

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**PRINCIPAL BENCH, NEW DELHI**

**COMPANY APPEAL (AT)(INS) NO.659/2022**

(Arising out of judgement and order dated 06.04.2022 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi in CP(IB) No.2607/PB/2019)

In the matter of:

Mukesh Kumar,  
H.No.4439, Street No.55, Regar Pura, Karol Bagh,  
Delhi-110005 Appellant

Vs

1. Ambrane India Pvt Ltd,  
Unit No.AN-203, D-Mall,  
Plot No.A1, Netaji Subhash Place,  
Pitampura, New Delhi,  
Delhi-110034.

2. Durga Das Agrawal,  
IRP of MP Promoters Pvt Ltd,  
413, Vikasdeep Building,  
Laxmi Nagar, District Centre,  
New Delhi-110092.

Respondents

For Appellant: Mr. Abhishek Anand, Mr. Nipun Gautam,  
Advocates.

For Respondent: Mr. Ashok Juneja, advocate for R1.  
Mr. Durga Das Agrawal, R2 in person.

**JUDGEMENT**  
**(5<sup>th</sup> JULY, 2023)**

**JUSTICE RAKESH KUMAR, MEMBER (JUDICIAL)**

The present appeal has been preferred under Section 61(1) of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to

as 'IBC') against an order dated 06.04.2022 passed by the Adjudicating Authority, National Company Law Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'Adjudicating Authority') in CP(IB) No.2607/OB/2019. By the said order the learned Adjudicating Authority on the basis of an application filed by M/s Ambrane India Pvt Ltd-financial creditor has admitted the application filed under Section 7 of the IBC and thereby Corporate Insolvency Resolution Process (CIRP) has been initiated against MP Promoters Pvt Ltd-Corporate Debtor.

2. The short fact of the case as is evident from the materials available on record is that the financial creditor which is a private limited company registered under the provisions of the Companies Act, 1956 filed an application under Section 7 of the IBC against the Corporate Debtor in the year 2019. In the month of April, 2017 the Corporate Debtor approached the Financial Creditor through its Directly namely Mr. Mukesh Kumar, appellant herein, for obtaining financial assistance for a short span of time. On the request of the appellant herein the Board of Directors of financial creditor on 20<sup>th</sup> May, 2017 resolved to grant a loan of Rs.1,01,00,000/- (Rupees One crore one lakh only) to the Corporate Debtor alongwith interest @ 9% per annum to be

compounded on 31<sup>st</sup> March, 2018 which was to be disbursed in one or more tranches. As per Board Resolution the loan was to be repaid alongwith interest on or before 31<sup>st</sup> March, 2018. As per case of the financial creditor on 26<sup>th</sup> May, 2017 first tranche of the loan amount of Rs.51 lakh was disbursed by the financial creditor vide Cheque No.000036 drawn on HDFC Bank, West Punjabi Bagh in favour of Corporate Debtor. Subsequently on 3<sup>rd</sup> June, 2017 the second tranche of loan amount of Rs.50 lakhs was disbursed to the Corporate Debtor by financial creditor through RTGS-HDFC Bank.

3. The financial creditor in a petition filed under Section 7 of the IBC before the Adjudicating Authority claimed that since the loan amount with interest was not paid despite terms and conditions put for payment by 31<sup>st</sup> March, 2018, the Financial creditor requested the Corporate Debtor for payment and since payment was not made the Financial Creditor on 06.08.2019 sent legal notice through its counsel to the Corporate Debtor and finally due to non-payment of the financial debt the Financial Creditor/Respondent No.1 was constrained to file application under Section 7 of the IBC for initiation of the CIRP. The Financial creditor claimed that on the date of the filing of the application the

Corporate Debtor was liable to pay Rs.1,21,95,953/- (Rupees One crore twenty one lakh ninety five thousand nine hundred fifty three only) which includes interest calculated till 31.07.2019.

4. In the said application on behalf of the Corporate Debtor, reply was also filed and one way or the other the matter delayed for considerable period and finally by the impugned order dated 06.04.2022 CIRP was initiated against the Corporate Debtor against which the present appeal has been preferred. It would be apt to reproduce the impugned order hereinbelow:-

*This application has been filed on 26.09.2019, under Section 7 of Insolvency and Bankruptcy Code, 2016 by M/s. Ambrane India Pvt. Ltd. as financial Creditor seeking to initiate Corporate Insolvency Resolution Process in the matter of M/s. MP Promoters Pvt. Ltd., the Corporate Debtor (CD).*

*2.The Financial Creditor (FC) has submitted that it had granted a loan of Rs. 1,01,00,000/- (Rupees One Crore One Lakhs Only) @ 9% per annum to be compounded on 31.03.2018 and an amount of Rs. 51,00,000/- (Rupees Fifty One Lakh Only) was disbursed to the Corporate Debtor (CD) on 26.05.2017 vide cheque and subsequently on 03.06.2017 additional amount of Rs. 50,00,000/- (Rupees Fifty Lakh Only) was disbursed through RTGS.*

3. The applicant has submitted an authenticated copy of bank account statement at Annexure-6 of which pages 62 & 67 are relevant for showing the amount and the dates of disbursement to the CD. It is submitted that the CD is liable to pay to FC a total sum of Rs. 1,21,95,953/- (Rupees One Crore Twenty One Lakhs Ninety Five Thousand Nine Hundred Fifty Three Only) which includes interest calculated till 31.07.2019. In addition, the interest @ 9 per annum calculated from 01.08.2019 till the actual date of realization of the outstanding amount is to be charged from the CD. The FC has enclosed a copy of the Board Resolution passed on 20.05.2017 vide which the Board of Directors of the FC have accorded consent to grant a loan not exceeding Rs. 1,01,00,000/- (Rupees One Crore One Lakhs Only) to MP Promoters Pvt. Ltd. along with interest @ 9% per annum to be compounded on 31.03.2018 which shall be disbursed in one or more tranches. The loan is to be repaid on or before 31.03.2018 along with interest thereon (Annexure-5; Page No. 54). Further, there is no specific agreement between the parties specifying the date of payment of the debt.

4. The CD has placed on record the balance sheet ending 31.03.2018 of M/s. MP Promoters Pvt. Ltd. in which an amount of Rs. 1,01,00,000/- (Rupees One Crore One Lakhs Only) been shown as other current liability payable to M/s. Ambrane India Pvt. Ltd. (pages 273, 278 of the application).

5. Further the applicant has filed certificate dated 04.02.2022 issued by the information utility NeSL with respect to the debt of the CD amounting to Rs. 1,21,95,953/- (Rupees One Crore Twenty One Lakhs Ninety Five Thousand Nine Hundred Fifty Three Only) "**Deemed to be Authenticated**". Earlier, vide order dated 07.04.2021 a cost of Rs. 50,000/- was imposed on the CD to file reply within seven days as a last chance. Today, the CD was not present, however his reply dated 20.07.2021 has been perused. The main ground taken by the CD in his reply is that there is no agreement annexed by the applicant to prove that there was any interest payable @ 9% per annum as claimed by the applicant.

6. We have heard the Ld. Counsel for the applicant and perused the documents placed on file. The amount of Rs. 1,01,00,000/- (Rupees One Crore One Lakhs Only) has been disbursed for which bank statements have been annexed. Further, as per the certificate issued by NeSL the debt of the corporate debtor is deemed to be authenticated. The CD has not presented himself to assist the Court. We are inclined to accept the petition to initiate CIRP against the M/s. MP Promoters Pvt. Ltd.

7. The petition is admitted.

8. The applicant has proposed the name of interim resolution professional (IRP) **Mr. Durga Das Agrawal** having address: **KBL Agrawal & C., 413, Vikasdeep Building, Laxmi, District Centre, New Delhi-110092**, Registration No:

**IBBI/IPA-001/IP P00557/2017-2018/10987**, contact no. **9811075092** and email: [cadda.ip@gmail.com](mailto:cadda.ip@gmail.com). The consent of the IRP as well as self-declaration that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board of India or ICAI have been submitted. In addition, further necessary disclosures have been made by **Mr. Durga Das Agrawal** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3)(b) of the Code. Hence, we appoint Mr. Durga Das Agrawal, as the IRP of the Corporate Debtor.

9. In pursuance of Section 13(2) of the Code, we direct the IRP to make public announcement immediately with regard to admission of this application under Section 7 of IBC. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

10. As a consequence of the application being admitted in terms of Section 7 of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1) of IBC shall follow in relation to the Corporate Guarantor as per proviso (a) to (d) of section 14(1) of the IBC. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the IBC shall come in force.

11. We direct the Applicant to deposit a sum of Rs. 2,00,000, with the Interim Resolution Professional **Mr. Durga Das**

**Agrawal**, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done my Law within three days from the date of receipt of this order by the Applicant. The amount however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Applicant.

12.The registry is directed to communicate a copy of the Order to the Applicant, the Corporate Debtor, Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi, at the earliest, but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.

5. Against the said order the present appeal was presented on 17.05.2022.

6. After the appeal was filed for the first time it was taken up on 06.06.2022 by two Members Bench of this Tribunal. On first date Respondent was represented by its counsel. However, notice was directed to be issued to Respondent No.2. This Tribunal also recorded as follows:-

*“Heard Mr. Abhishek Anand, the Learned Counsel appearing for the Appellant.*

*At this stage, Mr. Ashok Juneja, the Learned Counsel appearing for the Respondent No. 1 and prays for time to file ‘Vakalat’ and ‘Reply/Response’ (through ‘E-filing’ as well as through ‘Hard Copy’) of R1 before the ‘Office of the Registry’ and to serve a copy of the same to the other side before the next date of ‘Hearing’.*

*The Learned Counsel for the Appellant is required to serve ‘Appeal Paper Book(s) / Material Paper Book(s) (through ‘E-mail as well as through ‘Hard Copy’) to the 1st Respondent within one week from today and, in this regard, the Learned Counsel for the Respondent No. 1 is required to furnish the ‘E-mail’ address to the Learned Counsel for the Appellant during course of the day.*

*On receipt of ‘Reply/Response’ from the Respondent No.1 side, it is open to the Learned Counsel for the Appellant to file ‘Rejoinder’ if any, (through ‘E-filing’ as well as through ‘Hard Copy’) before the ‘Office of the Registry’ and to serve a copy of the same to the other side within one week, thereafter.*

*In respect of the 2nd Respondent, Let ‘Notice’ be issued through ‘Speed Post’ returnable by 13.07.2022.*

*The Appellant is directed to furnish the ‘requisite’ along with the ‘Process Fee’ be filed / paid within ‘two working days from today’ before the ‘Office of the Registry’ without fail. If the*

*Appellant provides the 'Mobile Number' and 'E-Mail' Address of the Respondent No.2, then in that 'Mode' also the 'Office of the Registry' may issue 'Notice' to the Respondent No.2.*

*The 'Office of the Registry' is directed to 'List' the matter on 13th July, 2022.*

*Since it is brought to the notice of this Tribunal on behalf of the 1st Respondent by its Learned Counsel that the first meeting of CoC had taken place on 16th May, 2022, the CoC shall proceed with the matter. However, it is open to the Appellant side to bring it to the notice of CoC that the instant Appeal is pending on the file of this Tribunal.”*

Thereafter reply and rejoinder were filed.

7. However, it appears that IA application i.e. IA No.1807/2022 filed for condonation of delay went un-noticed and even without condonation of delay we heard the matter and finally on 28.04.2023 Judgement was reserved. At the time of dictating judgement we noticed that IA application for condonation of delay and perused the application and after satisfying with the grounds stated in the said IA we condoned the delay.

8. Since 10 days delay had occurred in filing the appeal from the date of the impugned order an IA No.1807/2022 was filed for condonation of delay in filing the filed. Reasons for delay has been

explained and we are satisfied with the same. Accordingly delay in filing the appeal is condoned and IA No.1807/2022 is allowed.

9. Mr. Abhishek Anand, learned counsel for the appellant has mainly assailed the impugned order on the plea that there was no written agreement regarding loan and as such there was no financial debt. According to Mr. Anand in absence of financial debt the application filed under Section 7 was required to be rejected outrightly. He has specifically referred to Page 29 para 2 of Volume 1 of Memo of Appeal and has shown para 2 of the impugned order to substantiate that though Learned Adjudicating Authority had noticed the submission on behalf of the financial creditor that the loan of Rs.1,01,00,000/- @ 9% per annum to be compounded on 31.03.2018 and an amount of Rs.51 lakhs was disbursed to the Corporate Debtor on 26.05.2017 by cheque and subsequently on 03.06.2017 additional amount of Rs.50 lakh was disbursed through RTGM, the Learned Adjudicating Authority was not apprised with any written agreement to show as to whether the aforesaid amount was given as loan or not. However, it was contended by Mr. Anand that the said amount was an investment by the financial creditor in respect of the immovable property of the Corporate Debtor. Mr. Anand, learned counsel has also

referred to para 4 of the impugned order at Page 30 to show that the amount of Rs.1,01,00,000/- has been shown as current liability in the balance sheet of the corporate debtor to M/s Ambrane India Pvt Ltd/Financial Creditor. Learned counsel for the appellant has taken us to running page 64 which is part of the balance sheet of the Corporate Debtor for the period commencing from 31<sup>st</sup> March, 2017 to 31<sup>st</sup> March, 2018. He has drawn our attention to Note 7(a) at Page 64 which reflects as other current liabilities-advance against property 13/13. The name of the financial creditor/R1 appears at Serial No.5 of the said column and on 31<sup>st</sup> March, 2018 liabilities have been shown as Rs.1,01,00,000/- pertaining to the present financial creditor. He has argued that for the first time financial creditor came out with a case thorough its legal notice dated 06.08.2019 as if the said amount was given as loan with interest @ 9% per annum to be compounded on 31.03.2018. He has also placed para 6 of the legal notice dated 06.08.2019 which is at running page 385 in Volume 2 of the Memo of appeal.

10. Mr. Anand, learned counsel for the appellant to substantiate his argument on amount of Rs.1,01,00,000/- loan amount rather it was the booking amount in respect of property 13/13 of the

Corporate Debtor, has drawn our attention to certificate issued by National E-Governance Services Ltd (hereinafter referred to as NeSL) and he has referred to certificate and submits that this certificate also shows that the debt is not a financial debt but rather an operational debt. He has also taken us to running page 106 of Volume 1 of Memo of Appeal to show that in the application filed by the financial creditor date of default has been mentioned as 1<sup>st</sup> April, 2018. However, prior to legal notice dated 06.08.2019 no document has been brought on record by the financial creditor to show that corporate debtor was intimated regarding the default. He has emphatically argued that there was no loan transaction and in absence of loan agreement and also no reliable document, it is a specific case that there was financial debt and in absence of financial debt the learned Adjudicating Authority was not entitled to admit the application filed under Section 7 of the IBC. Learned counsel for the appellant has placed heavy reliance on a judgement of this Appellate Tribunal reported in 2022 SCC OnLine NCLAT 316 in the matter of **S. Chandriah Vs Sunil Kumar Agarwal**. He has specifically relied on para 17 to 20 which are quoted hereinbelow:-

17. *The precise question to be answered is as to whether the payment of Earnest Money even if it is accepted as disbursement whether disbursement is against the consideration for the time value of money.*

18. *The disbursement made by the Appellant to the Corporate Debtor was only a payment of Earnest Money which was to be adjusted in sale of the land. The disbursement was not in consideration for the time value of money. We may refer a Judgement of this Tribunal in Company Appeal (AT) Ins. No. 180 of 2021 "Sach Marketing Pvt. Ltd. Vs. Resolution Professional of Mount Shivalik Industries Ltd" where dealing with Section 5(8) in paragraph 17 and 18 following was observed by this Appellate Tribunal:*

*"17. For a debt to be termed as 'Financial Debt', the basic elements that are to be seen is whether (a) there is disbursal against consideration for time value of money and (b) whether it has a commercial effect of borrowing. The definitions provided in Section 5(7) and 5(8) show that a 'Financial Creditor' refers to a person to whom 'Financial Debt' is owed and includes even a person to whom such a debt has been legally assigned or transferred to. A 'Financial Debt' is a debt alongwith interest which is disbursed against the consideration for the time value of money and it may include any of the events specified in sub-Clause (a) to (i). The Legislature has included any financial transaction in the definition of 'Financial Debt' which are usually for a sum of money received today to be paid over a period of time in instalments, or in a single payment in future.*

*18. The expression time value has been defined in Black's Law Dictionary as 'the price associated with the length of time that an investor must wait until an investment matures or the related income is earned'. To reiterate, any of the transactions specified in Clauses (a) to (i) of Section 5(8) would fall within the ambit of the definition of 'Financial Debt' only in the event if they include the essential elements stated in the principal clause that is element of disbursal, against the consideration for time value of money and has the commercial effect of borrowing. For a person to be defined as a Financial Creditor of the 'Corporate Debtor', it has to be shown that the 'Corporate Debtor' owes such a 'Financial Debt' to such a person."*

19. *Essential condition for accepting a debt to be financial debt being absent, we are of the view that Adjudicating Authority has*

*not committed any error in rejecting the claim of the Appellant as Financial Creditor. The claim of the Appellant of Earnest Money of Rs. 7 Crores has been admitted by the Resolution Professional as under the category of other creditors. We thus do not find any error in the Order passed by the Adjudicating Authority dated 07.02.2020 and the Company Appeal (AT) Ins. No. 22 of 2022 deserves to be dismissed.*

*20. Learned Counsel for the Appellant has also relied on Annual Return for the Financial Year 2018-19 and 2019-20, where the earnest money liability of the Corporate Debtor has been classified as a "Financial Liability". Acknowledging the Liability of earnest money as a Financial Liability is not akin to admitting as a "Financial Debt". A debt of "other Creditors" is also a Financial Liability. Thus on the strength of Annual return of Financial Year 2018-19 and 2019-20, it can not be held that payment of earnest money by the Appellant was "Financial Debt".*

11. Similarly Mr. Anand, learned counsel for the appellant has referred to un reported judgement of this Tribunal passed in Company Appeal (AT)(Ins) No.251 of 2020 dated 3<sup>rd</sup> August, 2021 in **Pawan Kumar Vs Utsav Securities Pvt Ltd** and referred to para 21, 22, 26 and 27 which are reproduced hereinbelow:-

*“21. We have considered the submissions, the Financial Creditor has not furnished any document to show that the transaction in question is a loan transaction. So far as the section 10 of Indian Contract Act and Rule 3 (1) (d) of the Rules is concerned we again refer the Prayag Polytech (Supra) in which this Tribunal held that:*

*“7. As regard relying on Section 10 of the Contract Act, 1872, in our view IBC is a complete code in itself. Section 238 of IBC has overriding effect on provisions inconsistent with IBC. The ‘Financial contract’ is defined in “Insolvency*

*and Bankruptcy (Application to Adjudicating Authority) Rules, 2016” Rule 3(1)(d) requires setting out the terms of the financial debt including tenure etc. We find that Appellant has failed to show any record showing financial debt to be there. As such, we are unable to find any fault in the impugned order while rejecting Section 7 application.”*

*22. With the aforesaid, we are of the view that the Financial Contract as per the Rule 3(1) (d) is must between the corporate Debtor and the Financial Creditor for setting out the terms of a Financial Debt including the tenure of the Debt, interest payable and the date of repayment. In the absence of such Financial Contract, the Financial Creditor has failed to satisfy that when the debt and interest become due and payable.*

*26. With the aforesaid, we are of the view that the Respondent No. 1 (Financial Creditor) failed to establish when the debt become due and payable and the Corporate Debtor has committed default.*

*27. Apart from the aforesaid, we have considered the other circumstances. Admittedly, there is no agreement of loan and interest and no document is to stipulate the period of repayment even from the demand notice and the Application under Section 7 of the IBC. The terms of the loan agreement and other factors are not clear. The Corporate Debtor Company is having authorized and paid up capital Rs. 1 Lacs whereas the Financial Creditor between 16.02.2017 to 22.02.2017 advanced loan of Rs. 6.10 Cr.*

*From the pleadings it is not clear that at relevant time the Corporate Debtor was need of such huge amount and the Financial Creditor agreed to advance unsecured loan for such a huge amount. It is nowhere disclosed that the Corporate Debtor is engaged in which business and the loan and finances was required for which business requirements. The Financial Creditor has not filed copy of their balance sheet for relevant years and also balance sheet of the Corporate Debtor Company.”*

12. Taking clue from aforesaid judgement the learned counsel for the appellant has argued that the financial creditor though has failed to establish financial debt of any written agreement, learned Adjudicating Authority incorrectly admitted the application and initiated CIRP which is required to be interfered with.

13. Heard.

14. Mr. Ashok Juneja, learned counsel has appeared for Respondent No.1/Financial Creditor. A detailed reply has been filed by the Respondent No.1. Similarly Respondent No.2 who is Resolution Professional (RP) has filed status report dated 06.05.2023. Mr. Ashok Juneja, learned counsel for the Respondent No.1 has emphatically argued that there is no reason for interference with the impugned order particularly in view of the fact that in the present case default has taken in the month of

April, 2018 and petition for initiation of CIRP has been filed in the year 2019 itself. However, due to many reasons including Covid 2019 delay had occurred and finally by the impugned order dated 06.04.2022 the application filed under Section 7 was admitted. After admission since there was no stay order passed by this Tribunal several development has taken place which has been reflected from the Status Report submitted by R2. It was argued by Shri Ashok Juneja, learned counsel for Respondent No.1 that Board Resolution of the Financial Creditor dated 25.05.2017 gives a vivid picture that for financial assistance the Corporate Debtor through its director who is appellant in the present appeal had approached financial creditor for loan of Rs.1,01,00,000/- and as such the Board of Directors resolved to sanction the loan on terms of charging 9% interest per annum and it was to be compounded on 31.03.2018. Only after the Board Resolution on 26.05.2017 a cheque for the amount of Rs.51 lakhs was disbursed by the financial creditor in favour of the corporate debtor and second instalment of loan was given to the Corporate Debtor on 03.06.2017 i.e. an amount of Rs.50 lakhs which was disbursed to the corporate debtor by the financial creditor through RTGS.

15. Learned counsel for Respondent No.1 has taken us to running page 33 (Annexure 2 Colly) of its reply which was filed on 11.07.2022. The said document has been issued by NeSL Part I i.e. Part A showing record of default of Party M/s MP Promoters Pvt Ltd. This information is dated 05.08.2021. This document shows the name of financial creditor and also name of debtor. Financial creditor name is M/s Ambrane India Pvt Ltd and debtors name is M/s MP Promoters Pvt Ltd. Page 34 gives the date of contract as 26.05.2017 and debt start date is 26.05.2017, sanction debt amount Rs.1,01,00,000/-, facility name is unsecured loan and total outstanding amount has been shown as Rs.1,21,95,953/- and interest rate has also been shown as 9% per annum. It reflects the default date as 01.04.2018. He has also taken us to Page 312 i.e. Notes forming part of the balance sheet as on 31.03.2018. According to Learned Counsel for R1 as on 31.03.2018 the outstanding debt was Rs.1,08,62,169/-. According to learned counsel for R1 since all the ingredients as contemplated under Section 7 of the IBC was complete the learned Adjudicating Authority has rightly passed the order of admission for initiation of CIRP.

16. The RP/Respondent No.2 Mr. Durga Das Agarwal had appeared in person and submitted regarding filing of the status report dated 06.05.2023.

17. Besides hearing learned counsel for the parties we have perused the material available on record and after going through the same prima facie we are of the opinion that the learned Adjudicating Authority has rightly passed the impugned order which requires no interference. It is true that on the record there is no written agreement regarding claim of sanctioning loan to the corporate debtor. However, there are number of circumstances which in unequivocal term shows that financial creditor had been approached by the appellant for a loan of Rs.1,01,00,000/- and the loan was given to the corporate debtor in two tranches. 1<sup>st</sup> tranche was paid through cheque for an amount of Rs.51 lakh on 26.05.2017 and second amount i.e. Rs.50 lakh was given to the corporate debtor by financial creditor through RTGS and through RTGS it was paid on 03.06.2017 which has not been disputed by the either side. However, since there was no written agreement for sanctioning loan with interest the appellant has taken a futile stand that in absence of any written agreement it cannot be said that there was a financial debt. The circumstances and documents

which have been brought on record suggest that impliedly there was an agreement for providing loan to the corporate debtor for time value and also with interest.

18. Before proceeding it would be necessary to reproduce Board Resolution of the financial creditor which has been brought on record in the Memo of Appeal Volume II at Page 138. The Board Resolution dated 20.05.2017 is reproduced hereinbelow:

*CERTIFIED TRUE COPY OF THE BOARD RESOLUTION PASSED  
AT THE MEETING OF THE BOARD OF DIRECTORS OF  
AMBRANE INDIA PRIVATE LIMITED HELD ON SATURDAY, THE  
20<sup>TH</sup> DAY OF MAY, 2017 AT 11.00 A.M. AT THE REGISTERED  
OFFICE OF THE COMPANY AT C 91/7, WAZIRPUR INDUSTRIAL  
AREA, DELHI-110052*

*To make loans or investments and to give guarantees or to  
provide security in connection with a loan made under Section  
186 of the Companies Act, 2013*

*"RESOLVED THAT pursuant to section 186 and all other  
applicable provisions, if any, of the Companies Act, 2013, read  
with the relevant Rules made thereunder (including any  
statutory modification(s) or re-enactment(s) thereof for the time  
being in force), the consent of the Board of Directors of the  
Company be and hereby accorded to grant a loan not exceeding  
Rs. 1,01,00,000 (Rupees One Crore One Lakh Only) to MP*

*Promoters Private Limited along with the interest at the rate of 9% per annum to be compounded on 31<sup>st</sup> March 2018 which shall be disbursed in one or more tranches. The loan is to be repaid on or, before 31<sup>st</sup> March 2018 along with interest thereon.*

*RESOLVED FURTHER THAT Mr. Ashok Rajpal, Whole Time Director of the company be and is hereby authorized to take all necessary steps relating to grant of loan to MP Promoters Private Limited and to make, sign and execute, on behalf of the Company, such deeds, documents, agreements, undertaking and all other necessary papers as may be required; to accept modifications to same as may be necessary and to do all such acts, deeds and things that may be required or considered necessary or incidental for the same."*

19. The aforesaid Board Resolution makes it clear that one Mr. Ashok Rajpal whole time director of the company Ambrane India Pvt Ltd was authorised to take all the necessary steps regarding sanctioning and disbursement of the loan amount of Rs.1,01,00,000/- alongwith interest @ 9% per annum which was to be compounded on 31.03.2018. It was also clarified that loan shall be disbursed in one or more tranches and the loan amount was to be repaid on or before 31.03.2018 alongwith interest thereto. Subsequently it is not in dispute that the aforesaid loan

i.e. Rs.1,01,00,000/- was disbursed in two tranches; one by way of payment of Rs.51 lakh through cheque and another Rs.50 lakh through RTGS. The said fact is explicit that it was financial debt. Similarly the said debt was owed to the Respondent No.1. There is no doubt on the credibility of his being a financial creditor. The aforesaid facts meets with the provisions contained in Section 5(vii) and 5(viii) of the IBC. In the Board Resolution referred to aforesaid, specifies that the loan was to be repaid on or before 31.03.2018 with interest. It is not case of the appellant or corporate debtor that the said amount was repaid by the appellant and as such default is not in dispute. Further the ledger of the corporate debtor for the period 1.4.2017 to 28.05.2019 which is at running page 223 Volume I of the Memo of Appeal reflects that on 25.05.2017 Rs.51 lakh was remitted from the account of financial creditor to the account of corporate debtor and on 3<sup>rd</sup> June, 2017 Rs.50 lakhs was debited from the account of the financial creditor to the account of MP Promoters Pvt Ltd CD through RTGS and as on 31.07.2019 the total amount comes to Rs.1,21,95,953 which includes the interest amount.

20. So far as plea taken by the learned counsel for the appellant and reliance placed on the balance sheet of the corporate debtor

at running page 64 Volume 1 of the appeal is concerned, we are of the opinion that such defence which has been taken on behalf of the appellant that it was advance against the property is required to be noticed only for its rejection. Before proceeding it would be necessary to reproduce running page 64 of the Memo of Appeal particularly which deals Note 7(a) other current liabilities – advance against property 13/13:-

**“Note No.7(a) Other current liabilities Advance Against Property  
13/13 W.E.A**

**IN RUPEES**

<b>Particulars</b>	<b>31<sup>st</sup> March, 2018</b>	<b>As at 31<sup>st</sup> March, 2017</b>
<i>Om Shakti Enterprises Pvt Ltd</i>	26,00,000.00	27,00,000.00
<i>Padampati Goyal Krishna Rama Pati Miraco Ltd</i>	35,00,000.00	35,00,000.00
<i>Prakash AAP</i>	9,00,000.00	9,00,000.00
<i>Rakesh Bachan Ag 13/13</i>		50,00,000.00
<i>Ambrane India Pvt Ltd</i>	1,01,00,000.00	
<i>Priti Kedia and Uttam Kumar Kedia</i>	11,00,000.00	
<i>Ram Mehar and saroj</i>	10,00,000.00	
<i>Sheetal gupta</i>	50,00,000.00	

<i>Total</i>	<i>2,42,00,000.00</i>	<i>1,21,00,000.00</i>
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21. A bare perusal of the aforesaid fact creates serious doubt on the advance against one property i.e. 13/13. In the aforesaid table (i) against the same property total advance amount has been shown as Rs.2,42,00,000/- and the advance has been taken from 7 other entities besides the present financial creditor. Accordingly we are of the opinion that only on such document it cannot be inferred that Rs.1,01,00,000/- was taken as advance against one property and not loan. Whereas other documents which we have already discussed hereinabove reflects that it was loan amount for time value with interest.

22. So far as reliance placed by the learned counsel for the appellant on S. Chandriah Vs Sunil Kumar Agarwal-2022 SCC Online NCLAT 316 and also in the matter of Pawan Kumar Vs Utsav Securities Pvt Ltd-Company Appeal(AT)(Ins) No.251 of 2020 are concerned we are of the opinion that in view of the facts and circumstances of the present case those judgements have got no relevance in adjudicating the present issue.

23. In S. Chandriah case (Supra) payment was mentioned as earnest money whereas in the present case Board Resolution dated

20.05.2017 of the financial creditor which we have referred hereinabove makes it clear that on being approached by the corporate debtor a full time director of the company was authorised to disburse loan of Rs.1,01,00,000/- with 9% interest and loan amount was to be finally repaid by 31.03.2018. So far as Pawan Kumar case (supra) is concerned in the said case the financial creditor had not filed any evidence of default alongwith application under Section 7 nor financial creditor had filed copy of their balance sheet for the relevant years. However, in the present case the balance sheet of the Corporate Debtor has been brought on record which reflects the loan amount and also interest amount. Accordingly we are of the opinion that the appellant may not get any assistance from aforesaid two judgements on which reliance was placed by learned counsel for the appellant.

24. We have also perused the status report dated 8.05.2023 submitted by the RP/Respondent No.2. The para 5 of the status report is necessary to be reproduced hereinbelow:

*“5.That it is humbly submitted that the present status of the CIRP of CD is as follows:*

- i) *In response to the publication for inviting the claims the COC was constituted with a sole member of CoC that is Financial Creditor in the month of May, 2022*
- ii) *In the last one year of the CIRP five meetings of CoC has been conducted by the RP.*
- iii) *The RR has already published the COI in form G on 15.03.2023 in the newspaper of Financial Express (English) and Jansatta (Hindi), Delhi NCR Edition.*
- iv) *In response to the publication of Form G an EOI with EMD has been received from the prospective Resolution Applicant.*
- v) *The RP has already issued IM, RFRP & Evaluation Matrix to the Prospective Resolution Applicant.*
- vi) *The Last date of submission of Resolution Plan is 17.05.2023.”*

25. Before proceeding it would be necessary to reproduce Section 7 of the IBC which is as follows:-

**“7.Initiation of corporate insolvency resolution process by financial process-** (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.*

*Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6-A) of Section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent of the total number of such creditors in the same class, whichever is less.*

*Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten percent of the total number of such allottees under the same real estate project, whichever is less:*

*Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of*

*the first or second provisos within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its amendment.*

*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.*

*(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.*

*(3) The financial creditor shall, along with the application furnish—*

*(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;*

*(b) the name of the resolution professional proposed to act as an interim resolution professional; and*

*(c) any other information as may be specified by the Board.*

*(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).*

*Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.*

*(5) Where the Adjudicating Authority is satisfied that—*

*(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or*

*(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:*

*Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.*

*(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).*

*(7) The Adjudicating Authority shall communicate—*

*(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;*

*(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be”.*

26. In view of aforesaid provisions for the admission of a petition under Section 7 of the IBC there are certain relevant criteria. There must be debt and default. If an application fulfils the said criteria, the Adjudicating Authority is to admit such application. However, proviso 1<sup>st</sup> to Section 7 (5) speaks that only for rejection of an application reasons are required to be assigned. Meaning thereby if an application fulfils certain criteria, the Adjudicating Authority is to admit the said application and while admitting there is no requirement for assigning detailed reasons. However, if the Adjudicating Authority is going to dismiss the application as per provisions contained Section 7 of the IBC reasons are mandatory. Accordingly it is evident that admission of an application under Section 7, if fulfils certain criteria is a rule, however, rejection of such application is an exception.

27. In view of aforesaid facts and circumstances we are of the opinion that the Learned Adjudicating Authority has not

committed any error in passing the impugned order. There is no reason to interfere with the impugned order. The Appeal stands dismissed. However, no cost is imposed.

**(Justice Rakesh Kumar)**  
**Member (Judicial)**

**(Dr. Alok Srivastava)**  
**Member (Technical)**

**bm**