the Appellant's claim was a sanction letter dated 24.09.2012 [Pgs. 127-130, APB]. Despite several requests and reminders issued by the IRP/RP for submission of requisite documents to enable collation and verification of the claim, the Appellant furnished certain documents and clarifications only on 09.06.2023 [Pgs. 417-418, APB], resulting in a delay of 106 days from the CIRP commencement date. Upon receipt of the said information, and after careful examination of the documents and submissions made by the Appellant, the erstwhile Resolution Professional, after due consideration, communicated the rejection of the

Appellant's claim as a financial creditor of the Corporate Debtor vide email dated 11.06.2023 [Pgs. 419, APB]. Undisputedly, the Appellant did not challenge the rejection for almost one year as the I.A. No. 1523 of 2024 was filed only on 03.06.2024.

16. Meanwhile in the 19th meeting of the CoC held on 06.03.2024, the Resolution Plan submitted by M/s Kazmi Enterprises was duly approved and the Resolution Professional filed IA (Plan) No. 7 of 2024 on 06.04.2024 before the NCLT, seeking approval of the aforementioned Resolution Plan.

17. Therefore, the NCLT rightly relied on **RPS Infrastructure Ltd. v. Mukul Kumar, (2023) 10 SCC 718** and held that the claim of the Appellant was belated before the NCLT and the mere fact that the NCLT has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon.

18. The Appellant contends that the present case is distinguishable from **RPS Infrastructure Ltd. (supra)** on the ground that the matter therein did not involve consideration of a takeover agreement. However, it is pertinent to note that the core issues in the present proceedings—specifically, the approval of a belated claim and the maintainability of an application under Section 60(5) of the Insolvency and Bankruptcy Code during the pendency of an application seeking

approval of the resolution plan—are identical to those adjudicated in **RPS Infrastructure Ltd. (supra).** Significantly, the application filed by the Respondent for approval of the resolution plan, bearing reference IA(IBC)(PLAN)/7(CH)2024, remains pending before the Hon'ble NCLT and is currently listed for hearing on 02.06.2025.

Appraisal

19. Heard the counsels of both sides and also perused the material placed on record.

20. The present Appeal has been filed by the Appellant against dismissal of IA/1523/2024 by the Hon'ble Adjudicating Authority (Chandigarh Bench) dismissing the claim rejection application. Appellant prays to allow the present Appeal and set aside order dated 21.01.2025 passed by the Hon'ble Adjudicating Authority, Chandigarh Bench in IA/5431/2024 in CP(IB)/420/(CHD)/2019 and direct the Respondent to admit the claim of the Appellant as Secured Financial Creditor as already admitted by Corporate Debtor in their Audited Balance Sheet.

21. To appreciate the issues involved, we are recapitulating the chronology in this case as follows:

23.02.2023	Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor.
25.02.2023	Interim Resolution Professional issued a public announcement in Form-A With the last date for submission of claims being 09.03.2023

01.03.2023	Appellant received letter from the office of IRP, stating to file claim as suspended board of directors had informed IRP that CD is having liability against Appellant.
11.04.2023	Appellant filed its claim before the IRP asserting its status as a financial creditor of the Corporate Debtor on the basis of a credit facility allegedly sanctioned to M/s Shivam International on 24.09.2012.
13.04.2025	IRP was replaced and RP Mr Rajiv Khurana was Appoint be Hon'ble Adjudicating Authority.
02.05.2023	RP Requested and raised certain queries for verification of claim. Particularly in the light of the fact that the alleged business takeover occurred on 01.04.2012, while the basis of the Appellant's claim was a sanction letter dated 24.09.2012.
09.06.2023	Appellant after gathering all the information regarding the queries raised by the RP, duly replied to the same. Appellant furnished the documents and clarifications only on 09.06.2023 [Pgs. 417-418, Volume III], resulting in a <u>delay of 106 days from the CIRP commencement date.</u>
11.06.2023	RP rejected the claim on ground Intec Capital Limited does not qualify as a financial creditor in respect to Corporate Debtor.
06.03.2024	In the 19th meeting of the CoC held on 06.03.2024, the Resolution Plan submitted by M/s Kazmi Enterprises was duly approved and the Resolution Professional filed IA (Plan) No. 7 of 2024 on 06.04.2024. IA(IBC)(PLAN)/7(CH)2024, remains pending before the NCLT.

14.06.2024	Upon rejecting claim, Appellant filed IA before Adjudicating Authority Hon'ble NCLT Chandigarh Bench bearing W1523/24. Appellant did not challenge the rejection for almost one year as the I.A. No. 1523 of 2024 was filed only on 03.06.2024.
21.01.2025	The said IA was heard and dismissed by Adjudicating Authority.

22. Adjudicating Authority has concluded that at best it can be a loan to the proprietorship firm namely Shivam International while giving its ruling as follows:

> "15. It is worthwhile to note that neither the terms of the takeover agreement dated 01.04.2012 nor the balance sheet of Shivam International as on 31.03.2012 has any mention about the loan, which was subsequently extended by the Applicant to Shivam International, from which it can be inferred that the loan extended by the Applicant was taken over by the Corporate Debtor.
>
> 16. In view of the above discussion, we are not inclined to accept the argument of the Applicant that the loan extended to Shivam International was taken over by the Corporate Debtor and therefore his claim as a financial creditor need to be accepted. At the best, the loan extended by the Applicant to Shivam International may fall under the category of loan to Mr. Chander Bhushan, Proprietor of Shivam International, for which the Applicant may resort to the appropriate legal remedies.
>
> 17. Further, in the present case, in terms of Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as "the Insolvency Regulations"), the public announcement in Form-A was made by the IRP on 24.02.2023, according to which the last date for submission of the claims is 09.03.2023 as shown below:
>
> XXX

However, the Applicant has filed its Claim in Form-C dated 04.04.2023 along with the supporting documents on 11.04.2023, which is after the last date mentioned in the public announcement. Further, the additional documents requested by the IRP vide Email dated 21.04.2023 and by the RP Mr. Rajiv Khurana vide Email dated 02.05.2023 were submitted by the Applicant only on 09.06.2023.

According to Regulation 8 of Insolvency Regulations, a person claiming to be a financial creditor is required to submit the claim with proof to the IRP and Regulation 12 of Insolvency Regulations prescribes that a creditor shall submit claim with proof on or before the last date mentioned in the public announcement. Although, a proviso inserted by Notification No. IBBI/2023-24/GN/REG/106, dated 18.09.2023 (w.e.f. 18.09.2023) provides that a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit his claim with proof to the IRP/RP up to the date of issue of request for resolution plans under Regulation period of ninety days from the insolvency commencement. However, the above proviso would not be applicable in the present case. In view of the above, it is clear that the claim has been filed by the Applicant beyond the stipulated time period prescribed under the Insolvency Regulations.

18. Further, the proceedings under Section 94 of the Code would not have any bearing upon the liability of the Corporate Debtor in the present case, if at all there is any liability of personal guarantor of Corporate Debtor, the same would be addressed in the final order of the Section 94 Application."

23. In the instant case we find that that the Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor on 23.02.2023. In compliance with the provisions of IBC, the then Interim Resolution Professional issued a public announcement in Form-A on 25.02.2023, inviting claims from

the creditors of the Corporate Debtor, with the last date for submission being 09.03.2023.

24. The Appellant submitted its claim to the Interim Resolution Professional on 11.04.2023, asserting its status as a financial creditor of the Corporate Debtor on the basis of a credit facility allegedly sanctioned to M/s Shivam International [proprietorship of the Suspended Director] on 24.09.2012, subsequent to the purported takeover of M/s Shivam International's business by the Corporate Debtor. The erstwhile IRP/Resolution Professional, upon receipt of the claim, sought clarifications from the Appellant, particularly in light of the fact that the alleged business takeover occurred on 01.04.2012, while the basis of the Appellant's claim was a sanction letter dated 24.09.2012. After several requests and reminders issued by the IRP/RP for submission of requisite documents to enable collation and verification of the claim, the Appellant furnished certain documents and clarifications only on 09.06.2023, resulting in a delay of 106 days from the CIRP commencement date. Upon receipt of the said information, and after careful examination of the documents and submissions made by the Appellant, the erstwhile Resolution Professional, after due consideration, communicated the rejection of the Appellant's claim as a financial creditor of the Corporate Debtor vide email dated 11.06.2023, the extract of which is reproduced as below:

Admittedly the loan was "granted" by you to Shivam International (Proprietorship) on 27.09.2012.

The assets and liabilities of Shivam International as on 31.03.2012 were taken over by Shivam Continental Pvt Ltd at a net worth of Rs 103.38 Lac vide agreement dated 01.04.2012 (prior to the grant of loan by you).

Please note that no entry of the loan granted by you existed in the financial statements of FY 2011-12 of Shivam International, obviously so, since no such loan had been granted by the date of the said agreement i.e. 01.04.2012. Accordingly, your loan was not a part of the assets & liabilities taken over by Shivam Continental Pvt Ltd from Shivam International on 01.04.2012 vide the said agreement.

The said agreement dated 01.04.2012 specifically states that ***"Nothing will be payable hereafter on any other count or pretext and this consideration encompasses absolute and total consideration for all the obligations of the erstwhile business known as M/s Shivam International."***

Accordingly, no obligation of M/s Shivam International can be booked in the books of Shivam Continental Pvt Ltd from 01.04.2012. However, if the loan was granted to Shivam International (or its sole proprietor Sh Chander Bhushan), it can only be an inter-se arrangement between you and the said proprietor and has nothing to do with the corporate debtor (CD).

Even if the amount of the said loan was transferred by the said proprietor to the CD, the same will be treated as an unsecured loan of Sh Chander Bhushan/Shivam International to the CD. It cannot be treated as a loan from Intec Capital.

Further, in respect of you contention regarding entry of your loan in the balance sheet of the CD, it is clarified that the RP, after due-diligence, has formed an opinion that the booking of the loan as a financial debt from Intec Capital has the effect of transferring of the personal liability of the said proprietor (who is also the promoter director of the CD) on to the CD to the detriment of the rights of other creditors of the CD. Hence the RP is in the process of filing appropriate application before the Hon'ble AA for reversal/correction of the said entry in the balance sheet by following the process prescribed in the Code.

As explained above, the RP is of the opinion that you do not qualify as a financial creditor in respect of the corporate debtor. However, you may exercise your rights as a creditor in respect of the proprietorship Shivam International or its proprietor outside the CIRP, as per law.

Please also note that your email communications with the said proprietor/proprietorship after 01.04.2012, in my opinion, are not legally tenable.

We also note that undisputedly, the Appellant did not challenge the above rejection of the claim by the RP for almost one year as the I.A. No. 1523 of 2024 was filed only on 03.06.2024.

25. Meanwhile in the 19th meeting of the CoC held on 06.03.2024, the Resolution Plan submitted by M/s Kazmi Enterprises was duly approved and the Resolution Professional filed IA (Plan) No. 7 of 2024 on 06.04.2024 before the NCLT, seeking approval of the aforementioned Resolution Plan.

26. During the hearing of appeal, Respondent had argued on the point that Appellant was aware of the takeover of M/s Shivam International by Corporate

Debtor on 04.06.2015 yet the same fact was not disclosed with the Hon'ble Arbitrator who passed the award in favour of Appellant and against M/s Shivam International. Appellant brings to our notice that Appellant was for very first time informed by the Corporate Debtor of the said takeover of M/s Shivam International on 04.06.2015. It was also brought to our notice that Arbitration award was passed on 05.09.2015 and pleading in the said arbitration was completed and case was pending before the Arbitrator for pronouncement by that time and there was no occasion for Appellant to appraise the Arbitrator regarding the takeover of M/s Shivam International.

27. We also note that a demand promissory note dated 27.09.2012 was executed by M/s Shivam International in favour of the Appellant. RP argues that the said demand promissory note clearly reflects that the proprietor is the guarantor for the loan extended to the Shivam International and the Corporate Debtor is neither the borrower nor guarantor even when it is executed after the takeover agreement dated 01.04.2012, the impugned judgment has extracted it and the Appellant also did not place on record the said promissory note and thus the Appellant has not come with clean hands, by concealing the documents that were interpreted against the Appellant by the NCLT.

28. We find that the NCLT held that the claim of the Appellant was belated before the NCLT and the mere fact that the NCLT has yet not approved the plan

does not imply that the plan can go back and forth, thereby making the CIRP an endless process. We don’t find any infirmity in this conclusion.

29. We also find that the NCLT rightly relied on **RPS Infrastructure Ltd. v. Mukul Kumar, (2023) 10 SCC 718** and held that such a belated acceptance can make the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. The Appellant contends that the present case is distinguishable from **RPS Infrastructure Ltd. (supra)** on the ground that the matter therein did not involve consideration of a takeover agreement. However, it is pertinent to note that the core issues in the present proceedings—specifically, the approval of a belated claim and the maintainability of an application under Section 60(5) of the Insolvency and Bankruptcy Code during the pendency of an application seeking approval of the resolution plan—are identical to those adjudicated in **RPS Infrastructure Ltd. (supra)** and therefore this doesn’t support the case of the Appellant.

30. The main ground of the Appellant is that Corporate Debtor in its audited balance sheet for the year 2013-2014 has admitted and acknowledged the loan of M/s Shivam International as well as the loan given by appellant to Corporate Debtor as two entries in the name of Intec Capital Limited. The said entries are reflected under the head “LONG TERM BORROWING SECURED LOANS FROM BANK INTEC CAPITAL LIMITED FOR SUM OF Rs 1,35,18,313.55/-” AND INTEC

CAPITAL LIMITED-2 FOR SUM OF RS.40,68,176.06/-. However, the Adjudicating Authority did not accept the argument of the Appellant that loan extended by the Applicant to Shivam International, was taken over by the Corporate Debtor, and hence rejected the claim of the Appellant as Financial Creditor of the Corporate Debtor. We note that the Hon'ble Supreme Court of India, in its decision in the matter of **IL&FS Financial Services Limited v. Adhunik Meghalaya Steels Private Limited, Civil Appeal No. 5787 of 2025 dated July 29, 2025** ("**Adhunik Judgment**"), held that balance sheets, when read in conjunction with corporate debtor's financial statements (especially cash flow statements) from previous years, constituted as a valid acknowledgment of debt under Section 18 of the Limitation Act, 1963 ("Limitation Act"), even where the name of the relevant financial creditor is not specifically mentioned in the balance sheet of the corporate debtor. This has been relied upon by the Appellant and we observe that it fully supports their case. We also observe that there has been acknowledgement by corporate debtor as well as suspended board of directors. From the material placed on record it is noticed that the Appellant was informed by the corporate debtor/ Suspended Board of directors for the very first time on 04.06.2015 via email by one Mr Rajesh who was employee of the Corporate Debtor, stating that M/s Shivam International is not anymore in existence and Corporate Debtor has taken over the said loan hence requested to merge the loans. Suspended board of director Chander Bhushan was also marked CC in the said mail, hence the Corporate Debtor as well as suspended board of director had acknowledged the liability and takeover of the loan of M/s Shivam International by Corporate Debtor. Furthermore, we also observe that one of the Promoter/Personal Guarantor of the Corporate Debtor namely Ms. Sunita Dogra Alias Sunita Rani has filed an application under section 94 of Insolvency and Bankruptcy Code, 2016 for PIRP, which is pending before the Hon'ble NCLT Chandigarh Bench bearing CP(IB)/52/(CHD)/2024 wherein she has admitted/ acknowledged the fact that the Corporate Debtor has dues against the Appellant. That the Personal Guarantor in its pleadings in Part III of the Application had mentioned that the Appellant is a creditor of Personal Guarantor as well as of Corporate Debtor. (@ Pg 45-47 of Rejoinder). In the said Personal Insolvency matter, RP Mr. Deepak Thukral was appointed and has filed its report under section 99 of IBC,2016 wherein Resolution Professional has also acknowledged the fact that the Appellant is the creditor of the Corporate Debtor and their exists liability of Corporate Debtor as well as Personal Guarantor towards Appellant. (@Pg 74 of Rejoinder). Thus, we find that Personal Guarantor/ Promoters of the Corporate Debtor has admitted the fact that Corporate Debtor has dues against the Appellant**.** Thus**,** the promoters of the corporate debtor have duly acknowledged the liability and have also acknowledged the fact that loan of the Shivam International was taken over by the Corporate Debtor. Thus, we find no doubt about the debt and it is also reflected in the Balance Sheets of the Corporate Debtor. These facts support the case of the Appellant but from the circumstances in the case we find that the rejection of its claims has not been challenged timely and in the meantime resolution plan has been approved by the CoC and now pending before NCLT for approval. We find that the Appellant has not been diligent enough in following up his claim before the RP and NCLT and at this late stage it has woken up. The merit of above case could have been looked into by the Adjudicating Authority, had they been presented timely not belated .. But at this stage, to re-start the process of the CIRP, we also don't find sufficient cause which is to be done in a time bound manner and cannot be reopened at this stage.

31. In the facts and circumstances of the case we are constrained to not agree with the grounds raised by the Appellant due to undue delay in challenging its claim which was rejected by the RP almost a year earlier. Appeal is therefore dismissed. All related IAs are also disposed of. No order as to costs.

[Justice N Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
January 09, 2026.
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