NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT)(Insolvency) No. 655 of 2020
& I.A No.3714, 4538 of 2022

[Arising out of order dated 25.06.2020 passed by the Adjudicating Authority, National Company Law Tribunal, Allahabad Bench in CP(IB) No. 457/ALD/2019]

IN THE MATTER OF:

Gp. Capt Atul Jain (Retd.),
P-567, Jal Vayu Vihar,
Sector-21, Noida,
Uttar Pradesh – 201301 **...Appellant**

Versus

Tripathi Hospital Pvt. Ltd.
H-27, Sector-22,
Noida, Uttar Pradesh – 201301 **...Respondent No.1**

Dr. Birendra Kr. Tripathi
(Managing Director),
Flat No.1101, Tower S-2,
Amantran Apts,
Sector-119, Noida **...Respondent No.2**

Dr. Mrs. Nidhi Tripathi
(Director)
Flat No. 1101, Tower S-2,
Amantran Apts,
Sector-119, Noida **...Respondent No.3**

Dr. Mrs. Manju Lata Tripathi
(Director)
E-14, Sector-9, New Vijay Nagar,
Ghaziabad-201009 **...Respondent No.4**

Ms. Sunayana Agarwal
(Addl. Director-THPL),
1449/9B, 8 Durga Puri,
Mandoli, East Delhi – 110091 **...Respondent No.5**

Dr. Manoj Agarwal
(Addl. Director-THPL),
House No. D-80,
Near Manav Rachna School,
Sector-51, Noida-201301 **...Respondent No.6**

Dr. Mayak Gupta
(Addl. Director-THPL),
A-71, Near Ramagya School,
Sector-50, Noida – 201301 **...Respondent No.7**

Mrs. Rakhi Shukla,
B-116, Gaur Global Village,
Crossing Republic,
Ghaziabad – 201016 **...Respondent No.8**

M/s Heritage Hospitals Ltd.,
B-27/5, Ramesh Nagar,
Near Raja Garden,
New Delhi – 110015 **...Respondent No.9**

Present:

For Appellant:	**Gp. Capt. Atul Jain (Retd), in person**
For Respondent:	**Mr. Ashok Kumar Singh, Sr. Advocate, Mr. Vikram Singh Baid, Mr. Adarsh Tripathi, Ms. Meghna, Mr. Kunal, Advocates for R-9.**
	Ms. Ekta Choudhary, Mr. Dinyank Dutt Dwivedi, Advocates

J U D G M E N T

[Per: Barun Mitra, Member (Technical)]

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code, 2016 ("**IBC**" in short) by the Appellant arises out of the Order dated 25.06.2020 (hereinafter referred to as "**Impugned Order**") passed by the Adjudicating Authority (National Company Law Tribunal, Allahabad Bench) in CP

(IB) No. 457/ALD/2019. By the impugned order, the Adjudicating Authority has dismissed the application filed under Section 7 of the IBC by the Appellant to initiate Corporate Insolvency Resolution Process (**"CIRP"** in short) against the Corporate Debtor/Respondent No.1. Aggrieved by this impugned order, the present appeal has been preferred by the Appellant.

2. Making his submission in person, the Appellant, Gp. Capt. Atul Jain (Retd.), submitted that on the request made by one Mr. D.K. Chaturvedi, ("**DKC**" in short) he agreed to providing a loan to help the Corporate Debtor-Tripathi Hospital Pvt. Ltd., ("**THPL"** in short) for construction of their hospital. It is the case of the Appellant that he transferred Rs.7.5 lakh, Rs.2.5 lakh and Rs.10 lakh to the bank account of DKC for advancing the above sum as loan to the Corporate Debtor at an agreed interest of 18%. It is claimed that with a view to generate a feeling of trust and confidence, it was proposed by DKC to give the above sum to his account who in turn was to transfer the same to the Corporate Debtor. It was further submitted that another sum of Rs.20 lakh was advanced directly to the account of Dr. B.K. Tripathi ("**BKT**" in short)-Respondent No.2, towards hospital construction. The Appellant further submitted that BKT and and Dr. Nidhi Tripathi ("**NT**" in short)-Respondent No.3, were husband-wife duo, who were running THPL as Managing Directors and were 100% promoter cum shareholders of THPL. It was also contended that the Article of Association of the Corporate Debtor empowered BKT to borrow money as Managing Director of THPL. The Appellant further submitted that the entire cumulative amount of Rs.40 lakh given by him was finally transferred to the Corporation Bank account of the Corporate Debtor from the personal account of BKT and NT maintained in Noble Bank, Noida. It was submitted that all transactions from the Appellant to DKC

and to BKT-NT and onward transactions from the Noble Bank to the Corporation Bank should therefore be viewed as legitimate loan transactions between the Appellant and the Corporate Debtor.

3. Assailing the impugned order, the Appellant submitted that there is no legal requirement for proving existence of any written contract to establish that a financial debt was owed by the Corporate Debtor. Pressing the point that there is no need to produce any document or agreement to adduce proof of loan given by the Appellant to the Corporate Debtor, it was added that the "Deemed to be Authenticated" default report contained in the NeSL/Information Utility Report in respect of the Corporate Debtor was a conclusive and undisputed evidence of loan, interest and default. Contending that WhatsApp messages and SMS are admissible legal evidence, it was stated that analysis of such communications including emails exchanged between the Appellant and Respondents No.2 and 3 clearly show that there was a financial debt owed by the Corporate Debtor. Further it was pointed out that BKT had twice paid to the Appellant an interest amount of Rs.2.5 lakh each which lends credence to the fact that the Appellant had disbursed certain sum of monies against the consideration for time value of money and which had the commercial effect of borrowing thus establishing financial debt. It was also submitted that two legal notices were also served on the Respondent No.2 and 3 for recovery of financial debt including interest and damages. In addition, a joint criminal complaint had been filed against BKT and NT and the matter is still pending before the district court. These Respondents have not paid the outstanding due even after accepting their liability before the Hon'ble Allahabad High Court and hence it was erroneous on the part of Adjudicating Authority not to have admitted the Section 7 application.

4. It was asserted that BKT and NT were alter-egos of each other and the Corporate Debtor. Adding further it was mentioned that the postal and email address given by BKT-NT in their saving bank account maintained at Noble Bank, Noida is the same as that of THPL. Moreover, THPL maintained its current account in Corporation Bank wherein the particulars of postal and email address were the same as that stated in the Noble Bank account of BKT and NT. It was, therefore, contended that by inference it can be concluded that the savings bank account maintained in the Noble Bank was actually the THPL's account. It was, therefore, asserted that BKT was using his savings account in the Noble Bank as a mask of THPL and that the Noble Bank account was actually the operational account of THPL. It was, therefore, contended that there is a need to pierce the corporate veil since the Board of Directors/Promoters/Shareholders/Noble Bank/Corporation Bank were one and the same and even their operations were same.

5. It has also been submitted that the Noble Bank account of BKT-NT was the de-facto account of the Corporate Debtor which they used extensively for routing loans received from various financial creditors to the Corporation Bank account of the Corporate Debtor. The Noble Bank account was also used for making payments of the company to contractors to defraud tax authorities. The Noble Bank was thus being used as a façade by the Corporate Debtor to cheat and deceit investors as well as the Government. Since the corporate character was being employed to commit irregularity and for defrauding others, there is a need to look behind the corporate veil in the interest of justice.

6. Refuting the above contentions of the Appellant, the Learned Senior Counsel for Respondent No.9 - M/s Heritage Hospitals Ltd (which had auction

purchased THPL in SARFAESI proceedings having paid sale consideration to the Union Bank of India) stated that in terms of Section 7 of the IBC, three ingredients are required to be established which are (a) existence of financial debt; (b) a default in payment of the debt on part of the Corporate Debtor; and (c) no disciplinary proceedings are pending against the proposed Resolution Professional. It was submitted that the Appellant had patently failed to produce any proof before the Adjudicating Authority to show that he had given any money to the Corporate Debtor directly. The alleged loan was not given to the Corporate Debtor as such but was actually transferred to the personal accounts of DKC and BKT-NT and hence cannot be treated as a sum given to the Corporate Debtor. In view of the above, it was submitted that the Adjudicating Authority had not committed any error in not treating the same as financial debt in terms of Section 5(8)(a) to (i) of the IBC and for not treating the Appellant as Financial Creditor in terms of Section 5(7) of IBC. Hence, as money was never transferred by the Appellant to the Corporate Debtor, the Section 7 application for initiation of CIRP of Corporate Debtor was not tenable.

7. It is further contended that the submission made by the Appellant that money had been transferred to DKC is false and misleading since only an amount of Rs.6,00,056/- had been transferred to the account of DKC while the rest of the monies as per bank statements had actually been transferred to one Mr. R.N. Chaturvedi (Rs.9 lakhs), M/s Srijan Developers Pvt. Ltd (Rs.6 lakhs) M/s JDS Design Execution (Rs.3 lakhs) and M/s Sthapana Architect and Engineers (Rs.1 lakh). Moreover, the money transfers were not even made from the account of the Appellant but done from other account holders.

8. It was further contended that even if for argument's sake it is accepted that certain sum of money was given to DKC, this cannot be a ground of initiation of CIRP against the Corporate Debtor since the sum was loaned to DKC and not to the Corporate Debtor. Similarly, the sum transferred to BKT and NT were to their personal accounts and hence the amount was transferred to them in their individual capacity and not as Directors of the Corporate Debtor. Hence, these sums not having been remitted to BKT-NT as "corporate person" under Section 3(7) of IBC also cannot be treated as loan to the Corporate Debtor. Thus, when no debts were owed by the Corporate Debtor to the Appellant, it did not constitute sufficient ground for initiation of CIRP of the Corporate Debtor. The Appellant has therefore failed to prove/establish that the THPL was a "corporate debtor" in terms of Section 3(8) of IBC. As it is not clear as to who had transferred certain sums of the said amount to DKC and BKT-NT, the Appellant has failed to satisfy how the sum of money allegedly transferred from the accounts of others would qualify to be treated as "debt" owed to him in terms of Section 3(11) of IBC. If debt is not proven or established, the question of "default" under Section 3(12) of the IBC does not arise and hence does not warrant initiation of CIRP.

9. The Learned Senior Counsel for the Respondent vehemently contested the reliance placed by the Appellant on the Information Utility Data on the ground that the records contained therein was only tentative in nature and not final. Further, the Information Utility Report not having been authenticated by the Respondent No.1, it cannot be used to prove acknowledgment of debt. It has also been submitted that WhatsApp messages do not indicate admission of either debt or default on the part of Respondent No.1 and hence cannot be accepted as

evidence. Moreover, none of the messages disclose any privity of contract between the Appellant and the Corporate Debtor. Submission was also made that the Appellant is a vexatious litigant and should not be allowed to do forum shopping with ulterior motives and more so since the intent of the IBC is for reorganization and insolvency of corporate persons and not a forum for recovery proceedings.

10. We have duly considered the arguments advanced by both the parties and perused the records carefully.

11. The short point for consideration before us is whether in the given facts of the case the application under Section 7 of IBC filed by the Appellant was maintainable against the Corporate Debtor.

12. Before we proceed to answer the above question, a quick glance at certain provisions of the IBC would be relevant and constructive: -

Sections

3(6) *"**claim**" means—*

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

3(7) *"**corporate person**" means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the*

Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;

***3(8) "corporate debtor"** means a corporate person who owes a debt to any person;*

***3(10) "creditor"** means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;*

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

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

***3(33) "transaction"** includes a agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corpo*rate debtor;

***5(7) "financial creditor"** means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;*

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

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on nonrecourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

[Explanation. -For the purposes of this sub-clause,-

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

Section 7: Initiation of corporate insolvency resolution process by financial creditor.

7(1) *A financial creditor either by itself or jointly with [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.*

Explanation*.--For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.*

13. It is pertinent to note that Section 7(1) clearly spells out that a Section 7 application can only be initiated only by a Financial Creditor either by itself or jointly. A perusal of the definition of expression 'Financial Creditor' would show that it refers to a person to whom a financial debt is owed and includes even a person to whom such debt has been legally assigned or transferred to. The trigger for initiation of the corporate insolvency resolution process by such a Financial Creditor under Section 7 of IBC is the occurrence of a default by the Corporate

Debtor above a prescribed threshold limit. Default in the IBC framework means the incidence of non-payment of debt in whole or in part when the debt has become due and payable, in law and in fact. Debt means a liability or obligation in respect of a claim which is due from any person and claim means a right to payment even if it is disputed.

14. Having noticed the above statutory construct, we may now take note of the relevant excerpts of the impugned order as to why it has held that the application filed under Section 7 of the IBC is not in accordance with law and not liable to be admitted as is reproduced below: -

> *"12. Thus, this Adjudicating Authority is of the view that as the applicants failed to produce any document to show that the applicant has given the money to the corporate debtor as it was contented that the amount was transferred to the personal account of the intermediary as well as the personal account of the directors and failed to establish that the amount was given to the corporate debtor. Therefore, the case of the applicant does not comes under any of the provision Section 5 (8) (a) to (i) of the I&B Code, thus cannot be considered as financial debt and neither the applicant comes under the definition of financial creditor in view of Section 5 (7) of the IB Code.*
>
> *13. For the reasons discussed above, this Adjudicating Authority is of the considered view that in absence of any document or agreement, the contention of the applicant is not liable to be accepted and the applicants failed to prove that the amount deposited comes under the definition of financial debt under Section 5(8) of IBC.*

15. So for the reasons discussed above, it is of the view that the application filed under Section 7 is not in accordance with the provision of law and is not complete, thus this application is not liable to be admitted."

(Emphasis Supplied)

15. It is the case of the Appellant that for a Section 7 application to be admitted, the Adjudicating Authority is only required to be satisfied whether the Corporate Debtor has defaulted; whether the application filed by the Financial Creditor is complete and whether any disciplinary proceedings is pending against the Insolvency Resolution Professional proposed by the Financial Creditor. It has been vehemently contended that there is no provision in the IBC which necessitates proving that there is duly established financial debt.

16. In support of his argument, the Appellant has adverted attention to the ratio contained in judgment of this Tribunal in ***M/s Precious Energy Holdings Limited vs. SBI in Company Appeal (AT) (CH) (Ins) 89/2022*** and in ***Vipul Himatlal Shah vs. Teco Industries in Company Appeal (AT) (Ins) 470/2022*** wherein it has been held that in the case of a Corporate Debtor who commits a default of a financial debt, the Adjudicating Authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It was added that not only there is no need to produce any document or agreement or written contract to adduce proof of loan given by the applicant to the Corporate Debtor, but that the "Deemed to be Authenticated" default report contained in the NeSL/Information Utility Report in respect of the Corporate Debtor was sufficient evidence of loan and default. It was also pointed out that a default includes a default in respect of a financial debt

owed not only to the applicant financial creditor but to any other financial creditor of the Corporate Debtor in terms of the explanation clause to Section 7 and hence the Appellant was entitled to factorize the debt owed by the Corporate Debtor to others also.

17. It is also the Appellant's contention that WhatsApp messages and SMS being admissible legal evidence when read with admission of debt by the Respondents before the Hon'ble Allahabad High Court in their affidavit in a Criminal Misc. Writ Petition, there is ample proof that financial debt was owed by the Corporate Debtor. It has also been contended that the very fact that BKT who was Managing Director of the Corporate Debtor had paid to the Appellant an interest amount of Rs.2.5 lakh on two occasions signifies that the Appellant had disbursed monies to the Respondents against consideration for time value of money thus establishing financial debt under Section 5(8) of the IBC. Hence, it was erroneous on the part of Adjudicating Authority to have held that Appellant had failed to produce any document to establish that the Corporate Debtor owed a financial debt to the Appellant.

18. The Learned senior Counsel for Respondent No. 9 has on the other hand contended that the Appellant has failed to prove that there is any legally binding and recoverable debt on the part of the Corporate Debtor as he has failed to adduce any evidence proving that there was any valid document or any agreement, verbal or written, between the Appellant and the Corporate Debtor which substantiates the monetary transaction of Rs.40 lakh allegedly claimed to have taken place between the Appellant and the Corporate Debtor. It was emphasized that there is no evidence of any direct transactions to have taken place between the Appellant and the Corporate Debtor. Whatever transactions have been

mentioned by the Appellant either took place between the Appellant and DKC or between the Appellant and BKT-NT and the Corporate Debtor was never in the picture. It has been argued that even if BKT-NT were Managing Directors of THPL, monies received by them in their personal accounts cannot be treated as money given to THPL as Corporate Debtor. In support of this contention, the Learned Senior Counsel for the Respondent No.9 has relied on the judgment of the Hon'ble Supreme Court in the matter of ***M/s Radha Exports (India) Pvt. Ltd. Vs. K.P. Jayaram & Anr. [2020 (10) SCC 538]*** where it has been categorically held that a personal loan given to a promoter or a director of a company cannot be the basis to trigger corporate resolution process under IBC.

19. From a bare reading of Section 7 of IBC, it is amply clear that insolvency process under IBC can be triggered only by a Financial Creditor either singularly or jointly. The primary and fundamental basis for a creditor to be treated as a financial creditor for the purpose of Section 7 in Part II of the IBC requires that a financial debt is owed to that person in terms of Section 5(7) of IBC. Such a financial debt could cover any of the transactions outlined in Section 5(8) (a) to (i) of the IBC. That being so, the basic requirement of existence of financial debt being owed by the Corporate Debtor to the Financial Creditor has to be first satisfied and cannot be overlooked.

20. The precise question before us to be answered is, therefore, whether the Appellant had made any disbursement to the Corporate Debtor against the consideration for the time value of money. In the present facts of the case, it is an undisputed fact that the Corporate Debtor has neither admitted to owing a financial debt to the Appellant nor has the Appellant been able to successfully

substantiate that he directly disbursed any sum of money against the consideration for time value of money to the Corporate Debtor. We also do not find any material to have been placed on record by the Appellant wherein the Corporate Debtor can be said to have unambiguously admitted the debt claimed by the Appellant. We notice that one set of transactions in question had taken place between the Appellant and Respondents No.2 and 3 in their personal capacity and not in the capacity of the directors of the Respondent No.1 company since the money was remitted to their personal account. The other set of transactions which the Appellant has harped on are those with DKC, who has undisputedly no official locus standi in the Corporate Debtor. Thus, the Appellant has clearly failed to adduce evidence to prove the existence of financial debt qua the Corporate Debtor. In the absence of financial debt qua the Corporate Debtor, the Appellant cannot be said to be a financial creditor under Section 5(7) of IBC.

21. At this juncture we may also add that there is no doubt in our mind that under the statutory scheme of IBC, record of information utility which falls in the category of "deemed to be authenticated" even if not sacrosanct but still is relevant to establish default in terms of Section 3(12) of the IBC. Be that as it may, the Appellant is however required, in the first place, to establish himself as a Financial Creditor of the Corporate Debtor in terms of Section 5(7) of IBC before being allowed to take advantage of the explanation clause to Section 7 to establish default owed not only to himself as a financial creditor but to any other financial creditor of the corporate debtor on the basis of NeSL data for initiation of CIRP against the Corporate Debtor. The Appellant has clearly misconstrued the provisions of IBC by taking shelter of Explanation to Section 7 in isolation instead

of reading it harmoniously with the non-negotiable requirement of Section 7(1) of firstly establishing himself as a Financial Creditor qua the Corporate Debtor.

22. It was brought to our notice that the Appellant has also filed criminal proceedings in respect of the said transactions to prove that a financial debt was owed to him by the Corporate Debtor but on close scrutiny we find that the legal notices were sent to Respondents No.2 and 3 in their personal capacity and not to the Corporate Debtor. The claim of the Appellant that the Respondent No.1 had filed reply affidavit in the Criminal Writ Petition before the Hon'ble Allahabad High Court and admitted the debt has also been disputed on the ground that the signatory therein was not authorized by Respondent No.1. Even the interest amount defrayed to the Appellant qua the transactions have also not been done by the Corporate Debtor but from the personal accounts of BKT.

23. In our considered view, therefore, we have no hesitation in holding that the Appellant does not meet the specific and distinct connotations required to be treated as a Financial Creditor qua the Corporate Debtor. Since the Appellant is not a Financial Creditor of the Corporate Debtor and the transactions in question are not in the nature of financial debt owed by the Corporate Debtor, there is no error in the judgment of the Adjudicating Authority that no case has been made out against the Corporate Debtor for initiation of CIRP.

24. This now brings us to the other limb of argument of the Appellant that in the interest of justice, the corporate veil must be lifted to bring the Appellant under the definition of Financial Creditor in terms of Section 5(7) of IBC. The Appellant has placed reliance on several judgments of the Hon'ble Supreme Court and this

Tribunal in this regard. Specific reference was made to the judgment of Hon'ble Supreme Court in ***LIC vs. Escorts (1986) 1 SCC 264*** wherein the Apex Court has held that a "*corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be in reality, part of one concern."* It has also been submitted that the Hon'ble Supreme Court in ***New Horizons Ltd. Vs. UOI 1995 SCC(1) 478*** has noted that piercing the veil concept is applied '*when the notion of legal entity is used to defeat public convenience, justified wrong, protect fraud or defend crime, the law will regard the corporation as an association of persons'.* Reference was also made to this Tribunal's judgment in ***Hytone Merchants Private Limited vs. Satabadi Investment Consultants Private Limited in CA(AT)(Ins) 258/2021*** wherein it has been observed that the Hon'ble Supreme Court in ***Arcelor Mittal India (P) Ltd. vs. Satish Kumar Gupta (2019) 2 SCC 1*** has recognized the principle of lifting of the corporate veil in matters relating to insolvency under IBC.

25. We have no quarrel with the proposition that the Hon'ble Supreme Court, in the interest of equity, justice and good conscience, has allowed the piercing of corporate veil in IBC matters also. We however must also add here that this principle has been generally used sparingly in the absence of any strait-jacketed formula or crystallized guidelines to determine when corporate veil is ought to be lifted. It therefore follows that it is necessary to establish from the facts of each case and the totality of circumstances whether it would be desirable and justifiable for puncturing of the veil.

26. Before we dwell on the facts of this case, we must note that it is a settled proposition of law that a company is a legal personality entirely distinct from its directors. Once a company is incorporated, it becomes an 'artificial person' and must be treated separately from its members. In the present factual matrix, the Respondent No.1-THPL is a 'corporate person' in terms of Section 3(7) of IBC and therefore enjoys a legal entity separate from that of BKT and NT. From the juristic point of view, therefore, the rights, duties and liabilities of THPL are distinctive from those enjoyed, exercised or discharged by directors in their personal capacity. It is abundantly clear that the Appellant has not entered into any direct transactions with the Corporate Debtor at any stage. The transactions have remained limited to DKC, BKT-NT in their individual capacity or with entities like RN Chaturvedi, Srijan Developers, JDS Design Execution, Sthapana Architect and Engineers as may be seen from pages 58-65 of Appeal Paper Book ("**APB**" in short). These borrowers have either received money from the Appellant or certain other unidentified accounts. Under these circumstances the liability of BKT-NT in their individual capacity cannot be automatically fastened on the Corporate Debtor. We also cannot but observe that the transactions claimed by the Appellant to have been made with the Corporate Debtor are themselves shrouded in mystery being a labyrinthine trail. Given the fact that the Appellant has failed to establish that he had given any loan to the Corporate Debtor directly, it does not stand to reason for him to press for piercing the corporate veil to alleviate the burdens of his financial misadventure. We do not countenance the urge expressed by the Appellant to pierce the corporate veil. That being so, we are satisfied with the findings of the Adjudicating Authority that the Section 7 application filed by the Appellant before it was not liable to be admitted.

27. In fine, we are of the view that the Adjudicating Authority did not commit any error in rejecting the Section 7 application filed by the Appellant. The impugned order does not warrant any interference. The Appellant shall, however, have the liberty to move any appropriate forum of law to seek remedial action as permissible in law to recover his debt and it would remain open to him to raise all pleas and contentions. There is no merit in the Appeal. Appeal is dismissed. All other IAs filed in this appeal stands disposed of. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 27.07.2023

PKM