



**NATIONAL COMPANYLAW TRIBUNAL  
GUWAHATIBENCH  
GUWAHATI**

**ORDER SHEET OF THE HEARING ON 2<sup>nd</sup> JUNE 2026**

**IA (IBC)/59/GB/2025, Inv. Pet. (IBC)/ 1/GB/2024  
CP(IB)/8/GB/2024**

**Present: 1. Hon'ble Member (Judicial), Shri Rammurti Kushawaha  
2. Hon'ble Member (Technical), Shri Yogendra Kumar Singh**

<b>In the Matter of</b>	Srei Equipment Finance Limited Vs Kitply Industries Limited
<b>Under Section</b>	U/s 7 of IBC, 2016

**Appearances (via video conferencing/physically)**

For Petitioner (s) : None

For Respondent (s) : Mr. Sanjay Bhatt, Adv. For CD  
: Mr. Krishnendu Dutta, Adv Intervener for Anil Singh & Ors.

**ORDER**

**CP (IB)/8/GB/2024, IA (IBC)/59/GB/2025 & Inv. Pet. (IBC)/ 1/GB/2024**

Order pronounced in open court *vide* separate sheets.

Sd/-  
**Yogendra Kumar Singh**  
Member (Technical)

Sd/-  
**Rammurti Kushawaha**  
Member (Judicial)



**NATIONAL COMPANY LAW TRIBUNAL  
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**CP(IB)/8/GB/2024  
IA(IBC)/59/GB/2025  
Inv. Pet. (IBC)/ 1/GB/2024**

*Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016; and under Section 65 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016, respectively.*

**In the matter of CP(IB)/8/GB/2024:**

**SREI Equipment Finance Limited**, company within the meaning of Companies Act, 2013, having its registered office at ‘Viswakarma Building’ 86C, Topsia Road (S), Kolkata – 700086 and also at Room No. 12 & 13, 6A, Kiran Sankar Roy Road, Kolkata – 700001;

**...Petitioner/Financial Creditor**

*-Versus-*

**Kitply Industries Limited**, a company within the meaning of Companies Act, 2013, having its registered office at Makum Pathar, A.T. Road, Margherita, Assam – 786181;

**...Respondent/Corporate Debtor**

*-And-*

**In the matter of IA (IBC)/59/GB/2025:**

**Kitply Industries Limited**, a company within the meaning of Companies Act, 2013, having its registered office at Makum Pathar A.T. Road, Margherita, Assam, India, 786181;

**...Petitioner/Corporate Debtor**

*-Versus-*

**Srei Equipment Finance Limited**, having its registered office at “Viswakarma Building” 86C, Topsia Road (S), Kolkata – 700086 and also at Room No. 12 & 13, 6A, Kiran Sankar Roy Road, Kolkata – 700001;

**...Respondent/Financial Creditor**

*-And-*



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**In the matter of Inv. Pet. (IBC)/ 1/GB/2024:**

**ANIL SINGH & Ors.**, working for gain at Kitply Industries Limited, White House Building, 4th Floor, 119, Park Street, Kolkata-700016, and authorised representative for co-workers of Kitply Industries Limited;

**...Petitioner**

**-Versus-**

**Srei Equipment Finance Limited**, having its registered office at “Viswakarma Building” 86C, Topsia Road (S), Kolkata – 700086 and also at Room No. 12 & 13, 6A, Kiran Sankar Roy Road, Kolkata – 700001;

**...Respondent No. 1**

**-And-**

**Kitply Industries Limited**, a company within the meaning of Companies Act, 2013, having its registered office at Makum Pathar A.T. Road, Margherita, Assam, India, 786181

**...Respondent No. 2**

***Coram:***

Shri Rammurti Kushawaha : Member (Judicial)

Shri Yogendra Kumar Singh : Member (Technical)

***Appearances (through video conferencing/physical):***

For Petitioner : Mr. S. Sen, Sr. Adv., Mr. S. Sarkar, Mr. A. Kanodia, (Advs.) for Srei Equipment Finance Limited.

For Respondent : Mr. R. Banerjee, Sr. Adv., Mr. K. Kejriwal, Mr. S. Bhatt, (Advs.), Mr. D. K. Jain, CA., for Kitply Industries Limited.

Mr. K. Dutta, Sr. Adv, Mr. S. Mitra, Ms. S. Todi, (Advs.) for (Inv. Pet. (IBC) /1 / GB/ 2024).

**Order pronounced on: 02.06.2026**



As Per Bench

1. The present Application has been filed by **SREI Equipment Finance Limited** ('Financial Creditor') ('SEFL'), under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC or the Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, to initiate Corporate Insolvency Resolution Process ('CIRP') of **Kitply Industries Limited** having CIN: U20211AS1982PLC001969 ('Corporate Debtor') for an unresolved Financial Debt of Rs. 3,33,58,76,382/- (Rupees three hundred thirty three crores fifty eight lacs seventy six thousand three hundred eighty two only) as on 26.04.2024.
2. As per the Petitioner, the brief facts of the case are as follows: -
  - 2.1. The Financial Creditor is Non-Banking Financial Company authorized by the Reserve Bank and inter-alia, carries on business as a Non-Banking Financial Company and provides financial services to various interested parties.
  - 2.2. Initially, the Corporate Debtor approached the Financial Creditor and its holding company SREI Infrastructure Finance Limited ('SIFL') for financial assistance which was sanctioned.
  - 2.3. The Corporate Debtor entered into two contracts, which are more fully stated herein below:
    - a. The amount sanctioned by the Financial Creditor was to the tune of Rs.130,00,00,000/- under Contract No. 177125 dated 24.01.2019.
    - b. The amount sanctioned by SIFL was to the tune of Rs.120,00,00,000/- under Contract No. 1268 dated 24.01.2019.  
Copies of the Contract No. 177125 dated 24.01.2019 and Contract No. 1268 dated 24.01.2019 are annexed as '*Annexure F1 and F2*'.
  - 2.4. The Corporate Debtor after entering the aforesaid contracts, the Corporate Debtor availed the following loan:
    - a. Loan amounting to sum of Rs. 96,27,00,000/- under Contract No. 177125 dated 24.01.2019.
    - b. Loan amounting to sum of Rs. 81,65,00,000/- Contract No. 1268 dated 24.01.2019 in several tranches.  
A copy of the disbursement details is annexed as '*Annexure G*'.



- 2.5. In the meantime, by a Business Transfer Agreement dated 16.08.2019 entered into between the SIFL and the Financial Creditor, the lending business of SIFL stood transferred to the Financial Creditor herein with effect from 01.10.2019 and thus the Financial Creditor was considered as a lender for the entire loan facility of the Corporate Debtor, together all underlying promises, securities and undertakings standing in favour of the SIFL.
- 2.6. Though the Business Transfer Agreement was not approved by the Lenders of Financial Creditor and SIFL, subsequently, the Financial Creditor and SIFL underwent CIRP on an application filed by Reserve Bank of India ('RBI').
- 2.7. Thereafter a Resolution Plan for the Financial Creditor and SIFL which was approved by NCLT, Kolkata. The Approved Resolution Plan for the ease of continuation of business has ratified the effect given pursuant to the Business Transfer Agreement and accordingly the Financial Creditor shall be deemed to be Lender of the Corporate Debtor for the loan granted by SIFL in addition to its own loan.
- 2.8. In order to secure the aforesaid contracts, the Corporate Debtor had executed various documents being deeds of hypothecation creating charge over all movable assets, trademark/brand 'Kitply' of the Borrower and receivables as also pledged of shares of the Corporate Debtors by its shareholder. Copies of deed of hypothecations is annexed as '*Annexure H*' and copy of Pledge Agreement by the shareholder is annexed as '*Annexure I*'.
- 2.9. In order to secure the said loans the Corporate Debtor created security by way of an exclusive mortgage by depositing original title deeds of the property being land parcels admeasuring 434.541 Hec or 1073.316 Acres at villages Nagpur, Purda/Nawgaon Purda, Chetwa, Dhuma, Konka-Ronda, Tekapar, Kandai, Bhand, Sarholi, Kusmi Behra, Penditerai in district Durg and villages Chapora-Khurmura, Boirjitty in district Raipur in the state of Chhattisgarh together with all structures standing thereon in favour of the Financial Creditor on 27.01.2020. A copy of the declaration of mortgage along with a letter dated 27.01.2020 is annexed as '*Annexure J*', the relevant forms of creating charge in favour of the Financial Creditor as filed with the Registrar of Companies is annexed as '*Annexure K*'.



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- 2.10. The entire loan facility was repayable in a single payment at the end of 5 years, from the initial date of disbursement. During the tenure of the loan, the Corporate Debtor was irregular in payment of interest accruing in terms of the loan facility agreement.
- 2.11. After that the corporate debtor was called upon to make payment of the interest dues falling due from time to time. Despite the due date for repayment of the entire loan and other dues having expired on 28.01.2024, the Corporate Debtor has failed to repay the same and is thus in default. Copies of letters sent by SEFL to Corporate Debtor dated 16.03.2021, 11.06.2021 and 25.02.2022 is annexed as '*Annexure L*'.
- 2.12. It may be relevant to note in this regard that the Financial Creditor was acting through the Administrator appointed by the RBI, has initiated proceedings, inter-alia, against the Corporate Debtor, under Section 66 of the Code. As the filing of the said application, does not in any manner absolve the Corporate Debtor of its default in making payments of the outstanding loan, the instant application is competent and maintainable.
- 2.13. In this context it may also be noted that although entitled to do so, the Financial Creditor has not avoided the loan transaction with the Corporate Debtor and in consequence entitled to exercise its rights in view of the Corporate Debtor's default in the matter of the repayment of the same. A copy of the application under Section 66 of the said Code (without annexures) is annexed as '*Annexure N*'.
- 2.14. Filing of the application, inter-alia, against the Corporate Debtor's under Section 66 of the Code, being independent of the remedies available to a Financial Creditor under Section 7 of the Code, the instant application can be entertained by this Hon'ble Tribunal, and necessary order can be passed therein for the commencement of the CIRP of the Corporate Debtor.
- 2.15. The instant application as such is being filed without prejudice to the Financial Creditor's rights and contentions, in its application filed under Section 66 of the said Code.
- 2.16. The Corporate Debtor is in default of the aggregated some of Rs. **3,33,58,76,382/-** (Rupees Three Hundred Thirty Three Crores Fifty Eight Lacs



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Seventy Six Thousand Three Hundred Eighty Two only) as on **26.04.2024** with the Date of Default was on **28.01.2024**. Hence this petition.

3. Submissions by the Respondent/Corporate Debtor *vide* Reply Affidavit dated 24.07.2024 filed on 29.07.2024:

3.1. Mr. Anurag Saxena, Authorized Representative of the Corporate Debtor, filed an Affidavit in Reply on behalf of the Corporate Debtor and raised objection that there is no genuine alleged debt or default by the Corporate Debtor. Thus, section 7 petition is mala fide and fraudulent. The Financial Creditor is using the provisions of the Code as a recovery tool and not for the genuine purpose of resolution of any insolvency situation under the Code.

3.2. Further, the Corporate Debtor submitted the background and preliminary submissions which facts have been deliberately and mischievously concealed to mislead this Hon'ble Adjudicating Authority and to commit a fraud on this Hon'ble Adjudicating Authority as regard alleged debt and default on the part of the Corporate Debtor.

a. The Corporate Debtor has already undergone the CIRP earlier *vide* order dated 01.05.2018 passed by this Hon'ble Tribunal, on an application filed under Section 7 of the Code by one of its erstwhile Financial Creditor of the Corporate Debtor, namely IDBI Bank. A copy of the order dated 01.05.2018 is annexed as '*Annexure R-1*'.

b. Before initiation of CIRP in respect of the Corporate Debtor, SIFL, a duly registered NBFC with the RBI in the year 2017 had acquired secured Non-Convertible Debentures issued by Corporate Debtor and held by Asset Reconstruction Company (India) Limited ('ARCIL') and also purchased another set of secured Non-Convertible Debentures held by Snow Blue Shoppers Private Limited ('SSPL') from SSPL by way of independent transactions without any recourse and reference to the Corporate Debtor.

c. In pursuance of this, on the initiation of the CIRP, SIFL filed its claim as financial creditor under the Code and the same was admitted by the erstwhile Resolution Professional ('RP') and SIFL was assigned a voting share of 91.54% in the Committee of Creditor ('CoC') of the Corporate Debtor.



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- d. SREI Multiple Asset Investment Trust (Vision India Fund) ('Vision India Fund'), one of the related entities of SIFL had submitted a Resolution Plan in respect of the Corporate Debtor which came to be approved by the CoC in their meeting held on 22.10.2018 with 92.74% votes and was further, approved by this Hon'ble Tribunal *vide* order dated 07.12.2018.
- e. As per the declaration contained in the said Resolution Plan, Vision India Fund was a Category II Alternative Investment Fund set up under the SEBI (Alternative Investment Fund) Regulations, 2012, by SREI Multiple Asset Investment Trust (SMAIT) having SREI Alternative Investment Managers Limited, renamed as Trinity Alternative Investment Managers Limited (Trinity) as its manager. Copy of the approved Resolution Plan submitted by Vision India Fund is annexed as '*Annexure R-2*' and copy of the order dated 07.12.2018 is annexed as '*Annexure R-3*'.
- f. At the time of approval of the Resolution Plan of the Corporate Debtor, Trinity was a 100% owned subsidiary of SIFL. Sometime in 2020, SIFL sold 49% of its shareholding in Trinity to one Payaash Capital Singapore Pte Ltd. Therefore, on the approval of the Resolution Plan of Vision India Fund in respect of the Corporate Debtor, SIFL by way of operation of law, became a related party of the Corporate Debtor in terms of Section 5(24) of the Code.
- g. It is also important to note that in terms of Regulation 2 (q) of SEBI (Alternative Investment Funds) Regulations, 2012, a 'manager' of an alternative investment fund is defined '*as any person or entity who is appointed by the Alternative Investment Fund to manage its investments by whatever name called and may also be same as the sponsor of the Fund*'. Therefore, by the said definition, it is evident that Trinity also became a related party of the Corporate Debtor by operation of law, and was, fact in control of the management of the Corporate Debtor after the approval of the Resolution Plan, based on approval of the Resolution Plan of Vision India Fund another related entities of the Financial Creditor by this Hon'ble Adjudicating Authority.
- h. Further, various appeals were filed against the Approval Order passed by this Hon'ble Tribunal before NCLAT however, all of them came to be dismissed by the Hon'ble NCLAT and thus, the Resolution Plan as approved by this



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- i. Hon'ble Authority vide order dated 07.12.2018 attained finality and became binding on all in terms of Section 31 of the Code.
- j. In terms of the Approval Order, a special purpose vehicle, namely, Plytium Marketing Private Limited ('PMPL') came to be incorporated by the Vision India Fund as the Resolution Applicant for acquiring and managing the affairs of Corporate Debtor. Under the Resolution Plan, PMPL was required to bring in and pay a consolidated sum of Rs. 175 Crore to take over the Corporate Debtor as resolution amount against the outstanding admitted claims of the creditors of the Corporate Debtor. It is noteworthy that, out of the said sum of Rs.175 Crore, a sum of Rs.167.74 Crore, or about 96.1 %, was earmarked to be paid to SIFL against its claim as secured financial creditor in the CIRP. Only a meagre sum of 7.26 Crore was to be distributed among all other creditors of Corporate Debtor.
- k. As part of the implementation of the Resolution Plan, PMPL acting on instructions and control of Trinity, caused approval and sanction of alleged financial assistance to the Corporate Debtor from the Financial Creditor and SIFL for a limit of Rs.130 Crore and Rs.120 Crore respectively for meeting of the obligation as resolution amount in terms of the approved Resolution Plan. Pursuant thereto, a total sum of Rs.96.27 Crore from the Financial Creditor and Rs.81.65 Crore from SIFL came to be infused into the Corporate Debtor. From the said amount of Rs.177.92 Crore, SIFL itself received Rs.167.74 Crore under the approved Resolution Plan and the balance amount was distributed amongst other creditors. A copy of the bank accounts of the Corporate Debtor highlighting money disbursed by Financial Creditor and SIFL to the Corporate Debtor and money being disbursed back to SIFL and the Financial Creditor as per the approved Resolution Plan is annexed as '*Annexure R-4*'.
1. It is submitted that no real borrowing transaction had taken place and the alleged financial assistance was merely brought into the Corporate Debtor for funding the Resolution Amount under the approved Resolution Plan. The alleged disbursement was therefore not in the nature of a financial debt but constituted book entries made for implementation of the Resolution Plan. The



entire alleged debt is merely a book entry arising out of implementation of the approved Resolution Plan dated 07.12.2018.

- m. It is pertinent to note that in the meantime, on 04.10.2021, RBI superseded the board of directors of both SIFL and the Financial Creditor.
- n. The facts and circumstances clearly establish that the present proceedings are fraudulent and malicious in nature and have been instituted with ulterior motives including obtaining illegitimate gains by erasing operational and statutory dues of the Corporate Debtor and using the Code as a mechanism for recovery. The material facts relating to the nature of transactions and implementation of the Resolution Plan have been deliberately concealed by the Financial Creditor.
- o. Reliance is placed upon the judgment of the Hon'ble NCLAT in *Ocean Deity Investment Holdings Ltd. Vs Suraksha Asset Reconstruction Ltd. and Anr (2022 SCC OnLine NCLAT 3534)*, wherein it was held that the Adjudicating Authority ought to have examined the 'nature of these financial transactions' having regard to the Investigation Reports which were filed by the Appellant herein, the violation of the Articles of Association and assessed whether the transactions were collusive in nature or not and used its *discretion* whether to admit such an Application or not, keeping in view the scope and objective of the Code., a similar case as the present one has observed that merely because there is a debt and default, it cannot be construed that a section 7 application is maintainable.
- p. Reliance is also placed upon the judgment of the NCLT, New Delhi Bench II, in *Zoom Communications Private Limited Vs M/s Par Excellence Real Estate Private Limited*, a case similar to the present one which was later by upheld by the Hon'ble NCLAT *vide* order dated 27.07.2022 had lifted the corporate veil and rejected section 7 proceedings, initiated on the basis of sham transactions.
- q. It is also pertinent to note that the management of Financial Creditor had change pursuant to approval of Resolution Plan of NARCL, however, the Financial Creditor ought to have disclosed these facts which have been deliberately and mischievously concealed by it in the present Application.



r. It is submitted that during CIRP proceedings of SIFL and the Financial Creditor, the Administrator/Resolution Professional itself filed an application under Section 66 of the Code being IA No.949/2022 against the Corporate Debtor and other parties alleging fraudulent and wrongful trading. The Administrator itself sought the following reliefs therein:

- *to grant a Declaration that the loans advanced to Respondent No. 1 being Contract Nos. 1268 and 177125 with a gross loan outstanding sum of Rs. 228.66 crores (Rupees Two Hundred and Twenty Eight Crores and Sixty Six Lakhs) are fraudulent transactions and amount to fraudulent/wrongful trading under Section 66 of the Insolvency and Bankruptcy Code for which the Respondents are jointly and severally liable;*
- *to grant an Order and Injunction directing the Respondents to jointly and severally pay a sum of Rs. 228.66 crores (Rupees Two Hundred and Twenty Eight Crores and Sixty Six Lakhs) towards the gross loan outstanding in the loan accounts of the loans being Contract Nos. 1268 and 177125 of Respondent No. 1 and to pay interest on the said sum at a rate of 18% per annum from 1<sup>st</sup> October 2021 till realization;*
- .....

s. In IA No. 949/2022, the Administrator/Resolution Professional of the Financial Creditor and SIFL has made certain averments.

**30.1 Loan 1 sanctioned without detailed break up given in the loan sanction letter:** *Loan 1 was sanctioned to Kitply by SIFL-TU vide CIC Meeting No. 427 on 29 December 2018. The purpose of Loan 1 was, ostensibly, “The loan shall be utilized for development of 1200 acres of land spread across Raipur and Durg, Chhattisgarh, for storage of post-harvest agriculture products including claim settlement & refinance”. Neither the sanctioned letter nor the CIC minutes stated the value wise breakup of the intended use of the loan between the different purposes, i.e., development of land, claim settlement and refinancing. This seems highly unusual as Loan 1 was sanctioned to Kitply without clearly knowing the detailed particulars and/or itemized breakup of the end use of the loan. This suggests that limited due diligence was carried out before Loan 1 was sanctioned and disbursed to Kitply.*



**30.2 Loan 2 sanctioned without detailed break up given in the loan sanction letter:** Loan 2 was sanctioned to Kitply by SEFL vide CIC Meeting No. 299 on 25<sup>th</sup> December 2018. The purpose of Loan 2 was, ostensibly, “1. Part payment envisaged under the resolution plan. 2. Cost of the balancing equipment required in plywood business. 3. The loan shall be utilized for development of 1200 acres of land spread across Raipur and Durg, Chhattisgarh for storage of post-harvest agriculture products”. Neither the sanctioned Letter nor the CIC minutes stated the value wise breakup of the intended use of the loan between the different purposes, i.e., equipment, development of land, and claim settlement, this seems highly unusual as Loan 2 was sanctioned to Kitply without clearly knowing the detailed particulars and/or itemized breakup of the end use of the loan, This suggests that limited due diligence was carried out before Loan 2 was sanctioned and disbursed to Kitply.

**30.3 Loans utilized for settlement of claims under the Resolution Plan submitted by VIF, a connected party of SREI:** Kitply Industries was established in the 1982 by Shri S. P. Goenka and was primarily engaged in manufacturing of various grades of plywood, block boards, flush doors, and technical grade specialty wood. In 1996, the Hon’ble Supreme Court of India passed an Order banning felling of trees and utilisation of felled stock in the North-Eastern region of India, resulting in closure of Kitply’s manufacturing units, post which, Kitply underwent various rounds of restructuring. As a part of restructuring scheme (CDRJ, Kitply issued secured NonConvertible Debentures (“NCDs”) amounting to Rs. 220 crores to various secured creditors. In 2017, SREI purchased NCDs from Asset Reconstruction Company (India) Limited (“ARCIL”) and Snowblue Shoppers Private Limited (“SSPL”) at a value of Rs. 7 crores. CIRP was initiated against Kitply by one of its lenders and Kitply was acquired by Plytinum Marketing Private Limited (“PMPL”), an investee company of Srei Multiple Asset Investment Trust - Vision India Fund (“VIF”) in December 2018 under a Resolution Plan approved by NCLT, Guwahati, The BDO Report observes that as a part of the Resolution Plan, VIF needs to pay an upfront cash amount of Rs. 175 crores (“Resolution Fund”). The Resolution Fund is to be paid towards the full and final settlement of Insolvency process cost, financial creditor claims, claims of workmen and employees, other operational creditors, and statutory dues, as more particularly detailed in the BDO



*Report. VIF proposed to arrange the aforesaid funds as: (i) Equity of Rs. 1 crore; (ii) Unsecured Loan of Rs. 4 crores; and (iii) Secured Loan of Rs. 170 crores. However, it appears that Kitply has arranged the funds in the form of Loan 1 and Loan 2 which were subsequently sanctioned and disbursed to Kitply by SIFL/SEFL. As per the end use certificate of Loan 1 dated 8<sup>th</sup> November 2019, the disbursement of Rs. 81.65 crores was utilised towards part payment of the outstanding dues of various stakeholders as per the Resolution Plan. Similarly, as per the end use certificate of Loan 2 dated 29<sup>th</sup> March 2019, the disbursement of Rs. 93.37 crores was utilised towards payment to various stakeholders as per the Resolution Plan. Out of Rs. 93.37 crores, major payment of Rs. 89.56 crores was made to the financial creditors. The BDO Report further observes that on a review of the financial statements of Kitply for the F. Y. 2018-19, it appeared that Kitply had repaid the entire NCDs of Rs. 220 crores.*

*30. 4 Further, it appears from the BDO Report that the holder of the NCDs was in fact SIFL, who held 1,77,292 debentures of Rs. 10,000/- each. This appears to indicate that loans of SEFL and SIFL were used to redeem NCDs belonging to SIFL itself, highlighting the round-tripping of funds. The same is supported by a review of the financial statements of SIFL for FY 2018-2019, extracted in the BDO Report, wherein it appears that the NCDs of Kitply were redeemed.*

*30.5 Upon review of disbursement reports of loans and collection from NCD redemption, it appears from the BDO Report that disbursements to Kitply from SEFL ISIFL and collections from Kitply Industries in SIFL for NCD redemption had occurred on the same date and for a similar value thereby indicating that disbursements to Kitply Industries were used to redeem NCDs to SIFL. The same is extracted and summarised in Table 5.64.13c of the BDO Report.*

*30.6 From the aforesaid, it appears that the entire amounts disbursed under Loan 1 and Loan 2 were not utilised for all the stated purposes but were only utilised for one of the stated purposes, i.e., settlement of claims as per the Resolution Plan. It is highly unusual that the loans were sanctioned to Kitply even after being aware that one of the stated purposes was settlement of claims as per the approved Resolution Plan. The Resolution Plan was submitted by VIF. This indicates that Loan 1 and Loan 2 were indirectly given to VIF to fund the claims as per the approved Resolution Plan. It is*



*also surprising that the loans were sanctioned to Kitply immediately after approval of the Resolution Plan, indicating that the loans were only sanctioned to settle the claims under the Resolution Plan and not for any of the other stated purposes.*

A copy of IA No. 949/2022 without annexures in 'Annexure R-5'.

- t. Form perusal of averment made by the Administrator/Resolution Professional, it clearly establishes that loans from the Financial Creditor and SIFL to the CD were nothing but circuitous and round-tripping transactions in nature and not at all a lending transaction as contended in the present application.
  - u. It is therefore submitted that the Administrator of the Financial Creditor itself has questioned the validity and genuineness of the very same transactions now being relied upon in the present Section 7 proceedings. Once the Administrator itself alleges the transactions to be fraudulent and seeks avoidance under Section 66 of the Code, no proceedings under Section 7 can be maintained simultaneously on the same alleged debt and default.
- 3.3. The Respondent further submitted that applicant has not filed the Business Transfer Agreement dated 16.08.2019 with the company petition which is a necessary document as respondent is not only claiming alleged debt and default of alleged financial assistance granted by it to the Corporate Debtor but also the alleged debt and default in respect of alleged financial assistance granted by SIFL to the Corporate Debtor.
- a. It is submitted that in the Company Petition filed by the Financial Creditor, the Financial Creditor has sought to claim not only its own alleged debt but also alleged debt arising from financial assistance allegedly granted by SIFL on the basis of the Business Transfer Agreement dated 16.08.2019. However, despite reliance upon the said agreement, the Financial Creditor has failed to place the same on record.
  - b. It is further to mention that the Financial Creditor also in para F of the Company Petition categorically admitted that the so called Business Transfer Agreement dated 16.08.2019 was not approved by lenders of both the Financial Creditor and SIFL which is mandatory as both the Financial Creditor and SIFL were carrying on the business as NBFC and thus the



- alleged Business Transfer Agreement dated 16.08.2019 amongst them appears to be illegal and impermissible.
- c. In fact in IA No.949/2022, filed by the Administrator before the Hon' ble Adjudicating Authority, Kolkata Bench, the Administrator has questioned the veracity of the alleged Business Transfer Agreement in para 30 of the said IA. Despite the above, the Financial Creditor has relied upon the same for the purpose of including alleged debt and default in respect of SIFL as well in the present Application.
- d. The Business Transfer Agreement dated 16.08.2019 or the relevant extract of the Resolution Plan of NARCL ratifying the said Business Transfer Agreement which the Financial Creditor is relying on in the present company petition to prove the existence of alleged debt with regard to SIFL against the Corporate Debtor and thus, a copy of the same should be brought on record before this Hon'ble Adjudicating Authority and the same should be supplied to the Corporate Debtor herein so that it could be ascertained whether the Section 7 application for the alleged debt and default of SIFL is even maintainable or not at the first place.
- e. In terms of Section 7(2) of the Code read with Rule 4(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, where the applicant is an assignee or transferee of a financial contract, the application must be accompanied by the assignment or transfer agreement and all relevant documentation.
- f. Reliance is placed upon the judgment of the Hon'ble NCLT Kochi Bench in *Phoenix ARC Private Limited Vs Cherupushpam Films Private Limited [2023 SCC OnLine NCLT 12700]*, wherein section 7 application for not furnishing the Deed of Assignment in terms of Rule 4(2) of AA Rules and held the Section 7 petition to be incomplete and non-maintainable in view of the same.
- g. Furthermore, the Respondent on 11.07.2024 made submission before this Tribunal to direct the Financial Creditor to bring on record the Business Transfer Agreement dated 16.08.2019 or relevant extract. Despite of that, this Tribunal did not pass any order for production of that document and granted 10 days' time to file reply with cost of Rs. 25,000/-.



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- h. Pursuant to this, the Respondent filed Company Appeal (AT) (INS) No.1374/2024 before the Hon'ble NCLAT challenging the order dated 11.07.2024, wherein the NCLAT deleted the Cost and granted time to file reply before next date i.e., 25.07.2024. Despite of that the Financial Creditor failed to supply the Business Transfer Agreement dated 16.08.2019, therefore the Corporate Debtor reserves its rights to file additional pleadings upon production of the said documents. A copy of the order dated 22.07.2024 passed by the Hon'ble NCLAT is annexed as '*Annexure R-6*'.
- 3.4. The Respondent further submitted that the present petition is also not maintainable on account of inclusion of alleged amount in default within the period falling under Section 10 A of the Code.
- a. The present petition is also in violation of Section 10A of the Code and in filing the present Company Petition, the Financial Creditor appears to have lost sight of the fact that Section 10A of the Code specifically bars any claims in relation to any defaults allegedly occurring from 25.03.2020 to 25.03.2021.
- b. As per the Financial Creditor's own case, a default notice dated 16.03.2021 was issued alleging failure and neglect on the part of the Corporate Debtor to clear outstanding dues.
- c. Thus, the event of alleged default occurred on 16.03.2021 as per the own case of the Financial Creditor. However, to wriggle out of the mandate as per Section 10A of the Code, the Financial Creditor has unjustly attempted to create an incorrect premise by deliberately mentioning incorrect particulars that the Corporate Debtor defaulted on 28.01.2024 which are contrary to the facts of the present case. It is further pertinent to note that the Financial Creditor had further sent notices of default vide letter dated 11.06.2021 and 25.02.2022 to the Corporate Debtor in an attempt to extend the event of alleged default.
- d. Reliance is placed upon the judgment of the Hon'ble Supreme Court in *Ramesh Kymal Vs M/s Siemens Gamesa Renewable Power Pvt. Ltd [2021 SCC Online SC 72]*, wherein it was held that no application shall ever be filed for defaults occurring during the period covered by Section 10A.



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- e. In view of the above, no claim in respect of the alleged debt and default falling within the period hit by Section 10 A of the Code can be maintainable and thus, the Financial Creditor ought to be directed to exclude the amount and alleged default falling in that period from total alleged default under the present petition and in absence of it, the same is not maintainable.
- 3.5. The Respondent further submitted the Conduct of Business of the Corporate Debtor after Approval of Resolution Plan.
- a. It is submitted that after approval of the Resolution Plan, the business of the Corporate Debtor has continuously grown and the Corporate Debtor is presently a solvent and going concern entity. The Corporate Debtor is registered under the MSME Act, 2006 and possesses a valid Udyam Registration Certificate. A copy of the Udyam Registration Certificate is annexed as 'Annexure R-7'.
- b. It is pertinent to mention that the preamble of the Code has been very carefully worded to describe the spirit and objective of the Code to be 'Reorganization' and 'Insolvency Resolution', specifically omitting the word 'Recovery'. The Parliament has made a conscious effort to ensure that there is a significant difference between 'Resolution' and 'Recovery'.
- c. Reliance is placed upon the judgment of the Hon'ble Supreme Court in *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited, (2018) 1 SCC 353*, wherein if the provisions of the Code are being misused for the purpose of Debt Recovery, particularly when the amounts due are small, and the Company is a solvent entity and is a going concern, the question of 'Reorganizing' or 'Resolution of the Company' does not arise.
- d. Reliance is also placed upon the judgment in *Binani Industries Limited Vs Bank of Baroda & Anr., Company Appeal (AT) (Ins.) No. 82 of 2018 [2018 SCC Online NCLAT 565]*, wherein it was held that the Code is not a recovery proceeding.
- e. Further the Hon'ble Supreme Court in *SS Engineers Vs Hindustan Petroleum Corporation /2022 SCC OnLine SC 1385]* , *Invent Asset Securitisation and Reconstruction Private Limited Vs Girnar Fibres Limited /2022 SCC Online SC 808)* and *"Transmission Corporation of A.P. Ltd. Vs. Equipment Conductors & Cables Ltd."*, *"Mobilox Innovations (P) Ltd v. Kirusa Software (P) Ltd."* [2017



*SCC Online SC 1154*] wherein it has been held that the provisions of the Code are essentially intended to bring the Corporate Debtor back to its feet and are not of money recovery proceedings as such.

- 3.6. That all the agreements allegedly executed between the Corporate Debtor and the Financial Creditor are disputed as sham documents as the alleged debt was merely a book entry which was created as part of the Resolution Plan approved by this Hon'ble Adjudicating Authority. That SIFL was a CoC member of the Corporate Debtor during CIRP with 91.54% voting share. SMAIT, related entity of SREI group submitted a plan which got later approved *vide* order dated 07.12.2018. That the Resolution Applicant thereafter created a trust by the name of Trinity and took money from SIFL and Financial Creditor and paid almost 95% of the money back to SIFL as part of the Resolution Proceeds.
- 3.7. Thus, there is no alleged debt that is payable by Corporate Debtor to the Financial Creditor and SIFL nor there is any alleged default on part of the Corporate Debtor as the alleged debt is a mere book entry which was created as part of the Resolution Plan of the Corporate Debtor approved by this Hon'ble Adjudicating Authority *vide* order dated 07.12.2018.
- 3.8. It is further pertinent to note that the Financial Creditor had further sent notices of default *vide* letter dated 11.06.2021 and 25.02.2022 to the Corporate Debtor in an attempt to extend the event of default.
- 3.9. In view of the aforesaid facts and circumstances, the Respondent prays that the present Application under Section 7 of the Code be rejected as the same is misconceived and non-maintainable as thus doesn't call for initiation of the CIRP again in respect of the Corporate Debtor.
4. Additional Submission by the Applicant/SEFL *vide* Rejoinder dated 28.11.2024.
  - 4.1 The Applicant submitted that before dealing with the various allegations contained in the reply affidavit dated 24.07.2024, the applicant submitted as follows:
    - a. The fact that there is a debt in excess of Rs.1.00 Crore and such debt in default has not been disputed in the Reply Affidavit by the Corporate Debtor.
    - b. The fact that prior to the debt of default, the Corporate Debtor had acknowledged the fact of assignment of debt by way of Business Transfer



Agreement by SIFL in favour of the SEFL is also not in dispute. The Corporate Debtor has not denied or disputed the declaration of mortgage issued by the Corporate Debtor on January 27, 2020 in favour of the Financial Creditor. The Corporate Debtor has in fact acted upon such assignment and has created mortgage / further security in favour of the Financial Creditor herein for the entire loan, that is the loan extended by the Financial Creditor and the assigned loan, originally disbursed by SIFL.

- c. The assignment of the entire business of SIFL in favour of the Financial Creditor herein has also been on the basis of judicial orders and operation of law. By virtue of the Resolution Plan approved by the Hon'ble NCLT, Kolkata Bench on August 11, 2023 in respect of both SIFL and SEFL, the assignment has been given effect to.
- d. Thus, by virtue of such Resolution Plan, such loan having stood transferred in favour of the Financial Creditor herein, no further document or any other action was required by the Financial Creditor to prove it's right in respect of the amounts. A copy of the order of Approval of Resolution plan dated 11.08.2023 is annexed as '*Annexure A*'.
- e. The Financial Creditor submitted that it had sanctioned a loan of Rs.130.00 Crores under Contract No. 177175 dated 24.01.2019, out of which Rs.96.27 Crores was disbursed to the Corporate Debtor. It was submitted that the default in repayment of the said amount along with accrued interest is admitted and exceeds the statutory threshold of Rs.1.00 Crore. The Financial Creditor further submitted that the details of disbursement, remain undisputed and therefore, the allegation regarding non-disclosure of the Business Transfer Agreement is immaterial for deciding the existence of 'debt' and 'default'. Accordingly, the Petition is liable to be admitted.
- f. The Financial Creditor submitted that the disbursement of funds to the Corporate Debtor is admitted and was made against consideration for time value of money and payment of interest. It was further submitted that the utilization of the funds is immaterial and the amount constitutes a valid financial debt under the Code, which remains in default.



g. The Financial Creditor submitted that CD is neither the owner Corporate Debtor and that Plytanium Marketing Pvt. Ltd. is the shareholder of the Corporate Debtor. It was further submitted that although allegations were made regarding the Financial Creditor being a related party, the Financial Creditor itself had undergone CIRP and pursuant to approval of the Resolution Plan on 11.08.2023, there has been a complete change in its management. Therefore, the present management cannot be equated with the management existing in 2018-19.

From the above, the following emerge:

- h. Trinity Alternative Investment Managers Limited (TAIML) was a Settlor of the Trust, SREI Alternative Investment Trust (SAIT) (as per SEBI requirements).
  - i. After the formation of the Trust with Independent Trustees, the role of TAIML as Settlor ceased and now all powers vest with the Trustees.
  - j. Beneficiaries of the Trust are the contributors to the various Funds/Schemes floated by the Trust.
  - k. Thereafter, the Trustees duly appointed TAIML as the Fund Manager for a fee.
  - l. As a Fund Manager, TAIML places proposals before an independent committee of SAIT for their decisions on investments under different schemes/funds under the Trust as per the SEBI requirements.
  - m. TAIML has no role in investment decisions of the SAIT-IRF nor any control over any investee companies of the Fund/Scheme.
- 4.2 The Applicant further submitted that the Financial Creditor denied the allegations that the Corporate Debtor is not in default or that the proceedings under the Code have been initiated merely as a recovery mechanism. It was further denied that any material facts were concealed or that any fraud was committed to this Adjudicating Authority.
- 4.3 The Financial Creditor submitted that upon approval of the Resolution Plan dated 07.12.2018, all liabilities and loans stood extinguished and loans obtained by the Corporate Debtor under the contracts in question are post approval of the Resolution Plan and are fresh loans. Utilization of the loan amounts is not



- disputed and that the same were utilized for repayment of creditors in terms of the Resolution Plan.
- 4.4 It was further submitted that fresh loan transactions were entered into with fresh securities being created and that the Corporate Debtor had enjoyed the loan facilities along with a substantial moratorium period without disputing its liability, for the first time after filing of the present proceedings, has set up a story. Accordingly, it was denied that the amounts disbursed by the Financial Creditor and SIFL were mere book entries or not in the nature of financial debt.
- 4.5 The Financial Creditor denied the allegations that no real borrowing had taken place or that the transactions were merely book entries created to satisfy obligations under the Resolution Plan at the behest of Trinity controlled by Vision India Fund. It was further denied that no financial debt was payable by the Corporate Debtor or that there was no default on its part. With regard to the judgments relied upon by the Corporate Debtor, the Financial Creditor submitted that the same are inapplicable to the facts of the present case
- 4.6 The Financial Creditor denied the allegations that the present Company Petition is not maintainable on account of concealment or suppression of material facts with fraudulent intent. It was submitted that the Corporate Debtor itself has admitted the change in management of the Financial Creditor, which nullifies the allegations raised against the earlier management. Accordingly, it was contended that no question of suppression or concealment arises.
- 4.7 The Financial Creditor further submitted that proceedings under Section 66 of the Code are independent and distinct from proceedings under Section 7 of the Code and have no bearing on the maintainability of the present application. It was submitted that the scope and purpose of enquiry under Section 66 are entirely different from the determination of debt and default under Section 7 of the Code. The allegations under Section 66 of the Code pertain to alleged fraud committed upon the Financial Creditor and do not relate to the existence of financial debt or default, which are the issues for consideration in the present proceedings. Accordingly, the contrary allegations were denied and disputed.
- 4.8 The Financial Creditor submitted that the Business Transfer Agreement had already been accepted and acted upon by the Corporate Debtor prior to



occurrence of default and that the Corporate Debtor had also extended security for the entire loan amount disbursed by the Financial Creditor as well as SIFL. Accordingly, it was submitted that the status of the Financial Creditor as assignee is not in dispute and requires no further proof. It was further submitted that the assignment of the loan of SIFL took effect by operation of law and therefore no separate document was required to be produced.

- 4.9 The Financial Creditor further submitted that the Corporate Debtor, having acted upon the assignment and availed further benefits from the Financial Creditor by treating it as the lender in respect of the entire financial debt, cannot allege non-compliance with Rule 4 of the NCLT Rules, 2016. It was also submitted that the judgments relied upon by the Corporate Debtor relate to Deeds of Trust and are inapplicable to the present case involving a Business Transfer Agreement.
- 4.10 The Financial Creditor contended that the Business Transfer Agreement doesn't form part of the public record arising out of the order passed by the Hon'ble NCLT, Kolkata Bench and therefore there was no necessity to separately produce the same. In any event, since the Corporate Debtor had accepted and acted upon the Business Transfer Agreement long prior to the date of default, the question of separately producing the same does not arise. Accordingly, the contrary allegations were denied and disputed.
- 4.11 The Financial Creditor denied the allegations that the present petition is barred under Section 10A of the Code. It was submitted that the debt became due and payable on 28.01.2024, which falls beyond the period covered under Section 10A and therefore the present application under Section 7 is maintainable and satisfies the prescribed threshold limit.
- 4.12 The Financial Creditor further denied that the event of default occurred on 16.03.2021 or that the date of default was incorrectly stated as 28.01.2024. It was submitted that letter dated 11.06.2021 and 25.02.2022 to the Corporate Debtor in an attempt to extend the event of alleged default. Accordingly the obligation to repay the entire loan arose only upon maturity of the loans on 28.01.2024.
- 4.13 It was further submitted that even if disputes exist regarding the quantum of interest payable prior thereto, the admitted debt and default exceed Rs.1.00 Crore and therefore the allegations raised are inconsequential. The Applicant also



submitted that the benefit of Section 10A was intentionally restricted by the legislature to the specified one-year period beginning from 25.03.2020 and debts becoming due after expiry of the said period remain amenable to proceedings under Section 7 of the Code. Accordingly, the contrary allegations were denied and disputed.

- 4.14 The Financial Creditor denied the allegations that no real borrowing had taken place or that the loans advanced by the Financial Creditor and SIFL were merely book entries created to satisfy obligations under the Resolution Plan. It was further denied that no debt is payable by the Corporate Debtor or that no default has occurred. The Financial Creditor submitted that the alleged debt is not a book entry and is independent of the Resolution Plan.
- 4.15 It was further submitted that the payments made under the Resolution Plan were past and concluded transactions and that the borrowings availed by the Corporate Debtor after approval of the Resolution Plan have no connection with the earlier debts, which already stood extinguished and/or repaid under the Resolution Plan. The Financial Creditor denied that the default occurred on 16.03.2021 and clarified that the said communication only related to non-payment of periodic interest. Accordingly the due date for repayment of the entire loan was 28.01.2024 and therefore the date of default mentioned in the application is correct.
- 4.16 The Financial Creditor reiterated that proceedings under Section 66 and Section 7 of the Code are entirely independent and that creation of charge of the debt on Plytanium Marketing Pvt. Ltd. has no bearing on the present proceedings. Accordingly, it was denied that the present application under Section 7 is liable to be dismissed.
5. The Respondent/Corporate Debtor had filed Supplementary Affidavit *vide* dated 26.07.2025:
- 5.1 The Respondent submitted that the Supplementary Affidavit dated 26.07.2025 is filed pursuant to leave granted by this Hon'ble Tribunal dated 21.07.2025.
- 5.2 The Respondent submitted that it was admitted into CIRP under the provisions of the Code by order dated 01.05.2018 passed by the Hon'ble Tribunal.



- 5.3 It was further submitted that the CIRP was resolved pursuant to approval of the Resolution Plan submitted by SREI Multiple Asset Investment Trust (Vision India Fund) by order dated 07.12.2018.
- 5.4 The Respondent submitted that Vision India Fund is a Category II Alternative Investment Fund under the SEBI (Alternative Investment Fund) Regulations, 2012 and its manager is Srei Alternative Investment Managers Limited, presently known as Trinity Alternative Investment Managers Limited. It was submitted that the investments of Vision India Fund are controlled by Trinity.
- 5.5 It was further submitted that Trinity was a wholly owned subsidiary of Srei Infrastructure Finance Limited (SIFL), which is also the holding company of SEFL, and presently SIFL continues to hold 51% equity shareholding in Trinity. Therefore, according to the Respondent, SIFL directly controlled Trinity and indirectly controlled the investments of Vision India Fund.
- 5.6 The Respondent submitted that Vision India Fund, through Trinity, incorporated Plytinum Marketing Private Limited as its wholly owned holding company for implementation of the Resolution Plan and acquisition of the entire shareholding of Kitply.
- 5.7 It was further submitted that immediately upon implementation of the Resolution Plan, SIFL came into control of Kitply through Trinity and Plytinum. A chart depicting the flow of control from SIFL to Kitply is annexed as 'Annexure R-2'.
- 5.8 The Respondent submitted that during implementation of the Resolution Plan, the company was managed by a Supervisory Committee consisting of nominees of SIFL and Vision India Fund. It was stated that Ms. Shilpa Modi, nominee of Vision India Fund, was Chief Investment Officer of Trinity and also connected with several companies associated with SEFL and SIFL.
- 5.9 It was further submitted that at the second meeting of the Supervisory Committee held on 09.01.2019, the Committee decided to appoint Ms. Shilpa Modi and Mr. Trilok Rajgharia as directors of Kitply. According to the Respondent, both individuals were connected with and under the control of SIFL/SEFL. The minutes of the meeting dated 09.01.2019 are annexed as 'Annexure R-3' and the LinkedIn profile of Ms. Shilpa Modi was annexed as 'Annexure R-4'.



- 5.10 The Respondent submitted that the Supervisory Committee, allegedly controlled by SIFL, approached and obtained approval from SEFL and SIFL for financing the Resolution Plan. It was contended that instead of arranging funds independently, Vision India Fund obtained financing from SIFL itself for implementation of the Resolution Plan and payment to SIFL. According to the Respondent, Kitply was used merely as a conduit for execution of fraudulent transactions.
- 5.11 It was further submitted that immediately after approval of the Resolution Plan, Vision India Fund caused Kitply to issue a letter dated 12.12.2018 requesting SEFL to grant a loan of Rs.130 Crores even before the first meeting of the Supervisory Committee. The said letter dated 12.12.2018 is annexed as *Annexure R-5*.
- 5.12 The Respondent submitted that the entire transaction, including approval of the Resolution Plan and financing thereof, had been orchestrated by SIFL/SEFL and that the present proceedings were initiated on the basis of ulterior motives.
- 5.13 It was further submitted that the above facts had also been admitted by the Administrator appointed by the Reserve Bank of India in the insolvency proceedings of SEFL/SIFL. The Administrator had filed I.A. (IB) No.949/KB/2022 before the Hon'ble NCLT, Kolkata Bench, which remained pending for adjudication. A copy of the application together with annexures is annexed as '*Annexure R-6*'.
- 5.14 The Respondent submitted that the annexures to the said application included a forensic audit report dated 31.08.2022 prepared by BDO India LLP. The audit report disclosed that:
- a. SIFL, SEFL and Kitply were related entities;
  - b. The Board of Directors of Kitply consisted of persons connected with SIFL/SEFL;
  - c. The loan disbursed by SEFL/SIFL to Kitply were routed back to SIFL on the same date and for similar amounts, indicating round tripping; and
  - d. The loans were indirectly provided to Vision India Fund for funding claims under the approved Resolution Plan.



- 5.15 It was further submitted that the very transaction relied upon by SEFL for establishing debt and default in the present proceedings had already been challenged by SEFL itself under Section 66 of the IBC before the NCLT, Kolkata Bench and such proceedings remained pending. Therefore, according to the Respondent, until adjudication of the issue whether the alleged loans were fraudulent or sham transactions, no CIRP ought to be initiated against Kitply in exercising summary proceedings under Section 7 of the IBC.
- 5.16 The Respondent submitted that SEFL had also filed proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 before the Hon'ble Calcutta High Court being A.P. (Com) No.489 of 2025 seeking directions upon Kitply to secure a sum of Rs.243,04,28,074 arising out of the alleged loans disbursed by SEFL and SIFL. A copy of the petition is annexed as '*Annexure R-7*'.
- 5.17 It was further submitted that the Hon'ble Calcutta High Court, while considering the said Arbitration Petition, observed that the question whether the money advanced to Kitply constituted a genuine loan or a sham transaction involving round tripping was required to be decided through arbitration after detailed examination of facts. The Court also observed that the contention that SEFL took control over Kitply through Vision India Fund had prima facie basis. A copy of the judgment dated 02.07.2025 is annexed as '*Annexure R-8*'.
- 5.18 The Respondent submitted that in view of the observations of the Hon'ble Calcutta High Court and the pending proceedings before the NCLT, Kolkata Bench, serious disputes existed regarding the genuineness of the debt and alleged default and such disputed questions could not be adjudicated in summary proceedings under Section 7 of the IBC.
- 5.19 It was further submitted that the present Petition filed by SEFL was not maintainable and deserved dismissal with costs under Section 65 of the IBC as the proceedings were based upon disputed and allegedly fraudulent transactions.
6. Reply on behalf of Applicant/SEFL *vide* dated 06.08.2025 to the Supplementary Affidavit of Financial Creditor/Respondent:
- 6.1 The Applicant submitted that the facts of debt and default is undisputed by the Corporate Debtor and the present application filed under section 7 of the IBC is complete.



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- 6.2 The Applicant further submitted that the scope of Section 66 of the Code and Section 7 of the Code are completely distinct. The Documents filed in the Supplementary affidavit clearly establishes the nexus of the Corporate Debtor in setting up the intervener being certain workers since the document disclosed that the both the CD and Intervener are almost identical.
- 6.3 Further, it is submitted that Arbitral Proceedings relating to recovery proceedings are independent and distinct from the present proceedings. The initiation of recovery proceedings is not bar to present proceeding under section 7 of the Code.
- 6.4 It is further submitted that pendency of the present proceedings were not a bar in initiation or entertaining the reliefs claimed by the Financial Creditor before the Hon'ble High Court at Calcutta. Similarly the proceedings before the Hon'ble High Court at Calcutta can have no bearing, far less a bar in considering and admitting the present application for initiation of CIRP against the Corporate Debtor.
- 6.5 Furthermore, it is submitted that defense raised by the Corporate Debtor regarding grant of injunction on the trademark and the apprehension of delusion of security, order has been passed by the Hon'ble High Court at Calcutta. It is denied that the Hon'ble High Court at Calcutta has concluded that the Arbitrator has to decide on the issue arising before this Hon'ble Tribunal. It is denied that any disputes arising out of the present proceedings cannot be decided by the Hon'ble Tribunal since it is the exclusive domain of this Hon'ble Tribunal to determine the existence of a debt and default as required under the Code
- 6.6 The Applicant further submitted that the Corporate Debtor has unequivocally admitted the debt and default in its own financial statement and thus question of any further adjudication does not arises.

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7. Inv. Pet. (IBC)/ 1/GB/2024 has been filed by Anil Singh & 129 Ors. ('**Intervener**') workers and/or employees of Kitply Industries Limited ('**Kitply**') under Section 65 of the Insolvency and Bankruptcy Code, 2016 ('**the Code**') read with Rule 11 of National Company Law Tribunal Rules, 2016 ('**NCLT Rules**') seeking the following reliefs:
- a. *C.P. (IB) No. 8/GB/2024 be dismissed in limine;*



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- b. *Impose penalty of Rs. 1 Crore be imposed on the Respondent No. 1 in the instant Application, for fraudulently filing the collusive Section 7 Petition against Kitply;*
- c. *Issue notice to the Reserve Bank of India before proceeding any further with hearing of CP (IB) No. 8/GB/2024;*
- d. *Stay of further proceedings in CP (IB) No. 8/GB/2024 till disposal of the instant Application;*
- e. *The Applicants be permitted to intervene in C.P. (IB) No. 8/GB/2024;*
- f. *Ad interim order in terms of prayer (c) above;*
- g. *Costs;*
- h. *Any other order/directions that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances as mentioned above.*
8. Submission by the Intervener:
- 8.1 The Intervener submitted that SEFL/Respondent No. 1 has fraudulently filed the Section 7 Petition under the Code and for reasons other than any insolvency resolution of Kitply. Further, as is stated below, other than the ostensible debt claimed by SEFL, Kitply is a solvent concern that has been under the control of SEFL through its associated entities, by reason of the Resolution Plan approved on 07.12.2018.
- 8.2 Financial Creditor is inextricably interlinked and there is commonality of interest and identity between the person in control of Kitply and the alleged financial creditor namely SREI Multiple Asset Investment Trust (Vision India Fund) or Plytinum and SEFL respectively. It appears that SEFL, being an NBFC being governed by extant RBI regulations, is trying to protect itself from grave penal consequences and/or coercive action because of the utterly fraudulent nature of the transaction underlying the Section 7 Petition.
- 8.3 The Intervener further submitted the Brief Backgrounds of SEFL and SIFL
- a. SEFL, is a non-banking finance company, presently owned by National Asset Reconstruction Limited (NARCL). SIFL is another non-banking finance company, which is also owned by NARCL. SEFL and SIFL are related parties having a common parent body and for all intents and purposes are one and the same and/or alter egos of each other.



- b. This is a fit case for lifting of corporate veil of the alleged FC and the persons in control of Kitply to lay bare the fraudulent mechanism engineered by them in collusion with each other to procure initiation of CIRP.
  - c. The present ownership of SEFL and SIFL is a result of the approval of a resolution plan proposed NARCL in respect of SEFL and SIFL by order dated 11.08.2023 passed by the Hon'ble NCLT, Kolkata Bench in C.P.(IB) Nos.294/KB/2021 and 295/KB/2021 respectively.
  - d. Prior to initiation of CIRP in respect of SEFL and SIFL, both entities had declared one Adisri Commercial Private Limited being their ultimate parent entity. Copy of form AOC-4 NBFC filed by Adisri Commercial Private Limited for the financial year 2022-23, showing SIFL as a subsidiary. Therefore, SEFL and SIFL have been admittedly closely related parties having a common parent.
- 8.4 The Intervener further submitted brief facts about Past CIRP of Kitply.
- a. Kitply was admitted to CIRP by an order of this Hon'ble Tribunal dated 01.05.2018. A CoC of Kitply was formed with financial creditors where SIFL was a majority member of CoC on the basis of an alleged claim arising out of alleged NCDs.
  - b. Hence, SIFL controlled the CoC and the CIRP of the Corporate Debtor with 91.54% vote. For the purposes of the instant application, the references to SIFL and SEFL are interchangeable since such parties are closely related to one another.
- 8.5 The Intervener further submitted brief facts about Resolution Plan of Kitply.
- a. One Srei Multiple Asset Investment Trust (Vision India Fund) ('SREI VIF') proposed a resolution plan for taking over Kitply. SREI VIF is a Category II Alternative Investment Fund under the SEBI (Alternative Investment Fund) Regulations, 2012, setup by Srei Multiple Asset Investment Trust ('SMAIT') having Srei Alternative Investment Managers Limited, renamed as Trinity Alternative Investment Managers Limited ('Trinity'), as its manager.
  - b. The Resolution Plan proposed by SREI VIF was approved by this Hon'ble Tribunal by Order dated 07.12.2018. SREI VIF incorporated a 100% owned Special Purpose Vehicle in the name and style of Plytinum Marketing Private



Limited ('Plytinum') for taking over the 100% share capital of Kitply under the Resolution Plan.

- c. At the time of approval of the Resolution Plan, Trinity was a 100% owned subsidiary of SIFL. In 2020, SIFL sold 49% of the shareholding in Trinity to one Payaash Capital Singapore Pte Ltd. However, SIFL continues to hold majority stake and control over Trinity which continues to be the fund manager for SREI VIF, which in turn owns 100% of Kitply through Plytinum.
  - d. It is important to note that in terms of regulation 2 (q) of the SEBI (Alternative Investment Fund) Regulations, 2012, 'manager' of an alternative investment fund is defined '*as any person or entity who is appointed by the Alternative Investment Fund to manage its investments by whatever name called and may also be same as the sponsor of the Fund*'. Therefore, by the said definition, it is evident that Trinity would be, and is, in control of Kitply after the approval of the Plan, since Kitply is an investment of SREI VIF.
  - e. SEFL, through its alter ego/group company/controlled entity, effectively owns and controls Kitply. Put simply, SEFL is an alter ego of Kitply itself. A chart showing the flow of control is annexed as '*Annexure A-4*'.
  - f. Trinity is the fund manager of SREI VIF and Plytinum is a 100% subsidiary of Trinity. Therefore, Trinity has been and continues to be in control of Kitply through SREI VIF and Plytinum.
- 8.6 The Intervener further submitted brief facts about Implementation of the Resolution Plan of Kitply.
- a. As part of the implementation of the Said Plan, Plytinum, acting on the instructions and control of Trinity, appointed a new Board of Directors of Kitply on 18.01.2019 consisting of Ms. Shilpa Modi and Mr. Trilok Kumar Rajgari. It is important to note that Ms. Shilpa Modi is the Chief Investment Officer of Trinity and also held director position in several other companies connected to SEFL and SIFL.
  - b. Plytinum, acting on the instructions and control of Trinity, appears to have caused the approval/ sanction of ostensible financial assistance to Kitply from SEFL and SIFL for a limit of Rs. 130 Crore and Rs.120 Crore respectively.



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- c. Upon directions of Trinity, Kitply appears to have allegedly withdrawn a total sum of Rs.96.27 Crore from SEFL and Rs.81.65 Crore from SIFL, both of which are related to Trinity, and therefore also related to Kitply.
  - d. Plytinum allegedly infused only a sum of Rs.1 Crore as equity in Kitply and caused SEFL and SIFL to ostensibly provide loan of the alleged sum of Rs. 177.92 Crore. From the said alleged sum of Rs.177.92 Crore, approximately Rs.165.00 Crore appears to have been fraudulently routed back to SIFL on the same day.
  - e. Loans from SEFL and SIFL were fraudulently and collusively approved because Plytinum and Kitply are related entities and the ostensible loan allowed SEFL/SIFL to show unreal book profits. The loans were sanctioned and disbursed in violation of the RBI guidelines and/or regulations that are mandatorily required to be followed by financial entities.
  - f. In fact, in SIFL/SEFL's insolvency process initiated by RBI, the administrator has flagged this very same transaction (based on which the Section 7 Petition is filed) as fraudulent and illegal. The intention of SEFL is to add an element of legitimacy to the transaction by pushing through a CIRP initiation based on the fraudulent documentation/transaction to pre-empt coercive action being taken against it by RBI.
  - g. SEFL and SIFL created book entries by routing funds through Kitply back to SIFL thus creating a book entry of loan against Kitply in its own favour. The entire ostensible loan from SEFL and SIFL was essentially a book entry at the behest of Trinity, the Fund manager of SREI VIF, the Resolution Applicant.
- 8.7 The Intervener further submitted brief facts about Application under Section 66 of IBC filed by the Administrator of SEFL against Kitply.
- a. The Administrator of SEFL, appointed during the CIRP of SEFL, filed an application under Section 66 of IBC against Kitply and the erstwhile promoters of SEFL, alleging that the loan from SEFL and SIFL to Kitply were fraudulent circular transactions wherein the money from SEFL/SIFL was fraudulently routed back to SIFL. The transaction based on which the Section 7 Petition is filed, apart from being fraudulent, is also a scheme for round-tripping and money laundering.



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- b. The Administrator nominated by RBI has categorised the said transactions as fraudulent and has sought SIFL as repayment of NCD, the Administrator wrongfully sought contribution to the CIRP of SEFL from Kitply.
- c. Therefore, no person can be permitted to make a claim in a court of law based on what is a fraudulent document and transaction. The petition is hit by the principle *in pari delicto*. On such ground alone the Section 7 Petition deserves to be dismissed.
- 8.8 Furthermore, the intervener submitted that no real inflow of money came into Kitply from SEFL or SIFL. The business of Kitply grew year on year without any real funds coming into the company from either SEFL or SIFL. Even in the last financial year, no other creditors of Kitply have claimed any default against the company.
- 8.9 Kitply is a healthy and solvent company which should not be pushed into insolvency at the behest of fraudulent claims made by SEFL or SIFL.
- 8.10 It is further submitted by the intervener that there is no real debt that is payable from Kitply to SEFL or SIFL. There is also no default. Therefore, the Section 7 Petition is not maintainable. The alleged debt is a fraudulent book entry which was created as part of the Said Plan of Kitply approved by this Hon'ble Tribunal on December 7, 2018.
- 8.11 The Applicants will be irrevocably and highly prejudiced in the event Kitply is admitted to insolvency on the vexatious and false claim of SEFL. The Applicants, being workers and employees of Kitply are vitally interested in the present proceedings and deserve to be heard before any decision is made on the Section 7 Petition, hence this Intervention Application.
9. Reply on behalf of SREI/Respondent No. 1 *vide* reply dated 24.01.2025 in Inv. Pet. (IBC)/ 1/GB/2024.
- 9.1 The Respondent No. 1 submitted that the Company Petition being C.P. (IB) No. 8 of 2024 has been filed under Section 7 of the Code by Respondent No. 1/Financial Creditor against the Respondent No. 2/Corporate Debtor seeking initiation of CIRP against Respondent No. 2/Corporate Debtor.
- 9.2 The Applicants claiming to be workers/employees of the Respondent No. 2/Corporate Debtor, are in collusion with the Corporate Debtor with a malicious



intent to delay the admission of the insolvency proceedings. It is further submitted that, at the pre-admission stage, intervention by third parties is not maintainable in law and ought not to be entertained.

- 9.3 The present Application is ex-facie not maintainable in law, as the Applicants are neither necessary nor proper parties and have failed to establish any right to intervene in the proceedings.
- 9.4 There is not a single document to substantiate the allegation that any of the Intervener are either employees or workers of the Corporate Debtor. Therefore, on such ground alone, the Application ought to be dismissed at the threshold. Additionally submitted that the Application does not fail to disclose that there is any *locus-standi* of the Applicants to file the said Application.
- 9.5 The Applicants in one breath admit the precarious condition of the Corporate Debtor which led to its CIRP previously, yet question the debt which was taken by the Corporate Debtor under the new Management to overcome such CIRP.
- 9.6 The Intervener are workers, thus bound by the Resolution Plan approved in respect of the Corporate Debtor. There is no allegation that the loan in question in the present proceedings was de hors such Resolution Plan which is binding on the Applicants. In the said Application, the Applicants admit that Resolution Plan of NARCL for the Financial Creditor was approved by NCLT Kolkata Bench. NARCL and/ or the Financial Creditor is admittedly no way connected with or in any manner related party of the Corporate Debtor.
- 9.7 Admittedly, the Corporate Debtor was never owned by the Financial Creditor and Plytanium Marketing Pvt. Ltd., a shareholder of the Corporate Debtor. Further, although allegations have been raised regarding the Financial Creditor being a related party, it is a matter of record that the Financial Creditor itself underwent CIRP and pursuant to approval of the Resolution Plan on 11.08.2023, there has been a complete change in its management. Therefore, the present management cannot be equated with the management existing in 2018–19.
- 9.8 The Respondent No. 1 further submitted that from the record, the following emerge:
- a. Trinity Alternative Investment Managers Limited ("TAIML") was a Settlor of the Trust, SREI Alternative Investment Trust ("SAIT") (as per SEBI requirements).



- b. After the formation of the Trust with Independent Trustees, the role of TAIML as Settlor ceased and now all powers vest with the Trustees.
  - c. Beneficiaries of the Trust are the contributors to the various Funds / Schemes floated by the Trust.
  - d. Thereafter, the Trustees duly appointed TAIML as the Fund Manager for a fee.
  - e. As a Fund Manager, TAIML places proposals before an independent committee of SAIT for their decisions on investments under different schemes/funds under the Trust as per the SEBI requirements.
  - f. TAIML has no role in investment decisions of the fund and floated by the SAIT nor any control over any investee companies of the Fund/ Scheme.
- 9.9 The Respondent No. 1 further submitted that, in view of the aforesaid structure, it is evident that the Corporate Debtor and the Financial Creditor are not related parties. Without prejudice thereto, it was further submitted that there is no embargo under Section 7 of the Code against a related party filing an application. The transaction in question is neither sham nor fraudulent and therefore, the allegations made in the said Application are wholly baseless and liable to be rejected.
- 9.10 The Respondent No. 1 further submitted that there is no ostensible debt claimed by SREI Equipment Finance Limited and that Kitply Industries Limited is neither under the control of SEFL nor its associated entities pursuant to the Resolution Plan dated 07.12.2018 or otherwise.
- 9.11 It was further submitted that the allegations of suppression, misrepresentation, collusive initiation of CIRP, commonality of interest, interlinkage, malicious intent, fraud, or ulterior motive behind filing of the Section 7 Petition are wholly baseless and denied. The Respondent No. 1 also denied that SREI Multiple Asset Investment Trust (Vision India Fund) or Plytinum is a Financial Creditor, or that the Petition has been filed by one group entity against another.
- 9.12 The Respondent No. 1 further denied that SEFL is attempting to misuse the CIRP process, shield itself from penal consequences, or mislead this Hon'ble Tribunal in relation to the transactions underlying the Section 7 Petition.
- 9.13 The Respondent No. 1 further submitted that the present case is not fit case for lifting of the corporate veil or that any fraudulent mechanism was engineered for



initiation of CIRP. It was further denied that the Applicants are workers/employees of Kitply Industries Limited or that they have locus to oppose the Section 7 Petition.

- 9.14 The Respondent No. 1 further submitted that the earlier CIRP of the Corporate Debtor was conducted strictly in accordance with law and the Resolution Plan was approved by this Hon'ble Tribunal after due consideration. The voting share of SIFL in the CoC was stated to be immaterial and it was further submitted that no challenge had been raised at the relevant time regarding constitution of the CoC.
- 9.15 The Respondent No. 1 further submitted that the Financial Creditor is not a related party of the Corporate Debtor and that any past relationship ceased upon approval of the Resolution Plan of the Financial Creditor. The allegations regarding control, alter ego relationship and shareholding structure were specifically denied. It was also denied that Plytinum is a wholly owned subsidiary of Trinity Alternative Investment Managers Limited.
- 9.16 The Respondent No. 1 further submitted that the loan availed from the Financial Creditor was utilized for implementation of the approved Resolution Plan of the Corporate Debtor. Allegations regarding ostensible loans, fraudulent routing of funds, or illegitimacy of transactions were denied. It was further submitted that the allegations pertain to transactions prior to the Resolution Plan of the Financial Creditor and are irrelevant for adjudication of the present Section 7 Petition, where the scope is confined to determination of debt and default.
- 9.17 The Respondent No. 1 further submitted that the proceedings under Section 66 and Section 7 of the Code can proceed simultaneously and independently. The plea that the Petition is barred by the principle of '*Pari Delicto*' or liable to be dismissed was specifically denied.
- 9.18 The Respondent No. 1 further submitted that the loan obtained from the Financial Creditor was admittedly used for implementation of the Resolution Plan to revive the Corporate Debtor from liquidation. The allegations of collusion, fraud, sham transactions, or absence of default were denied. It was further submitted that CIRP would merely result in change of management and would not prejudice employees or continuity of the Corporate Debtor's business.



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- 9.19 The Respondent No. 1 further submitted that the Section 7 Petition is an abuse of process, involves misuse of corporate structures, or practices fraud upon this Hon'ble Tribunal. It was further submitted that the Applicants have no locus or right to intervene in the Section 7 proceedings and that the present Application is mala fide and liable to be dismissed with exemplary costs.
- 9.20 It was further submitted that the Applicants have failed to make out any case in support of the Application and being third parties, cannot intervene in C.P. (IB) No. 8 of 2024 filed by the Financial Creditor. Accordingly, dismissal of the Application in limine with costs was prayed for.
10. Reply on behalf of Kitply/Respondent No. 2 *vide* reply dated 28.01.2025 in Inv. Pet. (IBC)/ 1/GB/2024.
- 10.1 The Respondent No. 2, submitted that the Corporate Debtor in its reply to the Section 7 Petition that the Application is not maintainable inter alia on the ground that the Financial Creditor is a related party of the Resolution Applicant and in turn of the Corporate Debtor, the allegations of collusion between the Financial Creditor and the Corporate Debtor are specifically denied. It was submitted that there is no genuine debt or default and that the Section 7 Petition has been filed mala fide and fraudulently by using the provisions of the IBC as a recovery mechanism for mere book entry rather than for resolution of insolvency.
- 10.2 The Respondent No. 2 further submitted that while denying allegations of collusion, it supports the workers' contention to the limited extent that the Company Petition constitutes an abuse of the provisions of the IBC. It was submitted that the alleged debt is not genuine and that the Company Petition has been filed with ulterior motives to harass the Corporate Debtor and its employees.
- 10.3 The Respondent No. 2 further submitted that the contents of its reply affidavit dated 24.07.2024 filed in C.P. (IB) No. 8/GB/2024 may be read as part of the present reply. It was pointed out that the Corporate Debtor had earlier undergone CIRP pursuant to an order dated 01.05.2018 passed on an application filed by IDBI Bank Limited. During the CIRP, SIFL acquired secured non-convertible debentures and held 91.54% voting share



in the Committee of Creditors. Thereafter, a Resolution Plan submitted by Vision India Fund, stated to be controlled by SIFL was approved by the CoC and by this Hon'ble Tribunal on 07.12.2018 and Plytinum Marketing Private Limited was incorporated as a special purpose vehicle for implementation of the Resolution Plan.

- 10.4 The Respondent No. 2 further submitted that PMPL ostensibly arranged funds from SIFL and SEFL, resulting in payment of Rs. 167.74 crore to SIFL itself. It was submitted that the alleged inflow and transfer of funds constituted mere book entries and circular transactions intended to benefit SIFL under the guise of implementation of the Resolution Plan. These transactions do not amount to genuine borrowings or financial disbursements and therefore no outstanding debt or default exists.
- 10.5 The Respondent No. 2 further submitted that during the CIRP of SEFL, the Administrator appointed by the Reserve Bank of India filed I.A. No. 949/2022 under Section 66 of the Code before the Hon'ble NCLT, Kolkata Bench, alleging that the transactions among SEFL, SIFL and the Corporate Debtor were fraudulent, circular and amounted to round-tripping of funds without genuine infusion into the Corporate Debtor. It was submitted that the alleged debt forming the basis of the present Section 7 Petition arises from the very same transactions alleged to be fraudulent and therefore the maintainability of the Petition is seriously disputed.
- 10.6 The Respondent No. 2 further submitted that the Company Petition is barred by Section 10A of the IBC, since the alleged default admittedly arose during the protected period between 25.03.2020 and 25.03.2021. It was submitted that subsequent notices issued by the Financial Creditor cannot override the statutory embargo contained under Section 10A of the Code.
- 10.7 The Respondent No. 2 further submitted that the Corporate Debtor is a solvent and operational company and that the provisions of the IBC cannot be used as a recovery mechanism. Reliance was placed on judgments of the Hon'ble Supreme Court in *SS Engineers Vs Hindustan Petroleum Corporation [2022 SCC OnLine SC 1385]*, *Invent Asset Securitisation and Reconstruction Private Limited Vs Girnar Fibres Limited [2022 SCC Online SC 808]* and



*Transmission Corporation of A.P. Ltd. Vs. Equipment Conductors & Cables Ltd., Mobilox Innovations (P) Ltd v. Kirusa Software (P) Ltd. [2017 SCC Online SC 1154]* wherein it has been held that the provisions of the IBC are essentially intended to bring the Corporate Debtor back to its feet and are not to be used as money recovery proceedings.

**IA (IBC)/59/GB/2025**

11. IA(IBC)/59/GB/2025 has been filed by Kitply Industries Limited (**'Kitply'**) under Section 65 of the Insolvency and Bankruptcy Code, 2016 (**'Code'**) read with Rule 11 of National Company Law Tribunal Rules, 2016 (**'NCLT Rules'**) seeking the following *reliefs*:

- a. *C.P. (IB) No. 8/GB/2024 be dismissed;*
- b. *Penalty of Rs. 1 Crore be imposed on Srei Equipment Finance Limited for fraudulently filing the present Petition;*
- c. *Further proceeding in C.P.(IB) No.8/GB/2024 be stayed till final adjudication of the instant Application;*
- d. *Ad interim order in terms of prayer (c) above;*
- e. *Costs;*
- f. *Any other order/directions that this Hon'ble Tribunal may deem fit and proper in the above facts and circumstances.*

12. Submission by the Applicant/Kitply:

12.1 The Applicant submitted that this I.A was filed for seeking dismissal of the petition being C.P (IB) No. 8/GB/2024 on the ground that SEFL has initiated the present proceedings fraudulently and with malicious intent for purposes other than insolvency resolution of Kitply.

12.2 The instant Application has been necessitated by recent events that have transpired after the filing of Reply Affidavit by Kitply on or about July 24, 2024 (**'Reply by Kitply'**). Kitply reiterates and confirms all that is stated in the said Reply Affidavit and in the supplementary affidavit dated July 29, 2025 (**'Supplementary Affidavit'**).

12.3 The Applicant submitted that, as stated in the Reply Affidavit and the Supplementary Affidavit, serious disputes exist concerning the transactions



sought to be relied upon by SEFL, which disputes go to the very root of the matter and raise substantial doubt regarding the validity and existence of any debt.

- 12.4 The Applicant submitted that this Hon'ble Tribunal, while exercising summary jurisdiction under the IBC, cannot adjudicate upon the disputes arising in the present matter and therefore the Petition deserves to be dismissed with costs.
- 12.5 The Applicant submitted that SEFL suppressed the fact that Kitply had earlier undergone CIRP pursuant to order dated 01.05.2018, wherein SIFL controlled approximately 91.54% voting share in the Committee of Creditors. The claim of SIFL prior to CIRP was based on certain NCDs amounting to about Rs.176.5 Crore that were purchased from third parties for a consideration of Rs.7 Crore, being a meagre 4% of the face value.
- 12.6 Thereafter SIFL caused SREI Multiple Asset Investment Trust (Vision India Fund) to submit a Resolution Plan dated 10.10.2018 for resolution of the insolvency of Kitply. Vision India Fund is a Category-II Alternative Investment Fund under the SEBI (Alternative Investment Fund) Regulations, 2012 and that Srei Alternative Investment Managers Limited, subsequently renamed as Trinity Alternative Investment Managers Limited ('Trinity'), acted as the manager of the said fund. The Applicant submitted that the investments and affairs of Vision India Fund were controlled and managed by Trinity. A copy of the Resolution Plan dated 10.10.2018 is annexed as '*Annexure A*'.
- 12.7 The Applicant submitted that at the relevant point of time, Trinity was a wholly owned subsidiary of SIFL, which was also the holding company of SEFL. SIFL continued to remain the controlling shareholder of Trinity and thereby continued to exercise control over Vision India Fund and its investments, including Kitply. Therefore, SIFL continues to control Trinity directly, which in tum controls the investments of Vision India Fund, including Kitply. A copy of the letter dated 22.06.2020 issued by Trinity is annexed as '*Annexure B*' and a copy of the shareholding pattern of Trinity is annexed as '*Annexure C*'.
- 12.8 The Applicant submitted that the CIRP of Kitply was resolved by order dated 07.12.2018 passed by this Hon'ble Tribunal approving the Resolution Plan submitted by Vision India Fund. It was further submitted that Vision India



Fund, acting through Trinity, thereafter incorporated Plytinum Marketing Private Limited ('Plytinum') as its wholly owned subsidiary for implementation of the approved Resolution Plan and acquisition of the shareholding of Kitply.

- 12.9 The Applicant submitted that immediately upon implementation of the Resolution Plan, SIFL effectively acquired control over Kitply through Trinity, Vision India Fund and Plytinum. It was further submitted that during implementation of the Resolution Plan, Kitply was managed by a Supervisory Committee comprising nominees connected with SIFL and Vision India Fund, including Ms. Shilpa Modi, stated to be the Chief Investment Officer of Trinity and a person connected with several entities associated with SIFL and SEFL. A copy of the minutes of the Supervisory Committee meeting dated 17.12.2018 is annexed as '*Annexure F*' and a copy of the LinkedIn profile of Ms. Shilpa Modi is annexed as '*Annexure H*'.
- 12.10 The Applicant submitted that during the second meeting of the Supervisory Committee held on 09.01.2019, the Committee resolved to appoint Ms. Shilpa Modi and Mr. Trilok Rajgharia as Board of Directors of Kitply. It was contended that both such individuals were connected with and under the control of SIFL/SEFL. The Applicant further submitted that the Supervisory Committee, controlled by SIFL, had allegedly approached and obtained approval from SEFL and SIFL for financing the Resolution Plan. A copy of the minutes dated 09.01.2019 is annexed as '*Annexure G*'.
- 12.11 The Applicant further submitted that instead of infusing funds from independent sources, Vision India Fund, allegedly controlled by SIFL through Trinity, obtained finance from SIFL/SEFL to finance the resolution plan for paying SIFL itself. It was contended that Kitply was merely used as a conduit for execution of the said transactions.
- 12.12 The Applicant further submitted that even prior to the meetings of the Supervisory Committee, Vision India Fund caused Kitply to issue a letter dated 12.12.2018 requesting SEFL for a loan of Rs.130 Crores, allegedly without any prior documentation. It was submitted that the funds so disbursed were



immediately round-tripped back to SIFL. A copy of the said letter dated 12.12.2018 is annexed as '*Annexure I*'.

- 12.13 The Applicant submitted that the bank statements of Kitply during the relevant period clearly demonstrate inflow of funds from SEFL and corresponding outflow of similar amounts to SIFL, thereby establishing round-tripping of funds. It was submitted that the entire chain of events, commencing from approval of the Resolution Plan to financing thereof, was orchestrated by SIFL/SEFL for unlawful gain while causing prejudice to Kitply. A copy of the Bank Statement is annexed as '*Annexure J*'.
- 12.14 The Applicant submitted that on 04.10.2021, the Reserve Bank of India superseded the Board of Directors of SIFL and SEFL and thereafter both entities were admitted into CIRP by order dated 08.10.2021. During the insolvency proceedings of SIFL/SEFL, the Administrator appointed therein filed I.A. (IB) No.949/KB/2022 before the Hon'ble NCLT, Kolkata Bench, inter alia admitting and challenging the very same transactions involving Kitply as fraudulent, sham and round-tripping transactions. A copy of I.A. (IB) No.949/KB/2022 filed before the Hon'ble NCLT, Kolkata Bench is annexed as '*Annexure L*'.
- 12.15 From a perusal of the annexures to the said Application it shall appear that the Administrator had obtained a forensic audit report from BDO India LLP, dated 31.08.2022, wherefrom the following facts appear:
- a. SIFL, SEFL and Kitply are related to one another.
  - b. The Board of Directors of Kitply are connected persons of SIFL/SEFL. In other words, SEFL/SIFL controlled the Board of Kitply.
  - c. The loan disbursed by SEFL/SIFL to Kitply was routed back to SIFL "*...on the same date and for a similar value ... thereby indicating round tripping of loans*".
  - d. The loan disbursed by SEFL/SIFL to Kitply was "*indirectly given to Vision India Fund for funding claims as per approved Resolution Plan.*"
- 12.16 The Applicant submitted that the very transactions relied upon by SEFL in the present proceedings have already been challenged by SEFL's own Administrator under Section 66 of the IBC as fraudulent and sham transactions. It was submitted that until adjudication of the said proceedings,



this Hon'ble Tribunal ought not to initiate CIRP against Kitply on the basis of the same disputed transactions.

12.17 The Applicant further submitted that SEFL had also filed proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 before the Hon'ble Calcutta High Court seeking directions against Kitply to secure a sum of Rs.243,04,28,074/- arising out of the alleged loans disbursed by SEFL and SIFL. It was submitted that the subject matter and cause of action in the arbitration proceedings, the present Company Petition and I.A. (IB) No.949/KB/2022 arise out of the very same transactions. A copy of A.P. (Com) 489 of 2025 is annexed as 'Annexure M'.

12.18 Upon considering the facts alleged by SEFL and the facts available from IA(IB) No.949/KB/2022, the Hon'ble Calcutta High Court held as follows –

*“9. ... the question as to whether the money given to 'Kitply' was in effect a loan or a sham transaction and used for round tripping and to meet the expenses of the erstwhile directors or promoters of SEFL is a matter which has to be decided by the learned Arbitrator. The dispute between the parties will have to be resolved in an arbitration proceeding in terms of the clause.”*

*“10. ... The resolution plan of Srei Multiple Asset Investment Trust - Vision India Fund was accepted by the NCLT, Guwahati. Trinity is the fund manager of Vision India. SIFL had control over SEFL and Trinity. The submission of Mr. Kar that SEFL took control over 'Kitply' through Vision India (successful resolution applicant) has some, prima facie, basis. The transaction took place after approval of the resolution plan. However, the issues are required to be gone into in greater detail to understand the nature of the transaction and such determination would be before the arbitrator.”*

A copy of the judgment dated 02.07.2025 is annexed as 'Annexure N'.

12.19 It has now been concluded by the Hon'ble Court that there are several disputes concerning the transactions relied upon by SEFL/Financial Creditor, which are within the jurisdiction of an Arbitrator to be appointed. In other words, the issue of debt and default cannot be within the jurisdiction of this Hon'ble Tribunal.



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- 12.20 The Applicant submitted that pursuant to the said order of the Hon'ble Calcutta High Court, SEFL issued notice dated 28.07.2025 under Section 21 of the Arbitration and Conciliation Act, proposing appointment of Arbitrators for adjudication of disputes and Kitply thereafter responded proposing appointment of an Arbitrator by its communication dated 04.08.2025. A copy of the notice dated 28.07.2025 is annexed as '*Annexure O*' and a copy of the reply dated 04.08.2025 issued by Kitply is annexed as '*Annexure P*'.
- 12.21 The Applicant therefore submitted that the present Petition is not maintainable in view of the order passed by the Hon'ble Calcutta High Court and in view of the serious disputes surrounding the validity and genuineness of the alleged debt transactions.
- 12.22 The Applicant submitted that there exists no genuine or legally enforceable debt payable by Kitply to SEFL or SIFL and consequently no default has occurred. It was submitted that the alleged debt is merely a fraudulent book entry created as part of the implementation of the Resolution Plan approved on 07.12.2018.
- 12.23 The Applicant therefore submitted that the present proceedings constitute abuse of the process of law and misuse of the jurisdiction of this Hon'ble Tribunal and therefore the Petition deserves to be dismissed with costs under Section 65 of the Code.
13. Reply on behalf of SREI/Respondent *vide* reply dated 02.08.2025 in IA(IBC)/59/GB/2025.
- 13.1 The Respondent submitted that the contention of the Corporate Debtor that SEFL has initiated the present proceedings fraudulently or with malicious intent or for any purpose other than insolvency resolution of Kitply is wholly false, baseless and denied. Further submitted that the contention of the Corporate Debtor that there was no legitimate loan granted to Kitply or that the transactions forming the basis of the present Petition are sham transactions is also denied.
- 13.2 The Respondent further submitted that the contention of the Corporate Debtor that the Adjudicating Authority exercising summary jurisdiction under the code does not have jurisdiction to adjudicate upon the disputes concerning the



present case is denied and disputed. Further submitted that the contention of the Corporate Debtor that the present Petition deserves to be dismissed with exemplary costs against SEFL is wholly untenable and denied.

- 13.3 The Respondent further submitted that the contention of the Corporate Debtor that there are tribal issues or any question regarding the existence or validity of the debt in default or that the existence of debt and default requires adjudication by way of trial, is denied.
- 13.4 The Respondent further submitted that upon approval of the Resolution Plan of the Corporate Debtor on December 7, 2018, all claims, liabilities and loans stood extinguished and the financial facilities forming the subject matter of the present proceedings are fresh and independent loan transactions entered into after approval of the Resolution Plan with fresh securities created in respect thereof.
- 13.5 The Respondent further submitted that the utilization of the loans obtained from the Financial Creditor and/or SIFL is not in dispute and the said amounts were utilized for repayment of creditors in terms of the approved Resolution Plan of the Corporate Debtor. The Corporate Debtor, after having availed and enjoyed the loan facilities along with substantial moratorium period and having never disputed its liability to repay the financial debt, has raised false and baseless allegations only after initiation of the present proceedings.
- 13.6 The Respondent further submitted that admittedly the Corporate Debtor is neither owned nor controlled by the Financial Creditor and the allegations regarding the Financial Creditor being a related party are wholly misconceived. Further submitted that the Financial Creditor itself underwent CIRP and pursuant to approval of its Resolution Plan on 11.08.2023, there has been a complete change in its management and control and therefore the present management cannot be equated with the management existing during 2018-2019.
- 13.7 The Respondent further submitted that the factum of debt and default has never been disputed by the Corporate Debtor. Further submitted that the allegations that SEFL intended to make unlawful gain while causing loss and prejudice to Kitply are denied. If the allegations made by the Corporate Debtor are accepted,



the same would amount to disregarding the Resolution Plan already approved in respect of the Corporate Debtor, which is impermissible in law.

- 13.8 The Respondent further submitted that there is no question of any round tripping in the present case since it is a usual commercial practice for a Successful Resolution Applicant to obtain financial assistance and in the present case the lender had remained the same. If the allegations of the Corporate Debtor are accepted, the same would imply that the Financial Creditor is in control of the Corporate Debtor, which is factually incorrect. It was further submitted that had the Financial Creditor been in control of the Corporate Debtor, the Corporate Debtor would not have filed the present Application against the Financial Creditor itself.
- 13.9 The Respondent further submitted that the proceedings in IA No. 949 of 2022 filed by the Administrator of SEFL or SIFL under Section 66 of the Code are independent and distinct proceedings and have no bearing on the right of the Financial Creditor to proceed the present Application under Section 7 of the Code.
- 13.10 The Respondent further submitted that the allegations made in proceedings under Section 66 pertain to alleged fraud committed upon the Financial Creditor and do not relate to the existence of debt and default, which alone are relevant considerations in the present proceedings under Section 7 of the Code.
- 13.11 The Respondent further submitted that the arbitral and recovery proceedings are independent and distinct from the present proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 and the initiation of such proceedings does not operate as a bar to entertaining or admitting the present Petition. Further submitted that the Hon'ble High Court at Calcutta, while granting interim protection, had also recorded the existence of debt and default.
- 13.12 The Respondent further submitted that the Appeal preferred by the Financial Creditor against the order dated July 2, 2025 is limited only to certain observations made therein and the proceedings under Section 9 of the Arbitration and Conciliation Act are wholly independent of the present proceedings under Section 7 of the Code. Further submitted that the pendency of the present proceedings was not a bar to initiation or entertainment of the



proceedings before the Hon'ble High Court at Calcutta and similarly, the proceedings before the Hon'ble High Court cannot operate as a bar to consideration and admission of the present Section 7 Petition.

- 13.13 The Respondent further submitted that the contention of the Corporate Debtor that the issue of debt and default cannot be decided by this Hon'ble Tribunal while exercising jurisdiction under the Code is wholly misconceived and denied. Further submitted that this Hon'ble Tribunal, while acting as the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016, is fully competent to determine the existence of debt and default in exercise of its summary jurisdiction.
- 13.14 The Respondent further submitted that the present Petition is maintainable notwithstanding the order passed by the Hon'ble High Court at Calcutta and the disputes sought to be raised by the Corporate Debtor do not oust the jurisdiction of this Hon'ble Tribunal under the Code. Further submitted that the allegations that there is no debt payable by Kitply to SEFL or SIFL, that there is no default, that the debt is fraudulent or merely a book entry, and that the present Petition is an abuse of process or liable to be dismissed under Section 65 of the Code, are false, baseless and specifically denied.
- 13.15 The Respondent further submitted that the financial debt forming the subject matter of the present proceedings arose pursuant to fresh loan transactions entered into after approval of the Resolution Plan dated December 7, 2018 and cannot be termed as fraudulent or fictitious transactions.
- 13.16 The Respondent submitted that the Corporate Debtor has failed to make out any case whatsoever in support of the present Application and has failed to disclose any valid or sustainable defence to the Company Petition. As the Company Petition is maintainable both in law and on facts and the allegations sought to be raised by the Corporate Debtor are wholly misconceived, baseless and untenable.



### Finding & Analysis

14. We have heard the learned counsels for Financial Creditor, Corporate Debtor and the workman, at length and perused the pleadings, written notes, documents and material placed on record.

- Company Petition CP(IB)/8/GB/2024 has been filed by the Financial Creditor/ SREI Equipment Finance Limited under Section 7 of the Code seeking initiation of the CIRP against the Corporate Debtor/ Kitply Industries Private Limited on the ground of default in repayment of a purported financial debt from a perusal of CP, it appears that the Financial Creditor has alleged that the Corporate Debtor as defaulted in repayment of loans, disbursed by the Financial Creditor and its holding company SIFL. Financial Creditor has claimed amount in default of Rs. 33,58,76,382/- and claimed the date of default as 28.01.2024.
- IA(IBC)/59/GB/2025 has been filed by the Corporate Debtor (Kitply Industries Private Limited) under Section 65 of the Code seeking dismissal of CP(IB)/8/GB/2024 (*SREI Equipment Finance Limited vs. Kitply Industries Private Limited*) filed under Section 7 of the Code on the ground that Section 7 proceedings initiated by SEFL are fraudulent or malicious intent.
- Inv. Pet. (IBC)/ 1/GB/2024 has been filed by Anil Singh & 129 Ors. workers and/or employees of Kitply Industries Limited under Section 65 of the Code seeking seeking dismissal of CP(IB)/8/GB/2024 (*SREI Equipment Finance Limited vs. Kitply Industries Private Limited*) filed under Section 7 of the Code on the ground that Section 7 proceedings initiated by SEFL are fraudulent or malicious intent.

15. Before proceeding to adjudicate CP (IB)/8/GB/2024 filed by Financial creditor under Section 7 of the Code, IA(IBC)/59/GB/2025 filed by the Corporate Debtor under Section 65 of the Code and Inv. Pet. (IBC)/1/GB/2024 filed by the interveners/workmen under Section 65 of the Code, this Adjudicating Authority considers it necessary to identify the principal controversies emerging from the pleadings, documents and submissions advanced by the parties.

16. At the outset, it is necessary to observe that the present proceedings do not disclose a routine or ordinary case of financial 'debt' and 'default'. The pleadings, supplementary affidavits, rejoinders and documents placed on record reveal a peculiar factual matrix involving prior CIRP proceedings of the Corporate Debtor, implementation of an



approved Resolution Plan of the Corporate Debtor, subsequent financial arrangements between entities allegedly connected with each other, allegations of round-tripping of funds, allegations of collusive structuring of transactions pending proceedings concerning fraudulent trading before another NCLT Bench and appointment of Arbitrator by the Hon'ble Calcutta High Court.

17. The Financial Creditor has approached this Adjudicating Authority seeking initiation of CIRP against the Corporate Debtor/Kitply Industries Limited on the basis of alleged loan facilities sanctioned under agreements dated 24.01.2019. According to the Financial Creditor, substantial amounts were disbursed to the Corporate Debtor against consideration for time value of money and the Corporate Debtor committed default in repayment of the said dues. The Financial Creditor has further contended that the debt became fully due and payable upon maturity of the facilities on 28.01.2024 and therefore the present petition squarely satisfies the requirements of Section 7 of the Code.
18. The Financial Creditor has also submitted that the Corporate Debtor had acknowledged the liabilities, acted upon the assignment in favour of the Applicant. The materials placed on record further demonstrate that Deed of Hypothecation dated 04.06.2019, Pledge Agreement by the shareholder dated 13.02.2020, Mortgage documents along with letter dated 27.01.2020 and creating charge in favour of the Financial Creditor as filed with the Registrar of Companies were executed by the Corporate Debtor in favour of the Financial Creditor to secure the loan facilities granted by the Financial creditor. Having accepted and acted upon the transactions over a considerable period, the Corporate Debtor cannot now completely disown the same merely upon initiation of insolvency proceedings.
19. It has further been submitted that once disbursement and default are established, this Adjudicating Authority exercising jurisdiction under Section 7 is required only to ascertain existence of debt and default and not enter into disputed questions beyond the limited summary jurisdiction contemplated under the Code.
20. However, the Corporate Debtor has opposed the Section 7 Petition by raising objections which go far beyond mere dispute relating to computation or quantum of debt. The Corporate Debtor has questioned the very genesis and legitimacy of the transactions forming the basis of the alleged financial debt.



21. The Corporate Debtor has specifically contended that:

- The alleged loan transactions dated 24.01.2019 were merely sham book entries created during implementation of the earlier Resolution Plan of Kitply Industries Limited approved by this Tribunal on 07.12.2018;
- SIFL and SEFL exercised direct and indirect control over the Resolution Applicant (Vision India Fund) and Corporate Debtor through interconnected entities;
- Vision India Fund and Trinity Alternative Investment Managers Limited were connected with SIFL/SEFL;
- Ms. Shilpa Modi, nominee of Vision India Fund, was Chief Investment Officer of Trinity and also connected with several companies associated with SEFL and SIFL.
- In the second meeting of the Supervisory Committee held on 09.01.2019, the Committee decided to appoint Ms. Shilpa Modi and Mr. Trilok Rajgharia as directors of Kitply.
- The funds allegedly disbursed by SEFL/SIFL were substantially routed back to SIFL itself as part of Resolution Implementation; therefore no genuine commercial lending transaction ever came into existence.

22. The Corporate Debtor has further alleged that the very same transactions which are now relied upon by the Financial Creditor for initiation of CIRP have already been questioned by the Administrator appointed in the insolvency proceedings of SEFL/SIFL before the Hon'ble NCLT, Kolkata Bench in IA No.949/2022 under Section 66 of the Code. According to the Corporate Debtor, the Administrator himself has alleged fraudulent and wrongful trading, round-tripping of funds and related party transactions in relation to the same financial arrangements.

23. The Corporate Debtor has also placed reliance upon the forensic audit report dated 31.08.2022 prepared by BDO India LLP wherein observations were made regarding:

- SIFL, SEFL and Kitply are related to one another.
- The Board of Directors of Kitply are connected persons of SIFL/SEFL. In other words, SEFL/SIFL controlled the Board of Kitply.
- The loan disbursed by SEFL/SIFL to Kitply was routed back to SIFL “...on the same date and for a similar value ... thereby indicating round tripping of loans”.
- The loan disbursed by SEFL/SIFL to Kitply was “indirectly given to Vision India Fund for funding claims as per approved Resolution Plan”.



24. This Tribunal further noted that the Corporate Debtor has relied upon proceedings initiated before the Hon'ble Calcutta High Court under Section 9 of the Arbitration and Conciliation Act wherein observations were allegedly made that the issue whether the alleged loans constituted genuine transactions or sham and collusive arrangements involving round-tripping requires detailed adjudication upon appreciation of evidence.
25. Simultaneously, IA(IBC)/59/GB/2025 has been filed by the Corporate Debtor under Section 65 of the Code alleging that the Section 7 proceedings themselves are fraudulent, malicious and collusive in nature. The Corporate Debtor has contended that the insolvency mechanism is being misused not for insolvency resolution but for recovery, pressure and collateral purposes despite existence of serious issues regarding the legitimacy of the underlying transactions.
26. The Corporate Debtor has specifically alleged that:
- The transactions relied upon by the Financial Creditor are fraudulent transaction involving Round Tripping of the Funds;
  - SIFL took control of Kitply upon approval of the Resolution Plan of Kitply on 07.12.2018. Round-trip transaction was entered into by SIFL;
  - SIFL has itself alleged that the transaction with Kitply is fraudulent and circular as evidenced from the Section 66 of the code pending before Hon'ble NCLT Kolkata Bench;
  - Principle of "*in pari delicto*" bars SEFL from taking advantage of a transaction it has itself alleged to be fraudulent and circular;
  - Petition filed by SEFL in Arbitration Proceeding, an Arbitrator has been appointed to adjudicate the transactions between the parties and to decide whether the transaction is a sham;
  - SEFL has not filed the Business Transfer Agreement with SIFL. Therefore, the Petition is defective;
  - Default falls within the Bar under Section 10A of IBC, 2016;
  - The present proceedings constitute abuse of the provisions of the Code warranting action under Section 65 of the Code.
27. The Financial Creditor, however, has denied all allegations of fraud, collusion and malicious intent and contended that mere pendency of proceedings under Section 66 cannot defeat a valid Section 7 Petition where 'debt' and 'default' stand established



from records. The Financial Creditor has further contended that proceedings under Section 66 and Section 7 operate in distinct and separate fields and allegations regarding fraud cannot dilute the admitted financial obligations of the Corporate Debtor.

28. Further, Inv. Pet. (IBC)/1/GB/2024 has been preferred by the workers/employees of the Corporate Debtor seeking intervention in the present proceedings. The interveners have contended that:

- The Corporate Debtor is a solvent and going concern entity;
- Initiation of CIRP would seriously prejudice the livelihood of employees and workers;
- The Section 7 proceedings are collusive and fraudulent in nature;
- The Financial Creditor is attempting to misuse the insolvency mechanism despite serious disputes regarding the underlying transactions.

29. The interveners have also prayed for dismissal of the Section 7 Petition and initiation of proceedings under Section 65 of the Code against the Financial Creditor.

30. Thus, from a cumulative reading of the pleadings, affidavits, rejoinders and submissions advanced by all parties, this Adjudicating Authority finds that the disputes involved in the present matter are not confined merely to determination of outstanding dues but extend to foundational issues concerning existence and genuineness of the alleged financial debt, legality and effect of assignment claimed by the Financial Creditor, occurrence and date of default, effect of allegations of fraudulent and collusive transactions, scope and extent of summary jurisdiction under Section 7 of the Code, applicability of Section 10A, maintainability of insolvency proceedings in the backdrop of pending fraud proceedings before another forum, allegations of malicious initiation under Section 65 of the Code and the rights and interests of interveners/workmen opposing initiation of CIRP.

31. Accordingly, upon consideration of the aforesaid facts and circumstances, the following questions arise for determination before this Adjudicating Authority:

- i. Whether the Applicant/Financial Creditor has established the existence of a 'financial debt' within the meaning of Section 5(8) of the Code?
- ii. Whether the Applicant has established occurrence of 'default' under Section 3(12) of the Code?



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- iii. Whether the present proceedings under Section 7 are maintainable in light of the allegations regarding fraudulent and collusive transactions and pending proceedings under Section 66 of the Code?
- iv. Whether the present proceedings under Section 7 of the Code are maintainable in light of the fact that an Arbitrator has already been appointed to adjudicate the disputes arising out of the transactions between the parties, including the issue as to whether the underlying transactions are sham and non-genuine in nature, pursuant to the orders passed by the Hon'ble Calcutta High Court?
- v. Whether the Corporate Debtor and the Intervenors have established that the present Section 7 Petition has been initiated fraudulently or with malicious intent so as to attract Section 65 of the Code?
- vi. Whether the Application is liable to be rejected in view of Section 10A of the Code?
- i. Whether the Applicant/Financial Creditor has established the existence of a 'financial debt' within the meaning of Section 5(8) of the Code?**
32. The Financial Creditor submitted that loan facilities were sanctioned in favour of the Corporate Debtor under Contract No.177125 dated 24.01.2019 for Rs.130 Crores and under Contract No.1268 dated 24.01.2019 for Rs.120 Crores. Out of the sanctioned amount, Rs.96.27 Crores under Contract No.177125 and Rs.81.65 Crores under Contract No.1268 respectively were disbursed to the Corporate Debtor.
33. Pursuant to this Financial arrangement, the Corporate Debtor executed Deed of Hypothecation dated 04.06.2019, Pledge Agreement by the shareholder dated 13.02.2020, Mortgage documents along with letter dated 27.01.2020 and creating charge in favour of the Financial Creditor as filed with the Registrar of Companies in favour of the Financial Creditor.
34. It is further submitted that the said loans carried interest and were repayable in terms of the contractual arrangement, in terms of the Loan Agreements, the loan with accrued interest was repayable upon expiry of 5 years from 1st disbursement, i.e. 28.01.2024.
35. The corporate debtor started defaulting in payment of interest in respect of the said loans and as such, the financial creditor by way of letters dated 16.03.2021, 11.06.2021



and 25.02.2022, called upon the corporate debtor to pay the outstanding amounts in respect of its interest obligations under the said loan agreements.

36. The Financial Creditor further submitted that that the liabilities arose after approval of the earlier Resolution Plan dated 07.12.2018 and therefore constitute fresh and independent transactions unconnected with the earlier CIRP of the Corporate Debtor.
37. Therefore squarely fall within the ambit of “financial debt” under Section 5(8) of the Code. The Financial Creditor further contended that the utilization of funds is immaterial once disbursement against consideration for time value of money is established.
38. Per contra, the Corporate Debtor submitted that no genuine borrowing transaction ever took place and the alleged debt is merely a book entry created for implementation of the earlier Resolution Plan approved by this Tribunal on 07.12.2018.
39. The Corporate Debtor contended that:
- SIFL was itself the dominant CoC member during earlier CIRP of CD with 91.54% voting share;
  - Related entity of SREI Group, namely Vision India Fund (SREI VIF), submitted the Resolution Plan;
  - Immediately, after approval of Resolution plan, person in control of Kitply applied for loan from SEFL/SIFL to pay off the amount committed by the SREI VIF in the Resolution Plan.
  - After approval of Resolution Plan, in terms of Resolution Plan, SIFL, as member of CoC, was to be paid about Rs. 164.79 Crore out of the sum of Rs. 175 Crore being the Resolution Applicant.
  - Money brought into the account of Kitply, on the same day were routed back to SEFL/SIFL to meet with the obligation in terms of Resolution Plan duly approved by this Tribunal on 07.12.2018.
40. The Corporate Debtor further relied upon averments made by the Administrator of SEFL itself in IA No.949/2022 before NCLT Kolkata, wherein the same transactions were described as fraudulent, round-tripping and wrongful trading transactions.
41. This Tribunal Finds that at the outset it is evidenced that disbursement of certain amounts to the Corporate Debtor has been demonstrated by the Financial Creditor. However, mere disbursement by itself is not always conclusive of existence of a



genuine “financial debt” when serious allegations regarding the true nature and purpose of the transaction arise from the materials placed on record.

42. This Tribunal placed Reliance on the Judgment of NCLAT in *Ocean Deity Investment Holdings Pvt. Ltd. v. Suraksha Asset Reconstruction Ltd.* (CA (AT) (INS) NO. 795 OF 2021), wherein it was held that ‘ 27. *Keeping in view all the aforementioned Judgements and the documentary evidence on record, we are of the earnest view that merely because there is a ‘debt’ and a ‘default’ it cannot be construed that a Section 7 Application is required to be admitted. The Adjudicating Authority ought to have examined the ‘nature of these financial transactions’ having regard to the Investigation Reports which were filed by the Appellant herein, the violation of the Articles of Association and assessed whether the transactions were collusive in nature or not and used its discretion whether to admit such an Application or not, keeping in view the scope and objective of the Code.....’.*

43. The materials on record prima facie reveal the following extraordinary circumstances:

- The Corporate Debtor had already undergone CIRP earlier and the Resolution Plan dated 07.12.2018 was approved in favour of Vision India Fund, a related entity connected with SREI Group.
- SIFL itself was the dominant financial creditor during the earlier CIRP proceedings holding more than 91.54 % voting share in CoC.
- Immediately after approval of the Resolution Plan, fresh loan facilities were sanctioned by SIFL and SEFL to Kitply.
- The Administrator appointed in CIRP proceedings of SEFL/SIFL has itself alleged before NCLT Kolkata that the loans were utilized substantially for redemption of NCDs and settlement of claims payable to SIFL itself.
- The forensic observations extracted in IA No.949/2022 specifically indicate same-day routing of funds and alleged round-tripping transactions.
- The Administrator of the Financial Creditor itself sought declaration that the transactions amounted to fraudulent and wrongful trading under Section 66 of the Code.
- The Hon’ble Calcutta High Court also observed that whether the money given to ‘Kitply’ was in effect a loan or a sham transaction and used for round tripping and to meet the expenses of the erstwhile directors or promoters of SEFL is a matter



which has to be decided by the learned Arbitrator and the Arbitrator was appointed to decide the same.

44. In view of the above, after due consideration of the documents placed by the CD in support of the allegation that the FC is a related party of the CD and that FC is in control of the CD, appears to be correct. From the order dated 7th December 2018 of this Tribunal, approving the resolution plan of CD, it is evident that SIFL had control over the CIRP of the CD by virtue of more than 90% voting share. From the records of Trinity and Vision India Fund, viewed in light of the SEBI regulations and Master Circulars, we find that SIFL is in a position to exercise control over PMPL, the holding company of the CD, through Vision India Fund, and therefore over the CD as well. The FC, admittedly being the subsidiary of SIFL, is inextricably linked to SIFL, to form part of one concern. From the minutes of the Supervisory Committee of the CD, in its earlier CIRP, it appears that the Board of Directors were nominated by Vision India Fund and from the records it appears that one of the Directors viz. Shilpa Modi was the Chief Investment Officer of Trinity. The allegation of the CD, that the Directors of CD upon approval of resolution plan were employees of or in control of SIFL, has not been denied by the FC in its reply affidavit to IA(IB) No.59/GB/ 2025. Even if the directorship were to be ignored, SIFL/FC would continue to be in a position to exercise control over CD, on the basis of shareholding and other mechanisms among the series of entities as discussed above. We also find that the ownership of the FC or SIFL being with NARCL does not affect the downstream flow of shareholding and control and therefore such event does not alter the relationship between Financial Creditor and the Corporate Debtor.
45. Thus, the very Financial Creditor, through its Administrator, has itself questioned the genuineness and legality of the underlying transaction in independent proceedings before another coordinate Bench. This Tribunal is unable to ignore the serious inconsistencies arising from the stand adopted by the Applicant in the present proceedings and the stand taken by its own Administrator in IA No.949/2022 pending before Hon'ble Kolkata Bench.
46. Where the creditor itself alleges in separate proceedings that the transaction is fraudulent and constitutes wrongful trading, this Tribunal cannot mechanically proceed on the assumption that a clear and undisputed 'financial debt' exists. The issue



is not merely about computation of dues but concerns the very substratum and legitimacy of the transaction itself.

47. Accordingly, this Tribunal holds that the existence of a legally enforceable and undisputed financial debt is seriously overshadowed by substantial and bona fide issues requiring detailed adjudication. This Bench is, therefore, of the considered view that where the very transaction in question is alleged to be not genuine and lacking legal sanctity, the essential ingredient of a 'financial debt' within the meaning of the Code cannot be said to exist.

48. In view of the above facts, the judgments relied upon by the Ld. Senior Counsel for the FC, being New Era Propcon (supra) and M. Suresh Kumar Reddy (supra) do not support the contentions of the FC that mere debt and default is to be seen. There is a cloud over the entire transaction between the FC and the CD. The relation between the FC and the CD cannot be ignored in such facts and circumstances. This Adjudicating Authority notes that its jurisdiction is confined to examining whether there exists a financial debt and a default as on the date of admission. Any deeper inquiry into the nature or validity of the transactions or allegations of fraud must necessarily be pursued before the competent forum.

49. The judgments of the Hon'ble NCLAT in Ocean Deity (supra) and Piramal Capital (supra) have held that when sum claim to be in default is coloured by collusion and fraudulent intent, it does not qualify as financial debt and insolvency proceedings cannot be initiated on the basis of the same, as has been held by the Hon'ble Supreme Court in Phoenix ARC (supra). The dicta of the said decisions are applicable in the present case, supported by the decision of the Hon'ble Calcutta High Court wherein an Arbitrator has been directed to decide the question of whether the amounts disbursed to the CD were in effect a loan or a sham transaction used for round tripping for ulterior motives.

**ii. Whether occurrence of 'default' has been established?**

50. The Financial Creditor has asserted date of default as 28.01.2024 on the basis that the entire facility became repayable upon maturity of the loan. However, the record also reveals that notices alleging non-payment and irregularity in the interest repayment were issued on 16.03.2021, 11.06.2021 and 25.02.2022.



51. The Corporate Debtor has specifically contended that the alleged default substantially falls within the prohibited period under Section 10A. More importantly, when the very nature of the transaction itself is under serious challenge and the Financial Creditor's own Administrator alleges the transaction to be fraudulent and circular in nature, determination of 'default' cannot be undertaken in isolation.
52. The question whether the transaction constituted genuine borrowing or merely circular funding for implementation of the Resolution Plan directly impacts determination of 'debt' and 'default'.
53. This Tribunal is of the considered view that in the present peculiar facts, default cannot be conclusively determined in summary proceedings under Section 7 of the Code. This Bench is, therefore, of the considered view that where the very transaction in question is alleged to be non-genuine and lacking legal sanctity, the essential ingredient of a 'default' within the meaning of the Code cannot be said to exist.
- iii. Whether pendency of Section 66 proceedings and allegations of fraud affect maintainability of the present proceedings?**
54. The Financial creditor submitted that it is settled law that the jurisdiction of the Learned Adjudicating Authority operates in different jurisdiction under Section 66 of IBC, 2016 and Section 7 of IBC, 2016, whereby the scope of provisions are different and hence, separate petition under both provisions are maintainable. Section 66 of IBC, 2016 is for recovery of money alleging fraudulent transactions and Section 7 of IBC, 2016 is for admission of the corporate debtor in CIRP for its revival thereof.
55. Reliance is placed on the judgment of *Propcon Pvt. Limited Vs. SREI Equipment Finance Limited in Company Appeal (AT) Insolvency No.246 of 2024*. The said judgment has been upheld by the Hon'ble Supreme Court of India in Civil Appeal No. 6740 of 2024 by order dated 10.07.2024.
56. The Corporate Debtor submitted that Board of SEFL was superseded by RBI on 04.10.2021, SEFL was admitted to CIRP *vide* order dated 08.10.2021. The Administrator of SEFL and SIFL filed application against Kitply [IA(IB) No.949/2022] under Section 66 of IBC alleging that the loan transaction is a fraudulent and circular transaction. Transaction Audit Report carried out by Administrator of SEFL has alleged that the transaction with Kitply was round-tripping of funds and amounted to a sham/fraudulent transaction.



57. It was further submitted that Somewhere in September 2022, on the strength of the Audit Report, the Administrator of SEFL filed an application under Section 66 of the IBC before the Hon'ble NCLT Kolkata on the basis that the transactions with Kitply are fraudulent and round-tripping in nature. IA(IB) No. 949/KB/2022 is still pending for adjudication. SEFL is bound by the statements and contentions of the Administrator of SEFL.

58. This Tribunal observed that Administrator of SEFL in Section 66 (IA(IB) No. 949/KB/2022) application before the Hon'ble NCLT Kolkata, sought the following relief:

a) *to grant a Declaration that the loans advanced to Respondent No. I being Contract Nos. 1268 and 177125 with a gross loan outstanding sum of Rs. 228.66 crores (Rupees Two Hundred and Twenty Eight Crores and Sixty Six Lakhs) are fraudulent transactions and amount to fraudulent/wrongful trading under Section 66 of the Insolvency and Bankruptcy Code for which the Respondents are jointly and severally liable;*

b) *to grant an Order and Injunction directing the Respondents to jointly and severally pay a sum of Rs. 228.66 crores (Rupees Two Hundred and Twenty Eight Crores and Sixty Six Lakhs) towards the gross loan outstanding in the loan accounts of the loans being Contract Nos. 1268 and 177125 of Respondent No. I and to pay interest on the said sum at a rate of 18% per annum from 1<sup>st</sup> October 2021 till realization;*

c) *pending the hearing and final disposal of the present application, this Hon'ble Tribunal may be pleased to:*

*(i) order and direct all the Respondents to disclose on oath within such time as this Hon'ble Tribunal may deem fit and proper, full and complete details and particulars of all their assets and properties along with its financial statements from the F.Y. 2014-15 to F.Y. 20 21 ~ 22 including all the annexure thereto and details, documents and particulars in relation to utilization of funds received by them from the Corporate Debtor.*

*(ii) attach all assets and properties of all the Respondents which are presently held and possessed by the Respondents and also such assets and properties as may be disclosed by the Respondents on oath and also pass such orders and directions as may be necessary for tracing*



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*of all such assets and properties as may have been acquired from the proceeds of fraud, whether in their name or not and attach the same.*

*(iii) pass an order and temporary Injunction restraining and prohibiting all the Respondents from in any manner removing and/or from in any manner encumbering, transferring, selling, assigning, creating third party rights or parting with possession of any of their assets and properties or any part or parts thereof.*

*(iv) order and direct the Respondents to deposit in this Hon'ble Tribunal a gross amount of Rs. 228.66 crores (Rupees Two Hundred and Twenty Eight Crores and Sixty Six Lakhs) towards the gross loan outstanding and/or such other amount as may be found to be due and outstanding and/or found to have been siphoned off by them from the account of the Corporate Debtor.*

*d) ad-interim reliefs in terms of prayer clauses (c) above;*

*e) for costs;*

*f) for such further and other relief that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case.*

59. This Tribunal also observe in the Section 66 application:

**PARTICULARS OF THE TRANSACTIONS IMPUGNED IN THE PRESENT APPLICATION:**

26. For the purposes of this Application, the BDO Report has impugned the following loan accounts that are tabulated herein below:

**Table 1**

Sr.	Name of Customer	Sanctioned Amount (in crores)	Disbursed amount (in crores)	Gross Outstanding as on 30 <sup>th</sup> September 2021
5.64	Kitply Industries Limited	250.00	177.92	228.66

The gross outstanding amount includes loan principal outstanding and interest recoverable from the customer after adjustment of TDS, Debt Service Reserve Account ("DSRA") balance and unallocated party balances.

60. This Tribunal places reliance upon the judgment of the Hon'ble Supreme Court in *Union of India and others Vs N Murugesan Etc.* (CIVIL APPEAL NOS.2491-2492 OF 2021), wherein it was held "26. .... One cannot take advantage of one part while



*rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part.....”.*

61. Thus, this Tribunal finds that the very foundation of the present proceedings under Section 7 of the Code becomes doubtful, as the present petition itself arises out of the same alleged debt under Contract Nos. 1268 and 177125 dated 24.01.2019. The Financial Creditor, in the present Section 7 proceedings, has claimed an alleged financial debt of Rs.3,33,58,76,382/- as on 26.04.2024 arising from the said contracts. However, the very same transactions involving outstanding dues of Rs.228.66 Crores arising from the same Contract Nos. 1268 and 177125 are presently under challenge before the Hon'ble NCLT, Kolkata Bench in proceedings initiated under Section 66 of the Code by the Administrator of SEFL. In the said proceedings, the Administrator has specifically alleged that the aforesaid transactions are fraudulent, constitute fraudulent and wrongful trading and involve siphoning/routing back of funds, while simultaneously seeking recovery of the said amount from the Respondents jointly and severally.
62. This Tribunal cannot ignore such serious allegations merely because the proceedings before the Hon'ble Kolkata Bench are under Section 66 of the Code. Once the Financial Creditor itself, through its Administrator, has questioned the legitimacy and genuineness of the very transactions forming the basis of the present Section 7 petition, it cannot simultaneously seek initiation of CIRP on the strength of the same alleged debt. The Financial Creditor cannot be permitted to approbate and reprobate simultaneously by alleging fraud in one forum and seeking enforcement of the same transactions as valid 'financial debt' before another forum.
63. Further, admission of CIRP carries serious civil consequences including suspension of the Board of Directors, imposition of moratorium and possible displacement of a going concern enterprise. Therefore, although proceedings under Section 7 are summary in nature, this Tribunal is not expected to act mechanically where serious disputes regarding the genuineness and enforceability of the underlying debt already exist and are pending consideration before a coordinate Bench.



64. In view of the serious allegations concerning Contract Nos. 1268 and 177125, supported by parallel proceedings under Section 66 of the Code, this Tribunal is of the considered opinion that the present petition is not a fit case for admission under Section 7 of the Insolvency and Bankruptcy Code, 2016 at this stage.

iv. **Whether the present proceedings under Section 7 of the Code are maintainable in light of the fact that an Arbitrator has already been appointed to adjudicate the disputes arising out of the transactions between the parties, including the issue as to whether the underlying transactions are sham and non-genuine in nature, pursuant to the orders passed by the Hon'ble Calcutta High Court?**

65. The Corporate Debtor submitted that the Financial Creditor has filed arbitration proceedings in relation to the very same transactions which form the subject matter of the present Section 7 Petition. It was contended that proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 were initiated before the Hon'ble Calcutta High Court in A.P. (Com) No.489 of 2025 seeking protection in relation to the alleged dues arising out of the transactions in question.

66. The Corporate Debtor further submitted that the Hon'ble Calcutta High Court, while considering the rival contentions of the parties, observed that the disputes regarding the true nature of the transactions, including the contention that the transactions constituted sham arrangements involving round-tripping of funds, require detailed adjudication upon examination of evidence and therefore ought to be decided in arbitral proceedings.

67. It was further contended that the Hon'ble High Court also prima facie noticed the allegations regarding control of the Corporate Debtor through entities connected with SIFL/SEFL and therefore serious triable issues exist concerning the legitimacy of the underlying transactions. According to the Corporate Debtor, once such complicated issues involving allegations of sham transactions and fraudulent structuring are pending adjudication before the learned Arbitrator, the same cannot simultaneously be adjudicated in summary proceedings under Section 7 of the Code.

68. Per contra, the Financial Creditor submitted that pendency of arbitration proceedings or appointment of an Arbitrator cannot operate as a bar to maintainability of proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016.



69. The Financial creditor further submitted that object of preferring the said Section 9 was to prevent by and restrain the CD from alienating the security interests in respect of the loans disbursed to the CD, pending the adjudication of the Section 7 Application. Section 231 of the Code provides that no civil Court shall have jurisdiction in respect of any matter in which the Adjudicating Authority is empowered under this Code, to pass any order and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority under the Code.
70. Moreover Section 238 provides that the provisions of the IB Code will override other laws. Thus once an order initiating insolvency is passed, no injunction by any civil court can come in the way of such an order of the Adjudicating Authority. Reliance is placed on *Tata Consultancy Services Limited v. SK Wheels Private Limited Resolution Professional, Vishal Ghisulal Jain* (2022) 2 SCC 583.
71. This Adjudicating Authority has carefully considered the rival submissions. There can be no dispute with the settled proposition of law that pendency of arbitration proceedings or existence of an arbitration clause does not, by itself, bar initiation or continuation of proceedings under Section 7 of the Code. The insolvency jurisdiction under the Code is distinct from contractual adjudication undertaken in arbitral proceedings.
72. However, the present case stands on an entirely different factual footing. The issue before this Tribunal is not merely the existence of parallel arbitration proceedings. Rather, the core issue concerns the nature and effect of the disputes pending adjudication before the learned Arbitrator and the observations made by the Hon'ble Calcutta High Court regarding the underlying transactions themselves.
73. Upon perusal of the Petition A.P. (Com) No.489 of 2025 filed by the SEFL under Section 9 of Arbitration and Conciliation Act, 1996, this Tribunal observed that:
- '4. Based on the representations, covenants and warranties of the Respondent including but not limited to those as mentioned in the loan application dated December 12, 2018, the Petitioner (Lender) sanctioned a loan facility of INR 130,00,00,000 /- (Rupees One Hundred Thirty Crores only) in favour of the Respondent (Borrower) under a Rupee Loan ("Loan Agreement") dated January 24, 2019, executed on the same date. The said facility was granted subject to the terms and conditions set out in the Loan Agreement and allied security documents executed by the*



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*Respondent and its promoters/affiliates. A copy of the Sanction Letter dated January 10, 2019, sanctioning the loan facility of INR 130,00,00,000/- (Rupees One Hundred Thirty Crores only) along with the copy of the Rupee Loan Agreement dated January 24, 2019, is annexed hereto and marked as "B".*

74. This Tribunal observed that SEFL in Section 9 application sought the following relief:

- a) *An order directing the Respondent to deposit with this Hon'ble court an amount of INR 243,04,28,074 /- (Rupees Two Hundred Forty-Three Crores, Four Lakhs and Twenty-Eight Thousand Seventy-Four only) towards the outstanding dues of the Petitioner in terms of the Loan Agreement;*
- b) *Alternatively, an order directing the Respondent to furnish a bank guarantee from a scheduled bank for an amount equivalent to the amounts as mentioned above, to secure the claim and interests of the Petitioner;*
- c) *In the meantime, pending deposit of the said amount of 243,04,28,074/- (Rupees INR Two Hundred Forty-Three Crores, Four Lakhs and Twenty-Eight Thousand Seventy-Four only) and/or furnishing of bank guarantees as prayed for above, as the case may be:
  - i. *Pass an order restraining the Respondent from operating any of its bank accounts, including those identified in paragraph 25 above without keeping apart a sum of INR 243,04,28,074/- (Rupees Two Hundred Forty Three Crores, Four Lakhs and Twenty-Eight Seventy-Four only);*
  - ii. *Pass an order restraining the Respondent, their agents and representatives from in any manner encumbering, alienating, transferring, selling, disposing off, parting with possession of, or creating any third party rights, title, or interest of any nature whatsoever in respect of their respective immovable and movable assets, investments, properties of any nature including those identified in paragraphs 6, 7 and 9 above, in favour of any third party;*
  - iii. *Pass an order directing the Respondent to disclose on oath all their properties and investments/ assets/ receivables / entitlements (both movables and immovables and, in case of encumbered properties and assets, the extent of encumbrance) including without limitation from rent receivables and bank accounts and all particulars of their entitlement and receivables from third parties including from companies in which they are shareholders or from trusts in which they are beneficiaries from the date of the Loan Agreement upto the date of filing of the present petition;**
- d) *Pass ad-interim ex-parte orders in terms of the prayers prayed;*



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*e) Pass any other and further relief(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.*

75. Upon perusal of the Order dated 02.07.2025 in AP-COM/489/2025 passed by the Hon'ble Calcutta High Court observe the following:

*'9..... The question before this court under in the facts and circumstances narrated hereinabove, is whether any interim protection should be given to the petitioner, till the petitioner approaches the Arbitrator'.*

*'10. .... The resolution plan of Srei Multiple Asset Investment Trust - Vision India Fund was accepted by the NCLT, Guwahati. Trinity is the fund manager of Vision India. SIFL had control over SEFL and Trinity. The submission of Mr. Kar that SEFL took control over 'Kitply' through Vision India (successful resolution applicant) has some, prima facie, basis. The transactions took place after approval of the resolution plan. However, the issues are required to be gone into in greater detail to understand the nature of the transaction and such determination would be before the arbitrator.....'*

*'11. NARCL has substantial control over SEFL and Trinity. Trinity is the fund manager of Srei Multiple Investment Trust-Vision India Fund which in turn controls Kitply through Plytinum. The connection cannot be totally ignored'.*

*'12. However, in the facts and circumstances and balancing the convenience and inconvenience, **this Court deems it fit to grant an injunction in respect of the properties mentioned under Schedule IB, i.e., the mortgaged properties which were secured in favour of the petitioner and also in respect of the pledged shares appearing under Schedule I at page 179 of this application.** The details of mortgaged properties under Schedule-IB are quoted below:*

“

SL. No.	PARTICULAR	LOCATION	FREE HOLD LAND AREA
1.	ART UNIT MARGHERITA	ART MARGHERITA (ASSAM)	906624 SQ FT.
2.	MUMBAI (GODOWN)	BHIWANDI THANE	6350.30 SQ FT
3.	MARGHERITA UNIT	MARGHERITA (ASSAM)	67632 SQ MT



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4.	RAIPUR AGRO FORSTRY	CHATTISGARH	1192 ACRES
5.	RAMPUR UNIT	RAMPUR (U.P.)	

*The details of pledged shares under Schedule I is quoted below:*

**“SCHEDULE I**

**PARTICULARS OF INITIALPLEDGED SHARES**

Name of Shareholder(s)	No. of Shares	Total nominal value (In Rs.)	ISIN No.	DP Name, Address & DP ID	Client ID
Plytinum Marketing Pvt. Ltd.	9,99,994	9,99,940	INE147B01027	Aum Capital Market Private Limited having its registered office at 5, Lower Rowdon Street, Akashdeep, 1st Floor, Kolkata - 700020, DP ID – 12057800	00036299

76. Thereafter, on 15.09.2025 in APOT/217/2025 WITH AP-COM/489/2025, the Hon’ble Calcutta High Court observed the following:



*“The Court: This appeal is directed against a judgment and order dated July 2, 2025 passed on an application filed by the appellant herein under Section 9 of the Arbitration and Conciliation Act, 1996.*

*The interim order that is in operation shall continue till December 15, 2025 or until further orders of the Learned Single Judge, whichever is earlier.*

*Mr. Bose, learned Senior Counsel appearing for the appellant, submits that the findings of the Learned Single Judge in Paragraphs 10 and 11 of the impugned order could not have been arrived at as there was no material in support thereof. We say nothing on that count and only put the submission on record.”*

77. Thereafter, on 17.09.2025 in AP-COM/741/2025, the Hon’ble Calcutta High Court observed the following:

*“With the above observations, this application is allowed by appointing Justice Indra Prasanna Mukerji, former Chief Justice of the Meghalaya High Court as the sole arbitrator, to arbitrate upon the dispute between the parties.”*

78. Thus, this Tribunal notes that a Sole Arbitrator has already been appointed to adjudicate the disputes inter se arising out of the Loan Agreement dated 24.01.2019 relating to Contract Nos. 1268 and 177125, which also form the basis of the present Section 7 proceedings. This Tribunal further takes note that, in the proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 being A.P. (Com) No.489 of 2025, SEFL itself has sought protection and recovery measures in respect of the alleged outstanding dues arising from the same transactions, including injunctions concerning pledged shares and secured mortgage properties which were secured in favour of the petitioner in connection with the alleged loan facilities.

79. The filing of the present petition based on the same set of facts and transactions demonstrate that the Financial Creditor has apparently engaged in forum shopping. Such conduct militates against scheme and object of the IBC.

80. Thus, the disputes now pending before the learned Arbitrator are not confined merely to computation of dues or contractual enforcement. Rather, they extend to:

- The very nature and legitimacy of the transactions;
- Allegations of sham and collusive arrangements;
- Questions relating to control of the Corporate Debtor through connected entities;
- Allegations of round-tripping and structured transactions.



81. In such circumstances, this Adjudicating Authority exercising summary jurisdiction under Section 7 of the Code cannot enter into a parallel adjudication which may directly impact the rights, protections, securities and interim injunction already operating pursuant to orders passed by the Hon'ble Calcutta High Court in relation to the same transactions and secured assets.
82. The issue involved in the present proceedings is not merely determination of default simplicity, but adjudication of the legitimacy and enforceability of the underlying transactions themselves, which are already subject matter of arbitral adjudication pursuant to orders passed by the Hon'ble Calcutta High Court.
83. Simultaneously, this Tribunal also cannot ignore that proceedings under Section 66 of the Code are pending before the Hon'ble NCLT, Kolkata Bench concerning the very same transactions under Contract Nos. 1268 and 177125 and allegations of fraudulent and wrongful trading.
84. Accordingly considering, the serious disputes regarding the genuineness of the transactions, the appointment of the learned Sole Arbitrator for detailed adjudication of the disputes and the pending proceedings concerning fraudulent transactions before another Coordinate Bench, this Tribunal is of the considered view that the present matter involves complicated and disputed questions which cannot appropriately be adjudicated within the limited and summary jurisdiction exercised under Section 7 of the Insolvency and Bankruptcy Code, 2016.
- v. **Whether the Corporate Debtor and the Interveners have established that the present Section 7 Petition has been initiated fraudulently or with malicious intent so as to attract Section 65 of the Code?**
85. The Corporate Debtor as well as the Interveners/workmen have strongly contended that the present proceedings under Section 7 of the Code have been initiated fraudulently, collusively and with malicious intent, not for the purpose of insolvency resolution but for collateral and recovery purposes. According to them, the alleged loan transactions are sham and collusive arrangements structured during implementation of the earlier Resolution Plan and the funds allegedly disbursed were substantially routed back to SIFL itself. It has further been contended that the Financial Creditor exercised control over the Corporate Debtor through interconnected entities including



Vision India and Trinity and therefore the present proceedings constitute abuse of the insolvency framework.

86. The Corporate Debtor and the Interveners have also relied upon the pending proceedings under Section 66 before the Hon'ble NCLT, Kolkata Bench, the forensic audit observations alleging round-tripping and related party transactions and the observations made by the Hon'ble Calcutta High Court requiring detailed adjudication into the true nature of the transactions. On the strength of these circumstances, it has been urged that the present petition deserves dismissal with imposition of cost under Section 65 of the Code.
87. Per contra, the Financial Creditor has denied all allegations of fraud, collusion and malicious intent. It has been submitted that valid loan agreements were executed between the parties, substantial amounts were disbursed and securities and mortgages were created in favour of the Financial Creditor. It has further been contended that the Corporate Debtor acknowledged the liabilities in its financial statements and therefore the present proceedings cannot be termed as fraudulent merely because disputes have subsequently been raised regarding the underlying transactions. The Financial Creditor has also argued that proceedings under Section 66 and Section 7 operate in distinct fields and mere allegations of fraud or pendency of parallel proceedings cannot automatically attract Section 65 of the Code.
88. Section 65 of the Code is penal in nature and therefore the threshold for invoking the said provision is considerably high. Before imposing any penalty under Section 65, this Tribunal is required to arrive at a clear and cogent finding that the insolvency proceedings were initiated fraudulently or with malicious intent for purposes other than insolvency resolution.
89. However, merely because the present Section 7 Petition is found unfit for admission does not automatically lead to the conclusion that the proceedings were initiated fraudulently or maliciously within the meaning of Section 65 of the Code.
90. The record reveals that loan agreements were executed between the parties, substantial amounts were admittedly disbursed and securities and mortgages were created in favour of the Financial Creditor. This Tribunal also notices that the Hon'ble Calcutta High Court has granted injunction in respect of the pledged shares allegedly secured in favour of the Financial Creditor. Further, the Financial Creditor has relied upon



account statements, security documents and acknowledgements of liability in support of its claim.

91. Thus, although serious disputes exist regarding the true nature and legitimacy of the transactions and although the circumstances surrounding the transactions create substantial suspicion warranting careful judicial scrutiny, this Tribunal is unable to conclusively hold, at this stage, that the present proceedings were initiated solely with fraudulent or malicious intent.
92. The allegations raised by the Corporate Debtor and the Interveners undoubtedly justify rejection of the present Section 7 Petition for want of a clear and undisputed 'financial debt' fit for adjudication under the summary jurisdiction of this Tribunal. Nevertheless, the materials presently available on record do not satisfy the higher threshold required for invocation of Section 65 of the Code.
93. Accordingly, this Adjudicating Authority holds that while the present Section 7 Petition is not fit for admission in view of the serious disputes surrounding the underlying transactions, the Corporate Debtor and the Interveners have also failed to conclusively establish malicious initiation of proceedings so as to warrant imposition of penalty under Section 65 of the Insolvency and Bankruptcy Code, 2016.
- vi. Whether the Application is liable to be rejected in view of Section 10A of the Code?**
94. The Corporate Debtor has contended that the present petition is barred by Section 10A of the Insolvency and Bankruptcy Code, 2016. According to the Corporate Debtor, the Financial Creditor had itself issued notice dated 16.03.2021 alleging occurrence of default during the period covered under Section 10A and therefore the Financial Creditor cannot subsequently alter or shift the date of default in order to overcome the statutory bar contained under the said provision.
95. It has further been argued that the alleged default fundamentally traces back to the period protected under Section 10A and therefore initiation of CIRP on the basis of such debt is legally impermissible.
96. Per contra, the Financial Creditor has contended that the date of default in the present case is not during the Section 10A period. According to the Financial Creditor, the facilities in question were repayable upon maturity and the account became due and payable only upon expiry of the tenure of the facilities on 28.01.2024. It has therefore been submitted that the present petition is not hit by Section 10A of the Code.



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97. In the present case, although the Corporate Debtor has relied upon earlier correspondence and notices allegedly issued during the Section 10A period, the Financial Creditor has specifically founded the present petition upon the alleged maturity default arising on 28.01.2024. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Ramesh Kymal Vs Siemens Gamesa Renewable Power Pvt. Ltd.* [(2021) 3 SCC 224] wherein the Hon'ble Supreme Court Clarified that Section 10A imposes a complete bar on filing applications for defaults arising during the period under Section 10A of IBC.
98. The materials on record indicate that the facilities were repayable upon maturity on 28.01.2024 as evidenced from loan agreement dated 24.01.2019. The earlier communications relied upon by the Corporate Debtor appear to pertain to irregularity in servicing of interest obligations and cannot *ipso facto* be treated as crystallization of the entire debt becoming immediately due and payable. Accordingly, prima facie, the date of default as alleged by the Financial Creditor does not fall within the prohibited period contemplated under Section 10A of the Code.
99. In the present case, this Tribunal has already recorded that serious and substantial disputes exist regarding the nature and legitimacy of the underlying transactions, allegations of sham arrangements and round-tripping of funds, the relationship between the entities involved and the effect of pending proceedings before the Hon'ble NCLT, Kolkata Bench and the Hon'ble Calcutta High Court. This Tribunal has also held that such disputed and complicated issues are not fit for adjudication within the limited summary jurisdiction exercised under Section 7 of the Code.
100. Accordingly, this Adjudicating Authority has no hesitation in holding that the present case is not fit for admission to Corporate Insolvency Resolution Process. In summary, the present Company Petition is not maintainable and liable to be rejected.

**Order**

101. In view of the findings and conclusions recorded hereinabove, this Adjudicating Authority is of the considered view that the present matter involves serious and substantial issues concerning the very nature, legitimacy and enforceability of the underlying transactions, which are already subject matter of adjudication before the learned Sole Arbitrator, appointed pursuant to the orders passed by the Hon'ble Calcutta High Court as well as pending proceedings under Section 66 of the Insolvency



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- and Bankruptcy Code, 2016 before the Hon'ble NCLT, Kolkata Bench. This Tribunal has further held that the present case **does not disclose a clear and undisputed 'financial debt' and 'default'**, which is required for determination within the limited summary jurisdiction exercised under Section 7 of the Code.
102. Accordingly, Company Petition being **CP(IB)/8/GB/2024**, filed by the Applicant/Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor/Kitply Industries Limited is hereby **Rejected**.
103. Further, **IA(IBC)/59/GB/2025** and **Inv. Pet. (IBC)/1/GB/2024** are **partly allowed only to the limited extent that the relief sought for dismissal of CP(IB)/8/GB/2024 stands granted**. However, the prayers seeking initiation of proceedings and imposition of penalty under Section 65 of the Insolvency and Bankruptcy Code, 2016 against the Financial Creditor are rejected.
104. Accordingly, **IA(IBC)/59/GB/2025** and **Inv. Pet. (IBC)/1/GB/2024** both are **disposed off** in the above terms.
105. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsels.
106. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.
107. File be consigned to records.

**Sd/-**  
**Yogendra Kumar Singh**  
**Member (Technical)**

**Sd/-**  
**Rammurti Kushawaha**  
**Member (Judicial)**

*Signed this on 2<sup>nd</sup> of June, 2026.*

*Aditya Prakash (LRA)*