IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, BENCH-VI

IB- 251/(ND)/2023

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

IN THE MATTER OF:

SUNIL CHOPRA
D- 185, Sector-27
Noida, 201301

…APPLICANT/FINANCIAL CREDITOR

VERSUS

CAPL HOTELS AND SPA PRIV ATE LIMITED
Registered Office At:
Unit No. 5B, Pratap Bhawan,
Bahadur Shah Jafar Marg,
Daryaganj, New Delhi, 110008
[Email: company.secretary@galaxyhotel.in]

…RESPONDENT/ CORPORATE DEBTOR

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

Counsel for Petitioner:	Adv. NPS Chawla, Adv. Sujoy Datta, Adv. Vibhor Kapoor, Adv. Shubham Raghuwanshi.
Counsel for Respondent:	Adv. Kartik Malhotra.

ORDER

PER: BENCH

Date: 09.05.2025

1. This petition has been filed by Mr. Sunil Chopra, Financial Creditor to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s. CAPL Hotels and Spa Private Limited and others (hereinafter referred to as "Corporate Debtor") under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as "the Code") for the alleged default on the part of the Respondent in repayment of debt of Rs. 6,73,00,000/- .

2. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

    a. The Applicant, Mr. Sunil Chopra, extended an unsecured loan amounting to ₹6,73,00,000/- to the Corporate Debtor, CAPL Hotels and Spa Private Limited (formerly Clarion Hotels Private Limited), during the period from 13.06.2007 to 27.03.2009. The said loan was extended in his personal capacity and was repayable on demand.

b. Corporate Debtor has consistently acknowledged the said loan in its Audited Financial Statements over the years, classifying it as an "Unsecured Loan". Notably, the Audited Financial Statement for the year ending 31.03.2021, signed and adopted by the Board of Directors on 29.11.2021, contains such acknowledgment under Note No. 4.

c. A loan recall notice was issued by the Applicant on 04.07.2022 demanding immediate repayment of the full outstanding loan. A reminder for payment was further issued via email on 01.08.2022. In response to the aforementioned notice, the Corporate Debtor, through its Financial Controller Mr. Kashi Ram Jha, vide email dated 05.08.2022, acknowledged the communication and requested that the proceedings be kept in abeyance as the promoters were out of India until 20.08.2022 and expressed an intention to amicably settle the matter. Since no steps were taken by the Corporate Debtor to repay the debt or otherwise respond a second legal notice was issued by the Applicant through counsel on 27.01.2023.

d. The Applicant asserts that the default occurred on 19.07.2022, being the date following the expiration of the demand period stipulated in the recall notice. The

Applicant contends that the loan qualifies as "financial debt" within the meaning of Section 5(8) of the IBC, 2016, and that the Corporate Debtor's failure to repay the same upon recall constitutes a default under Section 3(12) of the Code.

3. The Corporate Debtor filed its reply dated 06.08.2023, in which the following contentions were made:

   a. The Corporate Debtor submits that the application under Section 7 of the IBC is barred by limitation, as the alleged financial debt is stated to have arisen in the year 2005-06, and the demand was purportedly made for the first time in July 2022- after a lapse of nearly 17 years. The Respondent argues that such a stale claim cannot be revived by unilateral recall or reliance upon self-serving accounting entries. Further, it is contended that the application fails to satisfy the statutory preconditions of Section 7 of the Code.

   b. The Applicant has failed to produce any loan agreement, repayment schedule, or even a basic acknowledgment of terms such as interest, tenure, or security. No board resolution or authorization was passed by CAPL to borrow funds from the Applicant. The absence of any documentation, along with the lack of demand for repayment for nearly two decades, is said to indicate that the Applicant never extended any loan capable of forming a financial debt.

c. Respondent contends that the Applicant had infused funds into CAPL in his capacity as a promoter-shareholder and Director, and such infusion was in the nature of quasi-equity, akin to a partner's contribution in a closely-held business venture. The Applicant held 16.5% shareholding through his wholly-owned entity Beacon Logicwares Pvt. Ltd., and concurrently exercised significant influence over the affairs of the Corporate Debtor by holding positions as Director and Key Managerial Personnel (KMP) between 2006 and 2019. The disbursal was nothing but a strategic investment with the expectation of future profits, and weas accounted as an 'unsecured loan' solely at the instance of the Applicant to misclassify the quasi-equity. This entry, it is alleged, was engineered under the Applicant's direct control during his tenure as a Board member and KMP. Consequently, such entries, even if appearing in the audited financial statements, are not to be construed as acknowledgments of debt.

d. Applicant voluntarily exited CAPL in 2019, transferring his entire shareholding in Beacon Logicwares (holding 16.5% of CAPL shares) to Mr. Anubhav Sharma. In connection with this exit, Mr. Sharma paid a total of ₹4.19 crore to the Applicant and Beacon, which was allegedly intended to fully

settle and extinguish all rights, claims, and exposures of the Applicant in CAPL.

e. Despite accepting consideration and requests during and after the 2019–2020 transaction, Mr. Chopra failed to deliver any share transfer documents or loan-related records, thereby disabling CAPL from adjusting or writing off alleged payables in its accounts., as a result, certain entries continued to appear in the financials of CAPL, which the Applicant now seeks to exploit as a basis for claiming a "debt" under the IBC.

f. The Respondent objects to the Applicant's reliance on Form C, wrongly termed a "NeSL Default Certificate," noting it was neither authenticated by NeSL nor served on valid CAPL emails post-ownership transfer. CAPL has shown that only two unrelated, discharged debts were ever recorded in NeSL.

4. The Petitioner made the following contentions in its Rejoinder dated 04.09.2023:

a. The Petitioner highlights that the AFS, adopted by the Board and filed with the RoC, records the debt as "unsecured borrowing" under Note 4, amounting to a statutory acknowledgment under Section 18 of the Limitation Act. Further, in response to a recall notice dated 04.07.2022 and follow-up email, the Corporate Debtor's Financial Controller

did not deny the debt but sought time for resolution, which the Petitioner deems a clear admission, establishing default under Section 3(12) of the Code

b. Absence of a formal loan agreement or board resolution does not preclude the existence of a financial debt. He relies on the Hon'ble ***Supreme Court's judgment in Asset Reconstruction Co. v. Tulip Star Hotels Ltd. [(2022) SCC OnLine SC 944]***, which held that acknowledgment in statutory documents like AFS is sufficient for a Section 7 application. Additionally, loans repayable on demand, without stipulated interest or tenure, are recognized under Section 5(8)(f) of the IBC. The Petitioner emphasizes settled law that acknowledgment in balance sheets constitutes valid acknowledgment under Section 18 of the Limitation Act. He also invokes the judgment in ***M/s Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd. [(2021) SCC OnLine SC 513]***, to assert that a loan without interest still qualifies as a financial debt under Section 5(8)(f) of the Code.

c. The Petitioner admits he was formerly a director and shareholder through Beacon Logicwares Pvt. Ltd. but maintains this does not alter the nature of the transaction, which remains a clear loan and not quasi-equity, as there is no resolution or agreement treating it as capital infusion. He denies that the 2019 share transfer extinguished his claim,

stating that the consideration received was unrelated to the loan and no document evidences waiver, assignment, or satisfaction of the debt. Emphasizing the independent character of the financial debt, he contends that inter-se arrangements among shareholders, including alleged payments by Anubhav Sharma, do not affect the Corporate Debtor's liability, which stems from a direct financial transaction duly recorded in its audited accounts.

5. In the supplementary reply dated 21.03.2024 the respondent made the following submissions:

   a. The Corporate Debtor states that it was acquired by new promoters in 2019–2020 after the former promoters became unable to manage CAPL's significant liabilities, particularly to financial institutions. The acquisition aimed, in part, to protect the outgoing promoters from enforcement of personal guarantees tied to past borrowings. It asserts that between 2016 and 2019/20, structured payments were made to the former promoters, including Sunil Chopra and related entities, as part of a comprehensive settlement extinguishing all inter se rights and financial claims

   b. It is alleged that Mr. Sunil Chopra intentionally withheld transaction documentation, acted in bad faith, and orchestrated a situation where critical verification was rendered impossible. The present claim, it is argued, is based

solely on self-serving accounting entries, which were inserted under Mr. Chopra's own influence when he was in control of CAPL.

c. CAPL points out that its audit reports from FY 2004–2005 to 2018–2019 consistently reflected regular loan repayments, with no overdue liabilities to related parties or financial institutions. Where applicable, loans were classified as interest-free and repayable on demand. Although defaults began to appear from FY 2016–17 onwards, none of the reports specifically identified any debt owed to Mr. Chopra as overdue or in default.

d. CAPL argues that the purported loan transactions (dated between 2005–2007) were **in contravention of the Companies Act, 1956**, and would therefore be **void and unenforceable ab initio**. Consequently, the alleged transaction **does not qualify as a "financial debt"** under Section 5(8) of the IBC, 2016, as it lacks the essential attribute of **time value of money.**

e. No demand for repayment was made from 2005 until July 2022, suggesting that there was no subsisting liability. The belated issuance of a recall notice, after the alleged settlement and acquisition, is said to indicate an afterthought designed to misuse IBC mechanisms for pressure and harassment.

f. CAPL insists that Mr. Chopra's claim is based on a solitary accounting entry and lacks evidence of an enforceable debt or default. It stresses that even such an entry, if contrary to law or lacking commercial substance, cannot be the basis for triggering CIRP under Section 7.

6. The Petitioner countered the Supplementary Reply of the Respondent with the following contentions:

a. The Petitioner denies that the loan was ever intended to be capital. He affirms that the funds were extended in his personal capacity and the Corporate Debtor's own records, including its AFS, classify the amount as an "unsecured loan."

b. Petitioner further submits that the Corporate Debtor's attempt to link the alleged discharge of the loan to a share transfer transaction with Mr. Anubhav Sharma in 2019 is unfounded. He clarifies that the consideration received in the share transfer was unrelated to the loan, and no documentary evidence has been adduced to establish waiver, assignment, or novation of the debt. He emphasizes that obligations arising from financial transactions are distinct from shareholding or corporate governance matters and must be adjudicated on their own merit. The Petitioner also refutes the claim that he withheld documents or failed to cooperate during the alleged transition in management, asserting that such averments are devoid of any evidentiary basis.

c. The Petitioner reiterates that he has complied with all statutory requirements under Section 7 of the IBC and the Adjudicating Authority Rules. He has submitted bank statements showing disbursement of ₹ 6.73 crore, the AFS of the Corporate Debtor acknowledging the liability, and the NeSL record. Corporate Debtor has neither denied the acknowledgment of the loan in its financial statements nor demonstrated repayment. He contends that the defence mounted by the Respondent is illusory, evasive, and contrary to the settled legal position on acknowledgment of debt

7. The following averments were made in the Written Submissions of the Petitioner dated 16.12.2024:

a. On the threshold issue of requiring a formal loan agreement or board resolution, the Applicant relies on ***Praful Satra v. MD Development (CP(IB) 1018/MB/2021)***, where the Mumbai Bench held that an unsecured advance in absence of an agreement recorded as "loan repayable on demand" and backed by a recall notice suffices to establish financial debt and default . Similarly, in ***Pradeep Tayal v. Essbert Fashion (Company Appeal (AT) (IB) 950/2022),*** the NCLAT affirmed that the definitions of "transaction" under Section 3(33) and "financial debt" under Section 5(8) of the IBC are inclusive in nature and the absence of a written contract does not preclude the recognition of a loan, which may be substantiated through

other documentary evidence provided under Column 8 of Part V of Form 1, demonstrating both disbursement and default.

b. With respect to CAPL's contention that interest-free advances cannot qualify as financial debt, the position has already been settled by the Hon'ble Supreme Court in ***Orator Marketing v. Samtex Desinz ([2023] SCC 753),*** which held that financial debt encompasses outstanding principal of a loan irrespective of interest payable thereon, if no interest is stipulated, only principal need be considered . Moreover, ***in ARCIL v. Uniworth Textiles (Company Appeal (AT)(IB) 991/2020)***, the NCLAT recognized that acknowledgment of debt in the balance sheets and via the acknowledgement letter would extend limitation, and is sufficient prima facie proof of default for Section 7 admission.

c. The claim of Corporate Debtor that the Applicant, Mr. Sunil Chopra, had manipulated accounting entries during 2006–2019 while in control of the company was baseless, as the present management, after acquiring his equity in 2018–2019, continued to acknowledge the debt year after year in audited financial statements (AFS), including for FY 2020–21 and 2021–22, which were duly signed by statutory auditors.

8. The following averments were made in the Written Submissions of the Petitioner dated 02.01.2025:

a. The claim, even if construed as a “loan” purportedly advanced between 2005 and 2009, is clearly time-barred under Articles 19 and 21 of the Limitation Act, 1963, with the period of limitation having lapsed between 2008 and 2012. Notably, no demand for repayment was raised until 2022, rendering the claim *ex facie* barred by limitation

b. Further the transaction lacks any element of interest or "time value of money," which is a sine qua non for classification as a financial debt under the IBC. The reliance on balance sheet entries is misplaced, as such entries were made unilaterally at the instance of the Applicant himself, who was serving as director, key managerial personnel (KMP), and shareholder in the corporate debtor, CAPL, until 2019.

c. Moreover, in the absence of a valid Form D filed with the National E-Governance Services Ltd. (NeSL), there is no credible or independent record of default, and the submission of Form C alone is insufficient to substantiate the claim.

d. The bank statements relied upon do not reflect CAPL’s name in the credit entries, and one of the accounts allegedly belonging to CAPL no longer exists, undermining the authenticity of the purported transactions. Additionally,

correspondence from the Applicant's own email account, as well as that of CAPL, fails to evidence any genuine or unequivocal acknowledgment of debt.

e. CAPL is a solvent and profitable entity, and initiating CIRP on the basis of a stale, time-barred, and disputed claim would defeat the IBC's objective, which is to resolve genuine financial distress- not to enforce personal claims disguised as insolvency proceedings.

f. Even assuming a prima facie debt were established, the Tribunal retains discretion under Section 7(5) of the IBC to reject admission where circumstances render it manifestly unjust or contrary to the object of the Code. As affirmed in ***Vidarbha Industries Power Ltd. v. Axis Bank Ltd., (2022) 8 SCC 352***, admission is not automatic. In the present case, CAPL is neither insolvent nor in financial distress, and subjecting it to CIRP over a two-decade-old, unproven, and disputed claim would subvert the Code's purpose of ensuring resolution of genuine insolvency, not exploiting the process for collateral ends.

Analysis and Findings:

9. We have perused the documents filed by the Financial Creditor as well as Corporate Debtor and have heard the arguments made by the Ld. Counsels appearing for both the parties.

10. Prior to adjudication of the present application, it is pertinent to refer to **Section 5(8)(a) and 5(8)(b)** of the IBC, 2016, which has been reproduced below–

> *Section 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;*

11. The Financial Creditor has pleaded that the loan advanced by him was a loan recallable on demand and qualifies as a financial debt under **Section 5 (8)** of the Code. He has further pleaded that even though the loan was interest-free but qualified as disbursal against time value of money.

12. The applicant has relied on ***Orator Marketing (P) Ltd. v. Samtex Desinz (P) Ltd. (2023) 3 SCC 753*** the relevant portion of of which has been reproduced below:

> *"23. Furthermore, sub-clauses (a) to (i) of sub-section (8) of Section 5 IBC are apparently illustrative and not exhaustive. Legislature has the power to define a word in a statute. Such definition may either be restrictive or be extensive. Where the word is defined to include something, the definition is prima facie extensive.*

The definition of "financial debt" in Section 5(8) IBC does not expressly exclude an interest free loan. "Financial debt" would have to be construed to include interest free loans advanced to finance the business operations of a corporate body."

13. In order for an interest-free debt to qualify as financial debt, an FC must show that the funds were disbursed with 'consideration for time value of money'. The question of what constitutes 'time value of money' varies depending on the facts and circumstances; nonetheless, the FC must demonstrate that it had an interest in the subject matter for which the loan was disbursed and was profiting from it. **The pre-requisite is disbursal of money to the borrower for utilization by the borrower and that the disbursal must be against consideration for time value of money even if it is not interest bearing.**

To better understand the position of law a reference needs to be made to ***Arunkumar Jayantilal Muchhala v. Awaita Properties Pvt. Ltd. and Anr. Company Appeal (AT) (Insolvency) No. 121 of 2023 & I.A. No. 4828 of 2023*** wherein the court held:

"Time value of money is not only a regular or timely return received for the duration for which the amount is disbursed as an amount in addition to the principal, but also covers any other form of benefit or value accruing to the creditor as a return for providing money for a long duration

As long as the lender visualizes an element of profit and enhancement of economic prospect in return for the money advanced for certain time period, *the loan in question entails time value of money and acquires the colour*

of commercial borrowing which is clearly borne out from the facts of the present case. It has all the trappings of a financial debt and squarely falls within the purview of Section 5(8) of IBC."

14. We are of the considered view that there is no credible evidence to establish that the alleged disbursal was made against the time value of money- an essential element for qualifying a claim as a "financial debt" under **Section 5(8)** of the Insolvency and Bankruptcy Code, 2016. The transaction in question neither involved any stipulated interest component nor any contractual arrangement indicating the accrual of financial gain, return, or profit to the alleged Financial Creditor. Furthermore, there were no agreed terms of repayment, nor was there any contemporaneous communication or correspondence evidencing a request for a loan or acknowledgment of such a financial arrangement. In the absence of these foundational elements, the disbursal lacks the commercial character necessary to constitute a financial debt under the Code.

15. The Hon'ble Supreme Court in ***Pawan Kumar, Ex-Director and Shareholder of Vogue Clothiers Pvt. Ltd. Vs. Utsav Securities Pvt. Ltd. and Ors*** held that even if the Application filed under Section 7 meets all the requirements, then also the Adjudicating Authority has discretion to prevent and protect the Corporate Debtor from being dragged into the Corporate Insolvency Resolution Process mala fide.

16. The purported recall of an alleged loan nearly 17 years after its initial disbursal- without any documented agreement, interest component, or discernible commercial consideration—raises serious doubts about the nature of the transaction and is inconsistent with the conduct ordinarily expected of a prudent financial creditor acting in the ordinary course of business. Furthermore, the email dated 05.08.2022, which the petitioner has relied upon as an acknowledgment under Section 18 of the Limitation Act, falls short of constituting a clear or unequivocal admission of liability. Rather, it reads as a generalized and non-committal response, devoid of any express acknowledgment of debt or promise to repay. In the absence of a categorical admission, such communication cannot, by itself, revive a time-barred claim.

17. The Respondent has further contended that the Applicant exercised significant influence over the accounts and affairs of the Corporate Debtor by virtue of his position as a Key Managerial Personnel (KMP) and Director. It was asserted that the financial statements relied upon by the Applicant were, in fact, authored and approved under his supervision, and that the relevant entries reflecting long-term borrowings were effected at his instance.

18. Moreover, the underlying transaction in question constitutes a Related Party Transaction. It is trite law that a company is governed by its Board of Directors, who bear primary responsibility for the management and conduct of its affairs. The record clearly establishes that Mr. Sunil Chopra, the Applicant, was actively

controlling and managing the operations of the Corporate Debtor during the relevant period in his capacity as Director. In view of the foregoing factual position, and considering that the Applicant had substantial control over the management and affairs of the Corporate Debtor, we are of the considered view that the Applicant qualifies as a "related party" within the meaning of Section 5(24) of the IBC, 2016. Accordingly, his claim warrants close scrutiny under the heightened standards applicable to related party transactions under the Code. Hence the absence of a Board Resolution authorizing a borrowing from Related Party raises doubts with respect to legitimacy of the claim.

19. The Corporate Debtor has questioned the correctness of the record of Financial Information (Form-C) available with the Information Utility (NeSL) and submitted that no Record of Default with Information Utility in Form-D has been furnished in terms of **Regulation 21(4) of IBBI (IU) Regulations 2017**, which is a requirement as per **Section 7(3)(a) of IBC**.

20. On perusal of the Financial Information in Form-C of the Corporate Debtor maintained by the Information Utility namely National E-Governance Services Limited (NESL) dated, we find that the mere filing of record of Financial Information in Form-C with the Information Utility (NeSL) does not constitute the record of default. Therefore, we are satisfied that there exists no debt and there is no default on the part of the Corporate Debtor.

21. Even if the amount disbursed by the Financial Creditor was to be considered as a Debt, it appears as if intent of the Applicant in the present case is only to invoke the provisions of the Code so as to enforce recovery against the Corporate Debtor. It is a settled law that the scope of the Code is to bring about a resolution of an insolvent debtor and is definitely not a recovery proceeding. ***The Hon'ble Supreme Court in M/s Invent Asset Securitization and Reconstruction Pvt. Ltd. V. M/s Girnar Fibres Limited, Civil Appeal No. 3033 of 2022*** observed that time and again it has been expressed and explained that the provisions of the Code are essentially intended to bring the Corporate Debtor to its feet and are not of money recovery proceedings as such.

22. In the light of the above discussion, we come to the unambiguous conclusion that the Appellant has not been able to make out a clear-cut case in his favor. The application filed by the petitioner under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) is not maintainable, as the essential conditions of "debt" and "default" prescribed under the provision are not satisfied. As per Section 7(1) of the IBC, a financial creditor may initiate the corporate insolvency resolution process (CIRP) against a corporate debtor only upon establishing the existence of a "financial debt" and a "default" in its repayment. In the present case, the petitioner has failed to demonstrate, with cogent evidence, the existence of a legally enforceable financial debt as defined under Section 5(8) of

the IBC, and correspondingly, has not substantiated the occurrence of a default as per Section 3(12) of the Code.

23. It has been opined by the Hon'ble Supreme Court that the role of the Adjudicating Authority is confined to establishing that a Financial Debt exists and there has been a default against the corresponding debt in ***E S Krishnamurthy & Ors. Versus M/s Bharath Hi Tech Builders Pvt. Ltd.*** [Civil Appeal No 3325 of 2020]. The germane excerpt from the said precedent has been reiterated as under –

> *"The Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. These are the only two courses of action which are open to the Adjudicating Authority in accordance with Section 7(5)."*

This Adjudicating Authority, being limited to the determination of debt and default within the framework of a summary trial, finds that the other submissions advanced by the Applicant and the Respondent fall beyond its jurisdiction. Consequently, this Authority refrains from delving into them. However, liberty is granted to the concerned parties to approach the appropriate forum for redressal.

24. In view of the observations made herein above, the instant application bearing **CP (IB) No. 251/ND/2023** filed by, **Mr. Sunil Chopra,** (Financial Creditor), under section 7 of the Code read with rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **CAPL Hotels and SPA Pvt. Ltd.** (Corporate Debtor) is liable to be dismissed and accordingly, the same stands **dismissed**.

-SD/- -SD/-

(ATUL CHTURVEDI) **(MAHENDRA KHANDELWAL)**

MEMBER (TECHNICAL) **MEMBER (JUDICIAL)**