

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 368 of 2025

[Arising out of the Common Order dated 16.01.2025, passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi Bench in CP(IB) No. 850/ND/2024]

IN THE MATTER OF:

Mr. Rajender Prasad Mittal
65/41, Punjabi Bagh, West Delhi
New Delhi – 110026

...Appellant

Versus

M/s Jaikrishan Estates Private Limited
B-36, Mohan Park Naveen Shahdara,
North East Delhi – 110032

...Respondent

Present:

For Appellant : Mr. Gaurav Mitra, Mr. Kunal Godhwani, Ms. Kinjal Chadha and Ms. Aishwarya Modi, Advocates

For Respondent : Mr. Vivek Kohli, Sr. Advocate with Ms. Vaishnavi Prakash and Ms. Vasudha Chadha, Advocates

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

[Per: Arun Baroka, Member (Technical)]

This is an Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('Code') against the order dated 16.01.2025, passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi Bench) in C.P. No. (IB) 850/ND/2024, wherein the Adjudicating Authority had rejected the petition filed under Section 7 of the Code filed by the Appellant – Mr. Rajender Prasad Mittal.

Submissions of the Appellant

2. The Appellant-Rajender Prasad Mittal claims to be the Financial Creditor and states that it had advanced all loan of Rs. 6,86,44,042/- to the Corporate Debtor - M/s Jaikrishan Estates Private Limited in the Financial Year 2014-15. This loan was disbursed by the Financial Creditor from his personal bank account maintained with Axis Bank bearing A/c No. 913010031810470.

3. The Corporate Debtor repaid an amount of Rs. 3 Crores. However, an amount of Rs. 6,86,44,042/- against the principal is still outstanding. Appellant claims that it shows in the books of the Corporate Debtor under the head "long term borrowing". The Corporate Debtor has acknowledged the aforesaid amount in its balance sheet for the Financial Year 2016-17, 2018-2019, 2020-21, and 2022-23.

4. Since the Corporate Debtor did not pay back the money, the Financial Creditor preferred a petition under Section 7 of the Code seeking initiation of CIR Proceedings against the Corporate Debtor for non-payment of outstanding debt of the Financial Creditor. However, the Adjudicating Authority passed the impugned order dated 16.01.2024 rejecting the petition.

5. It is claimed by the Appellant that it was a Director in the Respondent – Corporate Debtor and it had provided interest free loan in the nature of financial debt under Section 5(8) of the Code. The Adjudicating Authority had asked for relevant documents from the Appellant to find out the maintainability of the petition.

6. It is claimed that without even issuing the notice to the Respondent that the Adjudicating Authority came to a conclusion that applicant has not made the conditions laid down in Section 5(8) of the Code and to qualify the debt in question as a financial debt. It argues that even if there is no loan agreement between the parties at the time of advancing of the loan, if the amount was disbursed and established from the bank account statements, then Section 7 application is maintainable. For this purpose, it relies on the judgment of this Tribunal in **Mobile Constructions Private Limited vs M/s. Apple Land Development Private Limited in Company Appeal (AT) (Ins.) No. 756/2024.**

7. Appellant has placed its reliance on various judgments:

- a) **Pancham Studios Pvt. Ltd Vs. Konark Aquatics & Exports Pvt. Ld. in Company Appeal (AT) (Ins.) No. 406/2024**, para 13.

"13. As regards the issue of non-compliance of Section 186(2) of the Act is concerned, it is submitted that the Tribunal has committed an error in holding that the loan advanced in violation of Section 186(2) of the Act is void and unenforceable because Section 186(2) of the Act is to protect shareholders / stakeholders of a financial creditor so as to safeguard granting of excessive loans by the management of the FC beyond the capacity of the FC for which such shareholders/ stakeholders can challenge such violation and it is not open for the CD to take shelter under such provision and refuse the repayment of the borrowed sums. It is submitted that the CD being the beneficiary / recipient of the sums advanced has no locus to assail a transaction on account of violation of Section 186(2) of the Act. It is also submitted that for the violation of Section 186(2) of the Act, penal provisions of fine and imprisonment has been provided but it will not invalidate the transaction qua the third party borrower. In this regard, he has referred to a decision in the case of Sarveshwar Creations Pvt. Ltd. Vs. Union Bank of India, CA (AT) (Ins) No. 1003 of 2020 in which it has been held that "L. As far as the issue of contravention of provision of Section 185 of the Act prevailing as on that date (pre-

07.05.2018 amendment to the Act) is concerned, it is very much clear that this is the provision which the company has to comply internally and if they fail to comply the necessary punishment is available in the same section ie. Section 185, both monetary penalty and/or imprisonment. As far as bank is concerned, they have been provided time to time the Board Resolution showing the approval of the Board. Hence, if there is any irregularity then for that the Members of the Board are responsible. If the official of the bank have committed some irregularity, then it is the Bank who has to prosecute these officers against the provisions laid down under the law applicable to them. Bank is required to investigate internally. However, as far as the public fund with the public sector bank is concerned, the "Doctrine of Indoor Management" will be wholly and exclusively applicable"

b) **Sailesh Sangani Vs. Joel Cardoso and Anr. in Company Appeal (AT) (Ins.) No. 616/2018**, para 6.

"6. A plain look at the definition of financial debt' brings it to fore that the debt alongwith interest, if any, should have been disbursed against the consideration for the time value of money. Use of expression if any' as suffix to 'interest' leaves no room for doubt that the component of interest is not a sine qua non for bringing the debt within the fold of 'financial debt'. The amount disbursed as debt against the consideration for time value of money may or may not be interest bearing. What is material is that the disbursement of debt should be against consideration for the time value of money. Clauses (a) to (i) of Section 5(8) embody the nature of transactions which are included in the definition of financial debt'. It includes money borrowed against the payment of interest. Clause (f) of Section 5(8) specifically deals with amount raised under any other transaction having the commercial effect of a borrowing which also includes a forward sale or purchase agreement. It is manifestly clear that money advanced by a Promoter, Director or a Shareholder of the Corporate Debtor as a stakeholder to improve financial health of the Company and boost its economic prospects, would have the commercial effect of borrowing on the part of Corporate Debtor notwithstanding the fact that no provision is made for interest thereon. Due to fluctuations in market and the risks to which it is exposed, a Company may at times feel the heat of resource crunch and the stakeholders like Promoter, Director or a Shareholder may, in order to protect their legitimate interests be called upon to respond to

the crisis and in order to save the company they may infuse funds without claiming interest. In such situation such funds may be treated as long term borrowings. Once it is so, it cannot be said that the debt has not been disbursed against the consideration for the time value of the money. The interests of such stakeholders cannot be said to be in conflict with the interests of the Company. Enhancement of assets, increase in production and the growth in profits, share value or equity enures to the benefit of such stakeholders and that is the time value of the money constituting the consideration for disbursement of such amount raised as debt with obligation on the part of Company to discharge the same. Viewed thus, it can be said without any amount of contradiction that in such cases the amount taken by the Company is in the nature of a 'financial debt'."

- c) **M/s Agarwal Polysacks Limited Vs. M/s K.K. Agro Foods and Storage Limited in Company Appeal (AT) (Ins.) No. 1126/2022,** para 31.

"31. The Adjudicating Authority, however, took a view that there should be financial contract between the parties which elucidate the rate of interest and date of repayment. The Adjudicating Authority took a view that there is no written agreement to establish the nature of transaction between the parties, hence, Appellant failed to prove the debt. We have already held that requirement of written financial contract is not a pre-condition for proving debt. When Adjudicating Authority itself given finding in Para 5-6 the disbursement was with interest and repayment was on demand, two essential conditions of financial debt were present with regard to time value of money. When the financial statement indicate amount with interest since the loan of Rs.75,00,000 increased in the FY 2017-18 and amount due was shown as Rs.79,70,250, which clearly was after adding the interest, disbursement has to be held for time value of money. We, thus, are satisfied that all pre-conditions for establishing financial debt are proved by the Financial Creditor and the order of the Adjudicating Authority rejecting Section 7 application is not sustainable."

- d) **Orator Marketing Pvt. Ltd. Vs. Samtex Desinz Pvt. Ltd. in Civil Appeal No. 2231/2021 decided on 26.07.2021,** paras 2, 22, 29-31.

“2. The short question involved in this Appeal is, whether a person who gives a term loan to a Corporate Person, free of interest, on account of its working capital requirements is not a Financial Creditor, and therefore, incompetent to initiate the Corporate Resolution Process under Section 7 of the IBC.

22. The NCLT and NCLAT have overlooked the words "if any" which could not have been intended to be otiose. 'Financial debt' means outstanding principal due in respect of a loan and would also include interest thereon, if any interest were payable thereon. If there is no interest payable on the loan, only the outstanding principal would qualify as a financial debt. Both NCLAT and NCLT have failed to notice clause(f) of Section 5(8), in terms whereof 'financial debt' includes any amount raised under any other transaction, having the commercial effect of borrowing.

29. In Jaypee Infratech Ltd. (supra), the debts in question were in the form of third-party security, given by the Corporate Debtor to secure loans and advances obtained a third party from the Respondent Lender and, therefore, held not to be a financial debt within the meaning of Section 5(8) of the IBC. There was no occasion for this Court to consider the status of a term loan advanced to meet the working capital requirements of the Corporate Debtor, which did not carry interest. Having regard to the Aims, Objects and Scheme of the IBC, there is no discernible reason, why a term loan to meet the financial requirements of a Corporate Debtor for its operation, which obviously has the commercial effect of borrowing, should be excluded from the purview of a financial debt.

30. In Prabhudas Damodar Kotecha Vs. Manhabala Jeram Damodar, this Court interpreting Section 41(1) of the Presidency Small Cause Courts Act, 1882, as amended by the Maharashtra Act XIX of 1976, observed that 'the golden rule is that the words of a statute must prima facie be given their ordinary meaning when the language or phraseology employed by the legislature is precise and plain'. Since Section 41(1) does not specifically exclude a gratuitous licensee or make a distinction between a licensee with material consideration or without material consideration, the expression 'licensee' in Section 41(1) was held to also include licensee'. a 'gratuitous

31. At the cost of repetition, it is reiterated that the trigger for initiation of the Corporate Insolvency Resolution Process by a

Financial Creditor under Section 7 of the IBC is the occurrence of a default by the Corporate Debtor. 'Default' means non-payment of debt in whole or part when the debt has become due and payable and debt means a liability or obligation in respect of a claim which is due from any person and includes financial debt and operational debt. The definition of 'debt' is also expansive and the same includes inter alia financial debt. The definition of 'Financial Debt' in Section 5(8) of IBC does not expressly exclude an interest free loan. 'Financial Debt would have to be construed to include interest free loans advanced to finance the business operations of a corporate body.'

e) **Mrs. Jayanthi G. Ravi Vs. Chemizol Additives P Ltd. in Company Appeal (AT) (CH) (Ins.) No. 553/2020**, paras 9, 11, 17, 71.

"9. It is represented on behalf of the Appellant whether an amount loaned by the Director to a 'Company' recorded as a Loan in the Minutes of the Meeting of the Board of Directors is not a 'Financial Debt'?

11. The Learned Counsel for the Appellant brings it to the notice of this Tribunal that the loan of Rs. 4.10 Crores was disbursed by the Appellant to the Respondent/Company in two tranches, the first tranche of Rs. 2.50 Crores was made on 1.12.2016 and the second tranche of Rs. 1.6 Crores was made on 18.01.2017.

17. The Learned Counsel for the Appellant brings it to the notice of this 'Tribunal' that the instant case relates to a 'Financial Debt' and it does not pertain to the difference between a 'Secured' and an 'Unsecured Creditor'. In this regard, the Learned Counsel for the Appellant seeks in aid of the decision of the Hon'ble Supreme Court in Orator Marketing Pvt. Ltd. v Samtex Desinz Pvt. Ltd. reported in 2021 SCC Online SC 513 where in an expansive definition of 'Financial Debt' is laid down as under:

21. "The definition of 'financial debt' in Section 5(8) of the IBC has been quoted above. Section 5(8) defines 'financial debt' to mean "a debt alongwith interest if any which is disbursed against the consideration of the time value of money and includes money borrowed against the payment of interest, as per Section 5(8) (a) of the IBC. The definition of 'financial debt' in Section 5(8) includes the components of sub-clause (a) to (i) of the said Section."

31. "At the cost of repetition, it is reiterated that the trigger for initiation of the Corporate Insolvency Resolution Process by a Financial Creditor under Section 7 of the IBC is the occurrence of a default by the Corporate Debtor. 'Default' means non-payment of debt in whole or part when the debt has become due and payable and debt means a liability or obligation in respect of a claim which is due from any person and includes financial debt and operational debt. The definition of 'debt' is also expansive and the same includes inter alia financial debt. The definition of 'debt' is also expansive and the same includes inter alia financial debt. The definition of 'Financial Debt' in Section 5(8) of IBC does not expressly exclude an interest free loan. 'Financial Debt' would have to be construed to include interest free loan advanced to finance the business operations of a corporate body."

71. Be that as it may, this Tribunal' taking note of the facts and circumstances of the instant case and also considering the fact that the first tranche of Rs. 2.50 Crores was disbursed by the 'Appellant' to the Respondent/Company on 01.12.2016, and the second tranche of Rs.1.60 Crores was Transferred from the Appellant/Applicant's 'personal Bank Account' to the 'Current Account' of the Respondent/Company and these transfers were recorded in the 'Minutes of the Meeting of the Board of Directors' on 23.02.2017 and 06.04.2017, that the Respondent/ Company had mentioned in its 'Balance Sheet' for 01.04.2016 to 31.03.2017 about the outstanding liability to the Appellant of Rs. 4.10 Crores, the 'Balance Sheet' of the Respondent/Company, (even after the resignation of the 'Appellant' from the Company) also mentions the factum of 'outstanding liability' to the 'Appellant' and in spite of several assurances made to the 'Appellant', the Respondent/Company had not repaid the due outstanding sum to the 'Appellant' (received as 'Loan) and the correspondences between the parties, and even the 'Reply' of the Respondent/Company filed before the 'Adjudicating Authority' (during March, 2019) 'clinchingly' establishes that the Respondent/Company had admitted its liability to repay the 'Principal sum' and Interest' ('Admission' is the best piece of evidence in Law), especially the Respondent/Company had sought time to repay Loan and Interest thereon, in one payment by 30.04.2019 and taking into account all these cumulative facts in an integral manner, this Tribunal' comes to an inevitable, inescapable and consequent conclusion that the 'Appellant/Financial Creditor'

had established the 'Financial Debt' and 'Default' being the pre-requisites for admitting the 'Application' (under Section 7 of the I & B Code, 2016), filed by the 'Appellant'. Viewed in that perspective, the contra views arrived at by the 'Adjudicating Authority' that the 'Loan' was not a 'Financial Debt', as the amounts were not 'money borrowed' by the 'Corporate Debtor' and that the borrowing may not constitute a Financial Debt' that could be enforced as per the I & B Code, 2016 though the 'Borrowing' may be reflected in the Balance Sheet' as pointed out by the Petitioner (Appellant)' etc; are legally invalid' and 'untenable'. Looking from that angle, this Tribunal' interferes with the 'impugned order' dated 28.01.2020 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Bengaluru Bench) in CP (IB) No. 1/BB/2019) and set aside the same, to promote substantial cause of justice. Consequently, the 'Appeal' succeeds.”

Submissions of the Respondent

8. Respondent contends that Mr. Rajender Prasad Mittal who is the Appellant in this case is an erstwhile director of the Respondent. The Adjudicating Authority has rightfully held that the amount allegedly transferred by the Appellant to the Respondent did not constitute as financial debt within the meaning of Section 5(8) of the Code. The Appellant held the office of Director of the Respondent from 16.01.2000 to 21.10.2022. The Appellant sent resignation letter dated 21.10.2022 wherein he resigned from the office with immediate effect on account of "some other engagement". Respondent was bound to accept the resignation of the Appellant with immediate effect from 21.10.2022.

9. Further no legally enforceable 'financial debt' exists between the Appellant and the Respondent within the meaning of Section 5(8) of the Code. The sums advanced by the Appellant were as per working capital requirement

by a promoter-director, devoid of any interest, consideration for time value of money, or contractual repayment terms as elaborated hereunder.

10. The Respondent company was incorporated in 1997 as a company wholly owned and controlled by the Wadia Group (Group of companies promoted by Mr. Ashok Wadia and his family). However, in the year 2000, the ownership and control of the Respondent company was diluted in favour of the Appellant, Ravee Capitals Limited and Ravee Pro-Build Private Limited (collectively referred to as "Mittal Group") along with one, Mr. Amit Singla, APS Builders Private Limited and Singla Liquor Private Limited (collectively referred to as "Singla Group").

11. Accordingly, Mittal Group and Singla Group were inducted as shareholders each holding 20% (i.e. Rs.3 crores each) of the total share capital (i.e. Rs.15 crores) in the Respondent Company. This dilution resulted in Wadia Group's shareholding being reduced to 60% of the paid up capital of the Respondent company. To meet the working capital requirement of the Respondent, the Promoters/Directors of Wadia Group, Singla Group and Mittal Group were to augment the working capital of the Respondent and infuse funds in the proportion of their shareholding in the Respondent. It is pertinent to note that the said funds were meant to be utilized towards the working capital requirements of the Respondent and were not in a nature of any loan as envisaged under Section 5(8) of the Code.

12. The Appellant being a Director/shareholder, infused funds in a fiduciary capacity for the sustenance of the Company's working capital. There

is no resolution, loan agreement, or board approval classifying the amount as a debt. It is pertinent to note that neither the Appellant has taken any effort to categorise the purported transfer as loan since 2014 till 2021, and thereafter sent a misconceived demand notice to the Respondent vide notice dated 20.12.2021, annexed as annexure A-7 of the appeal, in order to wrongfully claim the purported amount as a loan and demanding it to be transferred to the wife of the Appellant.

13. Further, the Appellant, before the cessation of his designation as the director of the Respondent, held substantial business operations of the Respondent and, along with his son, Mr. Arun Mittal, was responsible for making managerial/ strategic decisions that included selling the projects being developed by the Respondent, execution of sale deeds with the customers, acting on behalf of the Respondent as an authorized signatory in the jointly held bank accounts, etc. Further, Mr. Arun Mittal, son of Appellant, was responsible for activities related to site management. The Appellant was actively engaged in overall management and operations of the Respondent Company.

14. Instead of fulfilling his duties and responsibilities as the director of the Respondent Company, the Appellant chose to act in complete abrogation of his obligations as the director of the Company. The Appellant failed to discharge his functions towards the Respondent company, its stakeholders and clients and ultimately parted with the Respondent company abruptly and immediately in 2022.

15. The amounts purportedly advanced by the Appellant to the Respondent were infusion of working capital in the Respondent, which were infused by all shareholding groups in proportion of their shareholding in order to meet the cost of various goods and services being procured by the Respondent and in order to ensure statutory compliances and unhindered construction and delivery of units in the all projects being undertaken by the Respondent. There was no intent of any grant of any loan by the Appellant to the Respondent nor was the amount purportedly advanced by the Appellant be construed as loan which is clear from the actions of the Appellant and the Respondent.

16. It is further stated that in order to accept a loan from the director, the company is required to pass a resolution in a Board Meeting stating the same. Hence, the Hon'ble NCLT in the Impugned Order has rightfully noted that the Appellant herein in the documents submitted as part of the section 7 application bearing CP (IB) No. 850(ND)/2024 has failed to provide any document to show that the Appellant was granting any loan to the company in the form of the amounts purportedly transferred by the Appellant to the Respondent. The relevant portion of the Impugned Order is reproduced hereunder:

"10. The Applicant/Financial Creditor has not placed on record any document to show that any Board Resolution was passed for infusing funds required for utilizing towards working capital requirements of the Corporate Debtor."

17. Hence, from the above it is clear that not only did the Appellant fail to place on record any loan agreement, he did not place on record any document

of any nature to substantiate that the money transferred to the Respondent was in the nature of loan. It is stated that the reason the Respondent failed to place on record any such documents is on account of the fact that the amounts purportedly transferred by the Appellant was never in the nature of a loan but funds were meant to be utilized towards the working capital requirements of the Respondent in proportion to his shareholding in the Respondent.

18. In order to qualify as a 'financial debt' in terms of the definition given under Section 5(8) of the Code it must be shown that the amount was disbursed against the consideration for the time value of money and it must have the commercial effect of a borrowing. The Appellant has failed to establish the existence of a "financial debt" as defined under Section 5(8) of the Code. The alleged transaction lacks essential elements of a financial debt, including consideration for time value of money.

19. The Appellant has failed to produce any loan agreement, promissory note, or other documented evidence establishing the terms of borrowing, including repayment schedule, interest rate, or other commercial terms typically associated with financial transactions.

20. The funds allegedly advanced appear to be in the nature of shareholder/promoter contributions rather than a financial debt, as evidenced by the Appellant's own admission of being a director in the Respondent during the relevant period when the alleged transaction took place.

21. The Hon'ble Supreme Court in Anuj Jain, Interim Resolution Professional for **Jaypee Infratech Ltd. vs. Axis Bank Ltd., (2020) 8 SCC 401**, held that a financial debt must carry the following requirement:

- i. Disbursal of the financial debt;
- ii. Against consideration for time value of money, i.e., a certain time period for repayment;
- iii. Commercial effect of borrowing, i.e., the transfer should be in the nature of a debt.

The purported transaction being alleged as financial debt by the Appellant herein clearly fails this test and hence cannot be categorized as 'financial debt' in terms of the Section 5(8) of the Code. The same has been rightfully held by the Ld. Adjudicating Authority vide the Impugned Order after careful examination of the documents presented by the Appellant herein.

22. The Hon'ble Supreme Court in **Phoenix ARC Pvt. Ltd. v. Spade Financial Services, (2021) 3 SCC 475** while explaining the nature of financial debt has emphasized that in order to qualify as financial debt the amount must reflect time value of money.

23. The Appellant failed to establish a specific date of default, which is essential under Regulation 2D of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This Hon'ble Appellate Tribunal in **Mukul Kumar v. RPS Infrastructure Ltd., CA (AT) (Ins) No. 1050 of 2020** has held that a notice with no concrete acknowledgment or undisputed amount does not constitute default. Hence,

the Appellant has failed to fulfil the threshold standard of proof required under Section 7(3) of the Code.

24. The reply to demand notice dated 20.12.2021 by the Respondent, annexed as Annexure A-8 of the captioned appeal clearly establishes that the funds were meant to be infused by all promoters/directors (including the Appellant) in proportion to their shareholding, which contradicts the Appellant's claim that it was a standalone loan transaction. The Appellant has contradicted himself by first claiming the transaction as a simple loan and later attempting to characterize it as having "commercial effect of borrowing" despite failing to demonstrate any commercial terms such as interest payments or fixed repayment schedules.

25. Further, the alleged ledger statement maintained by the Appellant himself annexed as annexure A-9 of the captioned Appeal shows inconsistent treatment of the alleged transactions, with no interest calculations, arbitrary repayments, and lack of formal demand until 2021, which contradicts the commercial nature of a financial debt. The so-called "ledger statement" provided by the Appellant appears to be self-created and lacks third-party verification or authentication, making it unreliable evidence of a financial debt.

26. The Appellant has allegedly claimed the alleged loan was repayable on demand, but while sending the demand notice dated 22.10.2021 did not show any document to the effect establishing such terms. The Appellant has failed to establish when such demand was first made prior to the notice dated

22.10.2021, especially considering that partial repayments were allegedly made without formal demands.

27. It is pertinent to refer to the decision of the Hon'ble NCLAT in the matter of **Ansal Housing Ltd. v. Samyak Projects Pvt. Ltd. [(2023) ibclaw.in 804 NCLAT)**, wherein it was held that Inter-Corporate Deposits between collaborators and related parties cannot be classified as financial debt. It further stated that the object of IBC is not recovery rather is a beneficial legislation to ensure revival and continuation and hence the Code cannot be misused for staging recovery.

28. The Appellant heavily relies on the judgment in **Shailesh Sangani v. Joel Cardoso (Company Appeal (AT) (Insolvency) No. 616 of 2018)** to argue that interest-free loans advanced by directors qualify as financial debt. However, this reliance is misplaced due to fundamental factual differences. In Shailesh Sangani, there was concrete evidence establishing the transaction as a loan, including acknowledgment by the Corporate Debtor of the specific transaction as a loan. In contrast, the present case lacks any contemporaneous loan agreement, promissory note, or board resolution categorizing the funds as loans rather than capital contributions.

29. The Respondent's reply dated 20.12.2021 explicitly characterized the transactions as proportionate capital infusions by all directors/promoters according to their shareholding patterns, which fundamentally distinguishes it from the Shailesh Sangani case where there was no dispute about the character of the transaction.

30. In Shailesh Sangani, the transaction was clearly recorded and classified as debt in the company's records with defined commercial parameters. In the present case, the Appellant has merely shown entries under "long-term borrowings" without establishing the commercial terms that would give the transaction the "commercial effect of borrowing" as required under Section 5(8)(f) of the Code.

31. The Appellant cites Agarwal **Polysacks Limited v. K.K. Agro Foods and Storage Limited (Company Appeal (AT) (Insolvency) No. 1126 of 2022)** to argue that a written financial contract is not a precondition for proving financial debt. However, the crucial distinction is that in Agarwal Polysacks, while there was no formal written agreement, there was clear evidence of interest payments and defined repayment terms.

32. The judgment in **Agarwal Polysacks (supra)** specifically noted that "disbursement was with interest and repayment was on demand, two essential conditions of financial debt were present with regard to time value of money." In the present case, the Appellant admits there was no interest component and provides no evidence of agreed repayment terms at the time of alleged disbursement. In Agarwal Polysacks, the financial statements showed clear evidence of interest accrual whereas in stark contrast, the Appellant's own ledger shows no interest calculations or accruals during the relevant period from 2014 to 2021.

33. The Appellant's reliance on **Mobile Constructions Private Limited v. Apple Land Development Private Limited (Company Appeal (AT)**

(Insolvency) No. 756 of 2024) is fundamentally flawed, as the Ld. Adjudicating Authority explicitly stated that:

"...the facts of the case in the judgment passed by the Hon'ble NCLAT in M/s. Mobile Constructions Private Limited (supra) are distinguishable from the facts of the present case."

34. In **Mobile Constructions Private Limited v. Apple Land Development Private Limited (Supra)**, there was substantial documentary evidence beyond bank statements that established the debt relationship, whereas in the present case, the Appellant relies primarily on self-created records and selective reading of financial statements. The Mobile Constructions case involved parties with a clear creditor-debtor relationship, whereas the present case involves a director/promoter who made proportionate capital contributions along with other directors/promoters, as evidenced by the Corporate Debtor's correspondence.

35. The Appellant's reliance on this Supreme Court judgment of **M/s Orator Marketing Private Limited v. M/s Samtex Desinz Private Limited (Civil Appeal No. 2231 of 2021)** to argue that interest-free loans amount to financial debt is misplaced. In Orator Marketing, there was no dispute about the character of the transaction, whereas in the present case, there is a fundamental dispute about whether the transactions were loans or capital contributions proportionate to shareholding.

36. It is established principle of law that IBC is not intended to be used as a recovery mechanism for all types of claims, particularly those arising from

the internal management of a company by its directors/promoters. Capital Contributions by Directors/Promoters Cannot Be Retrospectively Treated as Financial Debt.

37. This Hon'ble Appellate Tribunal in **Neelkanth Township & Construction Pvt. Ltd. v. Urban Infrastructure Trustees Ltd., Company Appeal (AT) (Insolvency) No. 44 of 2017** has held that shareholders advancing funds for business purposes do not automatically become financial creditors.

38. While the Appellant cites **Asset Reconstruction Company (India) Limited v. Bishal Jaiswal AIR ONLINE 2021 SC 267** to argue that balance sheet entries constitute acknowledgment of debt, the Hon'ble Supreme Court in that case specifically held that such entries must be read in context of their creation and supporting documentation. Whereas in the present case, the Appellant has failed to provide any such supporting documents.

39. In **Phoenix ARC Private Limited v. Ketulbhai Ramubhai Patel, AIR 2021 SC 875** the Hon'ble Supreme Court clarified that mere accounting entries cannot transform the character of a transaction if the underlying documentation and circumstances indicate otherwise.

40. The Corporate Debtor's reply dated 20.12.2021 explicitly stated that the funds were infused by all promoters/directors in proportion to their shareholding, which is characteristic of capital contributions rather than third-party lending.

41. The absence of any board resolution authorizing borrowing from the Appellant, despite his position as a director with authority to ensure proper documentation, strongly indicates that the parties themselves did not treat the transaction as a loan at the time it occurred.

42. The Hon'ble Supreme Court **in IFFCO Ltd. v. Bhadra Products AIR 2018 SUPREME COURT 627** established that the "time value of money" is a fundamental and indispensable component of financial debt under Section 5(8) of the IBC. The same is clearly not present in the Appellant's case.

43. The Appellant's own ledger statement and bank records fail to demonstrate any consideration for time value of money, such as interest payments or other financial returns on the alleged loan.

44. Based on the above grounds and distinctions between the cited cases and the present facts, it is evident that the Appellant has failed to establish the existence of a financial debt under Section 5(8) of the IBC. The transactions appear to be towards working capital requirements by a director/promoter that cannot be retrospectively characterized as financial debt after his resignation from the company. The Ld. Adjudicating Authority correctly rejected the application under Section 7, and this decision should be upheld by the Appellate Tribunal.

45. The Bank Statement relied upon by the Appellant in Annexure A-2 of the captioned appeal shows fund transfers but fails to establish terms of disbursement, repayment, interest, or time value consideration. The bank

statement merely show that various payments were made to and from the Respondent to the Appellant are irregular periods. It is clearly evident that such transfers are irregular and without any specification and the same cannot at this stage be claimed as loans.

46. It is stated that the Code under the proviso for Section 7(5) grants an opportunity to an applicant to cure any shortcoming or rectify any defect in the petition. The Ld. Adjudicating Authority had granted the same opportunity to the Appellant herein. However, the Appellant herein himself failed to provide the same and rectify the defects as there were no documents to establish that the funds were in the nature of a loan. This failure to comply with the order of the Ld. Adjudicating Authority has correctly been noted in paragraph 5 of the Impugned Order that despite an opportunity, the appellant herein failed to cure such defect, therefore, the appellant cannot at the appellate stage contest the same. The relevant portion of the is produced hereunder:

"5. During the course of arguments, this Adjudicating Authority called upon the Applicant to file an affidavit with respect to the maintainability of the present application. However, Learned Counsel appearing for the Applicant/Financial Creditor refused to place on record all relevant documents and expressed that he would like to argue the issue of maintainability."

Analysis

47. We have heard the counsels of both sides and also perused the material placed on record.

48. We find that there is an acknowledgment in the books of accounts of the Corporate Debtor relating to the long term borrowings against the name of the Appellant. This is sufficient to determine acknowledgment of the debt.

49. We also notice that when the Appellant has raised a demand vide legal notice dated 22.10.2021, it raised the issues relating to share purchase agreement and also assignment of this advance to his wife in para 7, which is extracted as below:

“7. That it is pertinent to mention that pursuant to the execution of the Share Purchase Agreement dated 26.04.2019 My client, will have no stake in the Addressee No. 1 Company and that My Client has no cogent rationale left to allow the Addressee No. 1 Company to continue with the further utilization of the interest free loan advanced by My Client in favour of the Addressee No. 1 Company at the cost of his financial security and instead indubitably wishes to recover and infuse the liquidated funds to undertake other outstanding professional/personal obligations. Furthermore, at this juncture it is imperative to mention that My Client ("Donor") had executed an irrevocable and unconditional Gift deed dated 19.07.2019 in favour of his wife Mrs. Saroj Rani ('Donee') wherein My Client, had unequivocally stated that Mrs. Saroj Rani will be the absolute owner of the property amount recovered from M/s. Jai Krishan Estates Pvt. Ltd. ('Gift') payable by you, the Addressee No. 1 Company to which My Client is legitimately and absolutely entitled. That the Donor in the Gift Deed dated 19.07.2019 has called upon My Client to honour his obligations in harmony with the covenants recorded in the Gift Deed in order to enable her to realise Rs.3,86,44,042 (Three Crore Eighty-Six Lakhs Forty-Four Thousand and Forty-Two only) vide presentation of 11 cheques bearing description as enumerated in the Gift Deed dated 19.07.2019 which My Client had duly drawn in favour of the Donee without any further delay. That My Client in

furtherance to effectuate and realise the Object of the Gift Deed dated 19.07.2019 in accordance with the covenants recorded therein thereby calls upon you the Addressee No.1 Company to remit the above-mentioned amount in favour of My Client without incurring any further complacency on your part to enable him to discharge his obligations qua the execution of the Gift Deed dated 19.07.2019 in an efficacious and time bound manner.”

50. The above para raises questions about the real nature of the debt. Even though the Respondent had issued a reply denying the debt, but in its reply at para 4, which is extracted as below:

“4. Accordingly, Mittal Group and Singla Group were inducted as shareholders each holding 20% (i.e. Rs.3 crores each) of the total share capital (i.e. Rs.15 crores) of JKEPL. This dilution resulted in Wadia Group's shareholding being reduced to 60% of the paid up capital of JKEPL. To meet the working capital requirements of JKEPL, it was agreed that all Promoters/ Directors of Wadia Group, Singla Group and Mittal Group shall augment the working capital of JKEPL and infuse funds in the proportion of their shareholding in JKEPL. It is pertinent to note that the said funds were meant to be utilized towards the working capital requirements of JKEPL.”

It accepts that this money was to meet the working capital requirements of the Respondent and it was agreed that all Promoters/ Directors of Wadia Group, Singla Group and Mittal Group shall augment the working capital of Respondent and infuse funds in the proportion of their shareholding in Respondent.

51. In a way, this is an acceptance by the Respondent that it had taken loan from the Appellant for its working capital requirements. But on the other

hand, we find the real nature of the debt to be questionable due to the existence of share purchase agreement, which is not on record and also the so called assignment by unrecoverable and unconditional gift deed dated 19.07.2019 in favour of this wife by the Appellant.

52. This should have been examined in detail by the Adjudicating Authority by at least calling for the reply of the Respondent, which in this case, has not happened. It will be in the fitness of things that we remand this case back to the Adjudicating Authority to decide the case on merits without being biased by our observations in this impugned order. Accordingly, the Appeal is disposed of and all the related IAs are also stand disposed of. No orders as to costs.

**[Justice N Seshasayee]
Member (Judicial)**

**[Arun Baroka]
Member (Technical)**

**New Delhi.
May 19, 2026.**

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