NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 594 of 2025

[Arising out of the Order dated 07.04.2025 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Kolkata Bench) in C.P.(IB) No. 131/KB/2023]

IN THE MATTER OF:

Mr. Gaurav Jaiswal
(Member of the suspended Board of Directors of
JHV Sugar Limited)
Having his address at:
SA-3/96, Chhota Lalpur, Pandeypur, Varanasi,
Uttar Pradesh – 221002 **...Appellant**

Versus

1. **Indian Renewable Energy Development Agency Limited (IREDA)**
Having its Registered Office at:
1st Floor, Core-4A, East Court,
India Habitat Centre, Lodhi Road,
New Delhi-110003 **...Respondent No.1**

2. **Mr. Alok Kumar Agarwal**
(Interim Resolution Professional of
JHV Sugar Limited)
(IBBI/IPA-001/IP-P00059/2017-2018/10137)
Having office at:
605, Suncity Business Tower,
Golf Course Road, Sector 54, Gurgaon,
Haryana – 122002 **...Respondent No.2**

Present:

For Appellant : Mr. Gaurav Sethi, Mr. Aman Sharma, Mr. Rahul Kapoor, Mr. Rahul Pawar and Mr. Kartik Nagpal, Advocates

For Respondent : Mr. Nibruti Samal, Advocate for IRP.

Mr. Nakul Sachdeva, Mr. Abhinandan Sharma, Mr. Shreyansh Rathi. Msr. S. Arora and Ms. Shrinkhla Tiwari, Advocates for IREDA

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

[Per: Arun Baroka, Member (Technical)]

The instant Company Appeal ("Appeal") has been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("Code"), challenging the order dated April 7, 2025 ("Impugned Order" or "Admission Order") issued by the Hon'ble National Company Law Tribunal, Kolkata Bench ("NCLT" or "Adjudicating Authority") in C.P. (IB) No. 131/KB/2023 ("Company Petition"). The Impugned Order dated 07.04.2025 pertains to an application under Section 7 of the Code filed by Indian Renewable Energy Development Agency Limited ("IREDA" or "Financial Creditor/Respondent No. 1"), wherein the Ld. NCLT admitted the petition, initiating the Corporate Insolvency Resolution Process ("CIRP") against JHV Sugar Limited ("Corporate Debtor") and appointing Mr. Alok Kumar Agarwal ("Respondent No. 2") as the Interim Resolution Professional ("IRP").

Submissions of the Appellant

2. The Appellant contests the Impugned Order for being ex-parte and violating natural justice, as no opportunity for representation was provided. It claims misrepresentations by Respondent No.1 without counter-arguments. The admission of a functional sugar factory into CIRP has severe socioeconomic consequences, threatening over 25,000 families, sparking industry disruption, and risking non-compliance with Supreme Court directives on farmer payments.

3. In 2011, the Corporate Debtor sought financial assistance from Indian Renewable Energy Development Agency Limited ("Respondent No. 1) for expanding its sugar mill and setting up a 20 MW Bagasse-based co-generation project in Uttar Pradesh by expanding their existing Integrated Sugar Plant capacity of 4500 TCD to 6500 TCD. Respondent No. 1 sanctioned a term loan of ₹57.10 Crores, divided into ₹27.41 Crores (Main Loan) and ₹29.69 Crores (Bridge Loan) under the Sugar Development Fund. A Loan Agreement and Deed of Hypothecation were executed on October 3, 2011, between the parties.

4. The Financial Creditor disbursed only ₹17.72 Crores towards the main loan, out of which, approximately ₹7.16 Crores was directly paid to the suppliers/ vendors on behalf of the Corporate Debtor by the Respondent No.1 and ₹10.55 Crores was disbursed in the Corporate Debtor's Trust and Retention Account. The management of the Corporate Debtor requested the Financial Creditor to disburse the total sanctioned loan amount, being ₹57.10 Crores as agreed in the Loan Agreement dated 03.10.2011, however, the Financial Creditor did not adhere to the terms of the Loan Agreement and did not disburse the entire sanctioned loan amount being ₹7.10 crores. As a result, only ₹17.72 Crores was ever disbursed to the Corporate Debtor.

5. The Financial Creditor's failure to disburse the full sanctioned loan amount resulted in the incomplete expansion of the Corporate Debtor's sugar mill and co-generation project, causing severe losses and a debt trap. This led to defaults in payments to creditors, sugarcane farmers, and others. Due to

the outstanding payments towards the sugarcane farmers, the entire assets of the Factory/sugar mill and assets under-development i.e., the power plant were attached by the District Magistrate, Maharahganj for the recovery of sugarcane farmer's dues in accordance with the U.P. Revenue Code, 2006.

6. Respondent No. 1, despite failing to disburse the full sanctioned loan amount and destabilizing the Corporate Debtor's finances, issued a unilateral recall notice on 11.08.2017, demanding an inflated amount of ₹25,05,26,962/- (Rupees Twenty-Five Crores Five Lakhs Six Thousand Nine Hundred Sixty-Two Only). The Corporate Debtor, having received only ₹17.72 Crores but the Respondent No.1 demanded 19.41 Cr as principal loan amount against some adjustments, refuted this claim through a reply dated 31.08.2017 sent via Corporate Debtors advocate due to which the attempts for reconciliation or settlement failed, leaving the matter unresolved.

7. On 18.07.2018, Respondent No. 1 filed Company Petition (IB) No. 153 of 2018 under Section 7 of the Code before the Hon'ble NCLT Kolkata Bench, seeking recovery of an escalated loan amount of ₹26.41 Crores, including ₹19.41 Crores as principal along with interest and charges. The petition was served at the Corporate Debtor's Varanasi Office citing the reason closure of its registered office. The Corporate Debtor filed a reply denying the claims and highlighting concealment of crucial facts and distortion of the case by Respondent No. 1 before the Hon'ble NCLT.

8. Despite the disputes regarding the loan amount and interest, the Corporate Debtor intended to make legitimate payments and proposed a One Time Settlement ("OTS-1"), which was approved on 16.05.2019. Following this, Company Petition (IB) No. 153 of 2018 was withdrawn by Respondent No. 1, as recorded in the Hon'ble NCLT's order dated 17.07.2019.

9. The Corporate Debtor, unable to adhere to the terms of OTS-1 due to financial stress caused by the Covid-19 pandemic, proposed a second One Time Settlement ("OTS-2"), which was accepted by the Financial Creditor on 15.05.2021. As per OTS-2, full payment was agreed to be completed by November 25, 2022.

10. Under the terms of OTS-2, the Corporate Debtor was obligated to pay ₹20,42,49,000/- plus 12.45% simple interest. By 25.11.2022, ₹13.25 Crores had been paid, and an extension request till 31.03.2023, was submitted on 14.12.2022. Multiple correspondences ensued between the parties, and the Financial Creditor, via emails dated 25.11.2022, 19.12.2022, 22.12.2022 and 28.12.2022, acknowledged the extension till 15.03.2023. The emails further confirmed receipt of ₹2.25 Crores out of the remaining ₹7.17 Crores (principal) and ₹2.93 Crores (interest), leaving ₹8.04 Crores outstanding to be paid by 15.03.2023.

11. Thereafter, from 02.01.2023 to 24.03.2023, in terms of the said emails subsequently the Corporate Debtor paid additional ₹5 Crores and cleared all the amount of principal loan as per OTS-2. Subsequent, to the ongoing

litigations against the Corporate Debtor with respect to sugarcane farmers and State of U.P, only mere interest amount of ₹2,98,85,658/-was remaining.

12. The Corporate Debtor has paid a total of ₹27,46,79,638/-, including ₹17,82,30,809/- (Principal Loan) and ₹9,64,48,829/-(Interest), both pre and post OTS-2. This demonstrates that the claim of default on the entire Loan Agreement, as relied upon by the NCLT and misrepresented by Respondent No. 1, is factually incorrect and merits being set aside.

13. The total outstanding amount owed by the Corporate Debtor was ₹2,98,85,658/- towards interest, while Respondent No.1 had already acknowledged the receipt of the full loan amount of ₹20.42 Crores under OTS-2 through prior communications on email. Thus, the Impugned Order is liable to be set aside as it appears Respondent No. 1 concealed crucial documents and facts, presenting a misleading case to procure an ex-parte order without the knowledge or representation of the Corporate Debtor or the Appellant.

14. Additionally, the Financial Creditor, despite being aware of the multiple offices of the Corporate Debtor, failed to serve the Petition at either the Registered Office or the Administrative Office. During the pendency of the Company Petition, the Corporate Debtor sent a letter dated 27.08.2024, seeking waiver of interest from 15.05.2021 to 24.03.2023, under the One Time Settlement Scheme. The letter disclosed that ₹17,82,30,809/- Crores was disbursed by the Financial Creditor, while ₹27,46,79,638/- Crores (including ₹,64,48,829/- Crores towards interest) had already been paid by

the Corporate Debtor. This letter, showcases the Corporate Debtor's unawareness of the pending proceedings, and that the Financial Creditor withheld the information in a deliberate effort considering that the Financial Creditor failed to apprise the Ld. NCLT of its existence. This omission highlights procedural lapses and reinforces the Corporate Debtor's claim that the Impugned Order was based on incomplete and distorted facts.

15. On 07.04.2025, the Hon'ble NCLT passed the impugned order ex-parte relying solely upon the inaccurate and incomplete audit report and allowed the said I.A.

16. The Impugned Order dated 07.04.2025 has been passed ex parte, without service of the Company Petition upon the Appellant/Corporate Debtor, despite Respondent No.1 being aware of the administrative office location of the Appellant. This is a gross violation of the principles of natural justice. Respondent No.1 was fully aware of the correct address of the Appellant, yet deliberately effected service only upon a nonfunctional address. Further, Respondent No.1 has, for reasons best known to it, conveniently mentioned the service email as jhvsugar@gmail.com, while making no attempt to serve the Appellant on the email IDs of the Company's Directors, including jhvpurchase@rediffmail.com, as recorded in the numerous correspondence exchanged between the parties. In fact, Respondent No.1 had on multiple occasions directly communicated with the Directors of the Appellant on their respective email IDs, thereby confirming knowledge of the correct and operative contact details. Such conduct demonstrates a clear

mala fide intention which has resulted in a grave violation of the principles of Natural Justice, thereby vitiating the Impugned Order. Appellant places its reliance on **Dharampal Satyapal Ltd. v. Dy. Commissioner of Central Excise, (2015) 8 SCC 519** wherein the Hon'ble Supreme Court reiterated that denial of opportunity of hearing renders any order void.

17. Assuming arguendo, the Appellant has committed a breach in fulfilling the terms of the OTS-2, it is claimed that the dispute raised by Respondent No.1 essentially concerns recovery of alleged interest dues, with principal already repaid. Such disputes fall within the jurisdiction of the Debts Recovery Tribunal (DRT) under the SARFESI Act. Resort to Section 7 of the IBC for recovery purposes is impermissible. Curiously, the Respondent No.1, subsequent to admission of the above-captioned appeal, has filed an OA bearing No. 304/2025 before the Debts Recovery Tribunal-II, Delhi seeking recovery of the very same alleged dues which form the subject matter of the present insolvency proceedings, thereby acknowledging that its appropriate remedy lies before the DRT and rendering the continuation of the present Section 7 petition wholly untenable. The Appellant places its reliance on the judgment of the Hon'ble Supreme Court in **Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17** wherein it was held that IBC is not a recovery legislation; it is meant to resolve insolvency of entities genuinely unable to pay. The appellant also places its reliance on the judgment of the Honourable Supreme Court in **Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353** where in it was held that IBC cannot be invoked where a genuine dispute exists or where the creditor is merely seeking

recovery of dues. Thus, the proper remedy of Respondent No.1 lies before the DRT and not under Section 7 proceedings.

18. Appellant also claims that it is a well-settled principle in law that insolvency proceedings cannot be admitted where the principal debt stands discharged and only the interest component remains outstanding. In the present case, outstanding amount undisputed by the Respondent No.1 is ₹2.98 crore which forms the interest component after discharge of the principal amount. Admission of CIRP solely on this ground is contrary to binding precedent. The Appellant places its reliance on the judgement of this Appellate Tribunal in **S.S. Polymers versus Kanodia Technoplast Limited 2019 SCC OnLine NCLAT 1310** para 5 and also **Steel India v. Theme Developers Pvt. Ltd., 2020 SCC OnLine NCLAT 200.**

19. The Appellant/Corporate Debtor contends that it has paid ₹27.46 crores against a disbursement amount of ₹17.72 crores, including ₹9.74 crores towards interest. Respondent No.1 has itself acknowledged these payments under OTS-2. At best, a marginal interest remains disputed. The Appellant places its reliance on the judgment of the Hon'ble Supreme Court in the matter of **Bijnor Urban Cooperative Bank Ltd. v. Meenal Agarwal, (2022) 12 SCC 727** wherein it was held that OTS is contractual and enforceable; once acted upon, both parties are bound by it. The Appellant also places its reliance on another judgment of the Hon'ble Supreme Court in the matter of **State Bank of India v. Arvindra Electronics Pvt. Ltd., 2022 SCC OnLine SC 1447** wherein it was held that OTS terms must be strictly

construed and once substantially complied with, any party cannot arbitrarily revoke and resort to IBC as a recovery tool.

20. On 11.04.2023, Respondent No.1 purported to withdraw from OTS-2 through an unsigned correspondence. The said communication is ex facie invalid in law, as it bears no signature and is unsupported by any board resolution or authorization of Respondent No.1. An unsigned and unauthorized document cannot constitute a valid withdrawal of a concluded One-Time Settlement, particularly when the Appellant had already substantially complied with its terms. Pursuant thereto, the Appellant immediately issued a detailed letter dated 17.04.2023, categorically pointing out that Respondent No. 1 had disbursed only ₹17.72 crores, against which the Appellant had already repaid ₹27.46 crores (including substantial interest), leaving only a marginal sum of ₹2.98 crores outstanding as on 31.03.2023. Significantly, no objection, denial, or rebuttal has ever been raised by Respondent No.1 to the letter dated 17.04.2023.

21. The sanction agreement executed between the parties explicitly stipulates that the Appellant would take confirmation from Respondent No.1 before placing any order for machineries/raw material to any machinery contractor/ supplier. This contractual obligation demonstrates that the Respondent No. 1's role was not confined merely to that of a financial creditor extending disbursement, but extended to an active participatory role in the functioning of the Appellant. Such involvement goes beyond the statutory definition of a "Financial Creditor" under Section 5(7) of the Code.

Consequently, the invocation of Section 7 proceedings at the behest of Respondent No.1 becomes non est in law. The IBC framework cannot be resorted to as a tool of coercion by a party whose role is intrinsically supervisory in nature, particularly where the principal debt already stands discharged and the alleged default pertains solely to a disputed interest component. Appellant places its reliance on the judgment of the Hon'ble Supreme Court in the matter of **Vidarbha Industries Power Ltd. v. Axis Bank Ltd., (2022) 8 SCC 352** to support its argument.

22. The present proceedings are not the Respondent's first attempt at recovery. The Respondent No.1 has filed as many as 8 cases under the Negotiable Instrument Act, 1881 before the Ld. Patiala House Court, New Delhi seeking recovery against the same debt under which the present proceedings are initiated. It is a well settled principle in law that he who comes into equity must come with clean hands. The Hon'ble Supreme Court through catena of judgments has reiterated this principle and emphasized on the fact that those who come before a court of law with unclean hands are not entitle to any relief. Appellant has placed its reliance on the judgment of the Hon'ble Supreme Court in the matter of **A.S. Motors (P) Ltd. v. Union of India, (2013) 10 SCC 114** to canvas this argument.

23. The Appellant, through various letters and communications, consistently attempted to reach out to Respondent No.1 with the objective of settling the matter and tendering the balance outstanding payments. However, all such bona fide efforts were deliberately ignored by Respondent

No.1, who failed to engage in good faith and instead proceeded with coercive measures. This conduct further evidences the mala fide intention of Respondent No.1 and reinforces that the initiation of insolvency proceedings is a misuse of the IBC framework as a debt recovery mechanism. Moreover, this Hon'ble Tribunal, through a catena of judgments, has categorically held that where the Corporate Debtor is not insolvent and is otherwise viable and capable of discharging its obligations, initiation of CIRP merely for recovery of interest dues amounts to a proceeding with malicious intent and misuse of the insolvency process for any purpose other than genuine resolution of insolvency or liquidation. It places its reliance on the judgement of this Appellate Tribunal in the matter of **SBF Pharma v. Gujarat Liqui Pharmacaps Pvt. Ltd., 2019 SCC OnLine NCLAT 1440** to support his argument.

24. The Appellant further contends that the Insolvency and Bankruptcy Code is required to be interpreted in a manner that advances the larger interests of all stakeholders, the 25,000 families herein, and not to their detriment. The Appellant, having a long-standing ancestral repute and a legacy of safeguarding the welfare of more than 25,000 (Twenty Five Thousand) families residing in the vicinity and across the State. The Appellant is presently holding stock worth more than ₹8 Crores in processed sugar and allied products. In such circumstances, the Hon'ble NCLT could not have admitted the Corporate Debtor into insolvency proceedings, particularly by way of an ex-parte admission order, thereby sealing the fate of over 25,000 dependent families at the hands of Respondent No. 2, who admittedly

possesses no expertise to address the complex issues concerning the functioning of a Sugar Factory. The said admission has further been based on the wrongful reliance placed on the alleged debt presented by Respondent No. 1 before the Hon'ble NCLT.

Submissions of the Respondent

25. Corporate Debtor has intentionally not chosen to contest the underlying proceedings before the Ld. NCLT, as it was aware that it had no effective chance to succeed in the said proceedings before the Ld. NCLT.

26. A bare perusal of the proof of service filed by the Answering Respondent indubitably reflects the fact that, by way of an email on 06.06.2023, the Answering Respondent had duly served the Company Petition on the official email address of the Corporate Debtor, as available from the records of the Ministry of Corporate Affairs, Government of India ("MCA"). Which is jhvsugar@gmail.com.

27. A bare perusal of the Orders dated 06.03.2024 and 10.05.2024 in the Company Petition makes it indubitably clear that the Registry of the Ld. NCLT had also attempted service upon the Corporate Debtor through registered post on its registered address as per the MCA records. However, the said Orders also record the fact that the said service had failed as the Corporate Debtor was not available at its registered address. By way of Orders dated 02.07.2024 and 01.10.2024 passed by the Ld. NCLT in the Company Petition, the Respondent also subsequently made paper publication of the underlying proceedings in the Company Petition against the Corporate Debtor. However,

it was only when the Corporate Debtor still failed to mark its appearance before the Ld. NCLT in the Company Petition, that, by way of Order dated 18.11.2024, the Ld. NCLT set the Corporate Debtor ex-parte.

28. In light of the same, it is clear that the Corporate Debtor had been duly served in the underlying proceedings in the Company Petition and it chose to remain wilfully absent from the underlying proceedings in the Ld. NCLT.

29. The instant assertion made by the Appellant is entirely an afterthought, as it is indubitably clear that the Corporate Debtor intentionally chose to not contest the proceedings in the Company Petition before the Ld. NCLT. It is further a matter of record that the Corporate Debtor was duly served by both email and registered post on the corresponding email address and physical address, as registered by the Corporate Debtor itself with the MCA.

30. The Appellant's own letter dated 17.04.2023 contains a watermark that states that the Corporate Debtor's address is the same address as mentioned in the Company Petition and as contained in the MCA records of the Corporate Debtor. It is a matter of record that physical service has been duly effectuated on the said address of the Corporate Debtor.

31. While dealing with similar assertions, the Hon'ble Principal Bench of the Hon'ble National Company Law Appellate Tribunal ("Hon'ble NCLAT") (New Delhi) in **Akhilesh Kumar v Bank of Baroda and Anr. (Company Appeal (AT) (Ins.) No. 512 of 2025**], and **Rajnish Gupta v Union Bank of**

India and Anr. (Company Appeal (AT) (Ins.) No. 351 of 2021, has held that service by way of email on the registered email address of the Corporate Debtor with the MCA shall be adequate service under the National Company Law Tribunal Rules, 2016 ("Rules"). In a similar factual context under Section 7 of the Code, the Hon'ble NCLAT in the above-cited judgements, this appellate tribunal has held that service by way of email on the registered email address of the Corporate Debtor with the MCA shall be adequate service that is in compliance with Rules 37 and 38 of the Rules. In light of the same, it is clear that the instant assertion raised by the Appellant has no merit, and the instant Appeal deserves to be dismissed.

32. Section 20(2) of the Companies Act 2013 read with Rule 35 of the Companies (Incorporation) Rules 2014 further mandates that service on the registered email address of a Company as per the records of the MCA shall constitute deemed service.

33. Appellant's contention that the Answering Respondent failed to inform the Corporate Debtor about the proceedings in the Company Petition, even when the Appellant requested closure of the loan account vide letter dated 27.08.2024, is wholly misplaced, as the Answering Respondent was under no obligation to specifically inform the Corporate Debtor about the Company Petition, as the Answering Respondent had already lawfully effectuated service of the Company Petition on the Corporate Debtor. The said assertion is also a mere afterthought by the Appellant as it seeks to maliciously escape the clutches of the CIRP, as it has no real chance of succeeding in the

underlying proceedings before the Ld. NCLT, as the fact of debt and default on part of the Corporate Debtor has, indubitably, been established.

34. The Appellant has alleged that the Impugned Order must be set aside as the Corporate Debtor is a going concern that possesses large stock of sugar and indirectly ensures the livelihood of around 25,000 (Twenty-Five Thousand) families of workers across the state of Uttar Pradesh as the Resolution Professional does not possess the requisite knowledge to effectively run the business of the Corporate Debtor. The Appellant has further alleged that the admission of the Corporate Debtor into CIRP is against the legislative intent of the Code. The said assertion cannot be a legally tenable ground for the setting aside of the Impugned Order, as the Code itself postulates the running of the Corporate Debtor as a going concern under the provisions of the Code once the Corporate Debtor is admitted into CIRP. Sections 5(26), 14(2), 20 and 23(1) of the Code, along with Regulations 32, 33, 37, and 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("Regulations"), reflect the legislative intent of entrusting the affairs of the Corporate Debtor, even if the same is a going concern, in the hands of the Resolution Professional.

35. The judicial review available to the Ld. NCLT, in the context of an application filed under Section 7 of the Code, is limited towards the establishment of debt over the prescribed threshold metric and the event of default by the Corporate Debtor. Reliance for the said proposition is placed

on the decision of the Hon'ble Supreme Court in **Innoventive Industries v ICICI Bank [(2018) 1 SCC 407)**, and the decisions of the Hon'ble NCLAT in **Shobhnath and others v Prism Industrial Complex Ltd. [2019 SCC OnLine NCLAT 1095)**, and **Nishit B. Patel v Good Value Financial Services Pvt. Ltd. and Anr. [2022 SCC OnLine NCLAT 2124]**. It is an established position of law that the Ld. NCLT, while adjudicating on the admission of an application under Section 7 of the Code, cannot take into consideration any other fact than whether there is a debt and default on the part of the Corporate Debtor.

36. The Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Limited v Satish Kumar Gupta (Civil Appeal Nos. 8766-8767 of 2019)** reflects the fact that the provisions of the Code clearly envisage the running of the Corporate Debtor as a going concern, even post the admission of the Corporate Debtor into CIRP. The relevant extracts from the aforementioned decision of the Hon'ble Supreme Court are extracted hereinbelow:

> "... 53. However, as has been correctly argued on behalf of the operational creditors, the preamble of the Code does speak of maximization of the value of assets of corporate debtors and the balancing of the interests of all stakeholders. There is no doubt that a key objective of the Code is to ensure that the corporate debtor keeps operating as a going concern during the insolvency resolution process and must therefore make past and present payments to various operational creditors, without which such operation as a going concern would become impossible. Sections 5(26), 14(2), 20(1), 20(2)(d) and (e) of the Code read with Regulations 37

and 38 of the 2016 Regulations all speak of the corporate debtor running as a going concern during the insolvency resolution process...."

37. The Resolution Professional, is adequately empowered to run the Corporate Debtor as a going concern, and the provisions of the Code provide him with the requisite means to do the same until the resolution of the Corporate Debtor under the provisions of the Code. Thus, assertion raised by the Appellant is wholly frivolous and is an afterthought. In fact, it is the Appellant who has been unable to effectively run the business operations of the Corporate Debtor as the Corporate Debtor has failed to effectively service the instant debt owed to the Answering Respondent.

38. The Appellant has failed to produce even a single piece of evidence to back its purported claim of employing lakhs of people. It is further submitted that the judicial precedents cited by the Appellant in support of the instant assertion are misplaced and entirely distinguishable.

39. Respondent has duly complied with Rules 37 and 38 of the Rules in the underlying proceedings in the Company Petition. It is further submitted that the instant assertion is a mere afterthought and has been put forth by the Appellant to escape the clutches of the CIRP, as the Corporate Debtor, despite being duly served, intentionally chose to not contest the proceedings in the Company Petition before the Hon'ble NCLT.

40. The Appellant has alleged that the amount of debt asserted by the Answering Respondent in the Company Petition, i.e., ₹24,95,05,121/-

(Rupees Twenty Four Crores Ninety Five Lakhs Five Thousand One Hundred and Twenty One Only), is incorrect, as the Corporate Debtor has allegedly paid an amount of ₹27,46,79,638/- (Rupees Twenty Seven Crores Forty Six Lakhs Seventy Nine Thousand Six Hundred and Thirty Eight Only) till date to the Answering Respondent. The Appellant has further alleged that the Corporate Debtor has remitted the entire payment towards the outstanding principal amount due under the terms of the purported One Time Settlement dated 26.11.2021 between the Corporate Debtor and the Answering Respondent, and only interest amounting to ₹2.98 Crores remains outstanding from the Corporate Debtor to the Answering Respondent under the said One-Time Settlement. The Appellant asserts that the Effective OTS was still in effect and that the Corporate Debtor had been complying with the same.

41. In furtherance of the Loan Agreement dated 03.10.2011 executed between the Corporate Debtor and the Answering Respondent ("Loan Agreement"), an amount of ₹1941.94 Lakhs was disbursed to the Corporate Debtor in various tranches from 19.12.2012 to 30.11.2015. As per the amortization schedule of the Loan Agreement, the debt was to be repaid in forty quarterly instalments commencing from 30.09.2013 and ending on 30.06.2023. Subsequent to the disbursal of the aforementioned amount, the Corporate Debtor miserably failed to service the debt advanced by the Answering Respondent. In light of the same, the Answering Respondent was constrained to issue a Demand Notice dated 16.12.2015 to the Corporate

Debtor, whereby the total outstanding amount, as on the said date, was demanded from the Corporate Debtor. Various reminder letters/emails were exchanged between the Corporate Debtor and the Answering Respondent between the years 2015-2018 with regard to the default committed by the Corporate Debtor and the repayment of the outstanding debt owed by the Corporate Debtor. However, the Corporate Debtor still failed miserably to service the debt owed to the Answering Respondent.

42. Subsequently, due to the failure of the Corporate Debtor to still effectively service the debt owed to the Answering Respondent, the Answering Respondent was constrained to file the initial application under Section 7 of the Code in 2018, bearing C.P. (L.B.) No. 153/KB/2018 ("First Application") before the Ld. NCLT. During the course of proceedings in the First Application before the Ld. NCLT, the Corporate Debtor approached the Answering Respondent for settlement and consequently shared a One-Time Settlement Proposal. Subsequently, the said proposal was deliberated and finalized between the said parties, resulting into the issuance of One Time Settlement Proposal dated 15.05.2019 ("OTS-1") between the parties. Due to the issuance of the OTS-1, the First Application was withdrawn by the Answering Respondent. The same was also duly recorded by the Ld. NCLT in its Order dated 17.07.2019 passed by the Ld. NCLT in the First Application.

43. The Corporate Debtor again failed to fulfill the repayment obligations under the terms of the OTS-1 and requested the Answering Respondent for further extensions. By way of subsequent extension letters, with the last and

effective one being the OTS extension letter dated 31.01.2022 (read with preceding OTS letter dated 26.11.2021) ("Effective OTS") issued by the Answering Respondent, the Corporate Debtor and the Answering Respondent agreed on, inter alia, the following re-scheduled repayment terms with respect to the outstanding debt owed by the Corporate Debtor:

XXX

> i. The Corporate Debtor was obligated to pay the outstanding OTS amount of Rs. 1996.84 Lakhs and Rs. 50 Lakhs along with Simple Interest at the rate of 12.45% on or before 25.11.2022.
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> ii. The Corporate Debtor was further obligated to pay at least One Crore per month to the Answering Respondent from 31.01.2022 and clear the outstanding amount on or before 25.11.2022.
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> iii. The Corporate Debtor further agreed that, in the event of a default by the Corporate Debtor on the terms contained in the Effective OTS, the OTS sanctioned by Answering Respondent would stand withdrawn without any further notice to the Corporate Debtor, and the Answering Respondent shall be, inter alia, entitled to recover all dues as per the books of the Answering Respondent, as if no OTS had ever been. sanctioned to the Corporate Debtor. It was further clarified that a no dues certificate would only be issued to the Corporate Debtor in the event that it fully complied with the obligations of the Effective OTS.

XXX

44. The terms of the Effective OTS were expressly accepted by the Corporate Debtor through the Appellant by way of email dated 08.02.2022 issued to the Answering Respondent. Even after repeated co-operation and extensions by the Answering Respondent with regard to the outstanding debt, the Corporate Debtor again miserably failed to carry out its obligations contained in the Effective OTS, as it, inter alia, failed to pay the outstanding

OTS amount of ₹1996.84 Lakhs and ₹50 Lakhs along with Simple Interest at the rate of 12.45% on or before 25.11.2022. In light of the said violations of the terms of the Effective OTS by the Corporate Debtor, subsequently, the Answering Respondent was constrained to consistently call upon the Corporate Debtor to fulfill the repayment terms contained in the Effective OTS. Pertinently, by way of a response to such emails issued by the Answering Respondent to the Corporate Debtor, the Corporate Debtor categorically admitted the debt owed to the Answering Respondent, along with the default committed by it. By way of various emails issued in the said period by Answering Respondent (specifically emails dated 25.11.2022 and 09.11.2022), the Corporate Debtor was repeatedly warned to fulfill the conditions contained in the Effective OTS, otherwise the Answering Respondent would withdraw the said OTS and proceed with appropriate actions under law.

45. In light of the blatant non-compliance by the Corporate Debtor of the terms of the Effective OTS, despite repeated warnings, the Answering Respondent was constrained to withdraw the Effective OTS by way of its email dated 12.12.2022 issued to the Corporate Debtor. It is further submitted that the terms of the Effective OTS explicitly allowed the Answering Respondent to withdraw the OTS and call upon the Corporate Debtor to pay the entire outstanding amount owed under the Loan Agreement, in the event that the Corporate Debtor failed to meet the obligations contained in the Effective OTS.

46. The Appellant's contention that the Answering Respondent has presented an incorrect and misplaced computation of the outstanding amount owed by the Corporate Debtor is wholly misplaced, as the Effective OTS had ceased to be in effect since its withdrawal by way of the Answering Respondent's email dated 12.12.2022. Further since the Effective OTS was withdrawn on 12.12.2022, any payments made by the Corporate Debtor subsequent to the said withdrawal would stand adjusted against the entire outstanding debt owed by the Corporate Debtor and not just the reduced outstanding debt owed under the terms of the Effective OTS.

47. A bare perusal of the ledger of the Corporate Debtor's loan account till 31.03.2025 makes it absolutely clear that the amount of debt claimed by the Answering Respondent is correct and as per the applicable terms and conditions of the applicable contract Le the Loan Agreement, between the Corporate Debtor and the Answering Respondent. Further the said ledger produced by the Answering Respondent is a true and certified ledger in compliance with the Bankers Book Evidence Act of 1891.

48. The Appellant has itself admitted that the Corporate Debtor is liable to pay, at least, an outstanding interest amount of ₹2.98 Crores to the Answering Respondent. As an arguendo, it is further submitted that the said admission itself renders the Impugned Order valid, as the said amount is well over the prescribed threshold limit. As an arguendo, a default on interest related to the outstanding debt over the prescribed threshold limit amounts to a default under the provisions of the Code. Reliance for the said proposition

is placed on the decision of the **Hon'ble NCLAT in Base Realtors Pvt. Ltd. v Grand Realcon Pvt. Ltd. [Company Appeal (AT) (Ins.) No. 882 of 2022].**

49. The emails issued by the Answering Respondent in November and December 2022, as relied upon by the Appellant, also in fact clearly establish the fact that the Answering Respondent duly notified the Corporate Debtor of the fact that:

i. The Effective OTS stood withdrawn on 12.12.2022, as the Corporate Debtor failed to comply with, inter alia, the mandatory repayment obligations contained therein by the terminal date contained therein.

ii. The Answering Respondent had proceeded to initiate suitable action in law against the entire outstanding debt owed by the Corporate Debtor.

iii. The terminal date for honoring the repayment obligations, a sine qua non for the legal existence of the conditional Effective OTS, was 25.11.20222.

iv. No other legally binding and concluded one time settlement agreement remained in effect between the Corporate Debtor and the Answering Respondent subsequent to the withdrawal of the Effective OTS on 12.12.2022.

50. Since the Effective OTS was withdrawn on 12.12.2022, the Appellant's assertion that its purported payments made in the time period of 02.01.2023 to 24.03.2023 must be read to be adjusted against the outstanding amount

under the terms of the Effective OTS are wholly devoid of merit and contrary to established principles of contract law. It is reiterated that the Appellant has failed to produce a single document that could establish a binding one-time settlement agreement between the Answering Respondent and the Corporate Debtor subsequent to the withdrawal of the Effective OTS.

51. The factum of the outstanding debt above the threshold limit along with the occurrence of the event of default, has been admitted by the Appellant in the Appeal.

52. A bare perusal of the terms of the Effective OTS, along with the fact of the withdrawal of the said Effective OTS makes it an established fact that the Corporate Debtor was aware of the fact that the entire outstanding debt, as per the terms of the Loan Agreement, was due to the Answering Respondent.

53. A perusal of the emails issued by the Answering Respondent in November-December 2022, evinces the fact that the Answering Respondent duly informed the Corporate Debtor that it shall be taking steps under law for the resolution of the debt owed. The Appellant cannot claim lack of knowledge of the outstanding debt simply because the Corporate Debtor's letter dated 17.04.2023, was not replied to by the Answering Respondent. It is a matter of record that the Answering Respondent proceeded to file the Company Petition before the Ld. NCLT on 28.04.2023. Furthermore, the Corporate Debtor was always aware of the fact that the entire outstanding amount due under the Loan Agreement was always substantial, as it

repeatedly sought to settle the same at reduced amounts under settlement schemes. The said assertions raised by the Appellant are contrary to law and the material on record.

54. The Effective OTS was withdrawn as per the terms of the said Effective OTS. It is submitted that the Corporate Debtor's loan account ledger, submitted by the Answering Respondent, clearly evinces the fact that the Corporate Debtor failed to comply with the terms of the Effective OTS, therefore rendering it a nullity in the eyes of law. It is further submitted that the emails issued by the Answering Respondent to the Corporate Debtor subsequent to the withdrawal of the Effective OTS clearly establish the fact that the Corporate Debtor was aware of the fact that the Effective OTS stood withdrawn and the Answering Respondent would take steps for the resolution of the debt owed under the Loan Agreement under law.

Appraisal

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

56. The Appellant has challenged the impugned order basis two principal grounds, firstly the impugned order has been passed ex-parte without issuance of proper notice or affording an opportunity of hearing to the Corporate Debtor and secondly, the facts of the present case do not attract the provisions of Section 7 of the Code.

57. With respect to proceedings against the Appellant being ex-parte, the main argument canvassed is that the Appellant were not served the Section

7 petition. Since they were not served and for that reason, they could not defend and therefore the order passed by the Adjudicating Authority is against the principles of natural justice. And for this reason, they vehemently conclude that the matter may be remanded back to the Adjudicating Authority.

58. We observe that the Appellant's contention that the Corporate Debtor was not served with the notice of the underlying Company Petition is contrary to the record. Even prior to filing, the Petition was sent to the Corporate Debtor at the e-mail address jhvsugar@gmail.com, as reflected in the records of the Ministry of Corporate Affairs ("MCA") We agree with the argument of the respondent that it is no longer res-integra that service of the Section 7 Petition effected on the e-mail address of the Corporate Debtor, as reflected in the records of the MCA, constitutes valid and sufficient service. This Appellate Tribunal in **Rajnish Gupta (supra)**, has held that service of a Section 7 petition on the registered e-mail address appearing in the company master data maintained by the MCA constitutes valid and sufficient service. The said principle was recently reiterated by this Appellate Tribunal in **Akhilesh Kumar (supra)**, wherein ex-parte admission of a Section 7 petition was upheld, holding that notice sent to the e-mail address appearing in MCA records amounts to adequate service in compliance with Rule 38 of the NCLT Rules, 2016

59. We find that in the facts and circumstances of the case the Section 7 petition was attempted to be served on the registered office on the appellant

and was also served through email address which is provided in the portal of the Ministry of Corporate Affairs, which is not denied by the Appellant. With respect to the due service of the notice of the Section 7 petition, we find that the Corporate Debtor was served at the email address jhvsugar@gmail.com which is reflected in the records of Ministry of Corporate Affairs (MCA).

60. The Respondent argues that that service at the registered office address of a company, irrespective of whether the company is carrying on business therefrom or whether the notice is returned undelivered for any reason, constitutes valid service under both the Code of Civil Procedure, 1908 ("CPC") and the Companies Act We observe that the service by way of email on the registered email address of the Corporate Debtor with the MCA shall be adequate service as it is in compliance with Rules 37 and 38 of the Rules. Further, Section 20(2) of the Companies Act 2013 read with Rule 35 of the Companies (Incorporation) Rules 2014 further mandates that service on the registered email address of a Company as per the records of the MCA shall constitute deemed service. In light of the same, it is clear that the instant assertion raised by the Appellant has no merit, and the instant Appeal deserves to be dismissed.

61. We further observe that Section 12 of the Companies Act, 2013 places the onus on the company to maintain a registered office capable of receiving and acknowledging all communications and notices addressed to it. It was therefore incumbent upon the Appellant to ensure that the CD's registered address remained functional for receiving notices or, in case of cessation of

business operation therefrom, to update the same in the records maintained with the MCA. For its own non-compliance, the respondent cannot be faulted.

62. The Appellant has placed reliance on this Appellate Tribunal in **Sunil Sanghavi vs. Cytecch Coatings Pvt. Ltd. in CA (AT)(Ins) No. 635 of 2018**, para 8 and 9. The relevant extract of the judgment is as follows:

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> 8. From the provision of Section 8, it is clear that the legislature intended to put the 'Corporate Debtor' on notice that the amount due having defaulted if the amount is not paid. The 'Operational Creditor' may take steps for 'Corporate Insolvency Resolution Process' against the 'Corporate Debtor'. It is not a mere formality but mandate of law that such notice is actually served on the 'Corporate Debtor' who may act accordingly. For the said reason, the Adjudicating Authority is required to record its satisfaction that the records, including service of demand notice are in order. The Adjudicating Authority is required to satisfy Company Appeal (AT) (Insolvency) No. 635 of 2018 itself that the notice was actually served on the 'Corporate Debtor' not that technically it was served in the address.
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> 9. The Adjudicating Authority having failed to do so, we have no other option but to set aside the order dated 18th June, 2018 and the order dated 4th October, 2018. The parties having settled the matter we are not remitting the matter to the Adjudicating Authority. The Adjudicating Authority will direct the Registrar NCLT, Kolkata Bench to release the amount in favour of the 1st Respondent- 'Cytech Coatings Private Limited' deposited on behalf of the 'Corporate Debtor' immediately.

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63. The Appellant has also placed its reliance on **Amit Jain, (Suspended Director of Mahagun (India) Pvt. Ltd. in CA (AT)(Ins) No. 1186 of 2025 and IA No. 4981, 5133 of 2025**.

64. We observe that both the above judgments **Sunil Sanghavi and Amit Jain (supra)** are distinguishable and do not provide any assistance to the Applicant.

65. On the other hand, the Respondent has placed its reliance on **Akhilesh Kumar (supra) para 14 – 17**:

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> 14. We have already extracted the order passed by this Tribunal on 14.10.2024, by which paragraph 8, the Court has directed for service in any of the modes. The Court permitted service of notice on email address of the corporate debtor available with the petitioner or by way of email to the corporate debtor registered with the MCA. Along with the section 7 application, the registered master data of the corporate debtor as registered in the MCA was also brought on record and email of the corporate debtor as registered in the master data of the MCA was utilised for service of notice to the corporate debtor. Admittedly, appellant himself has filed an affidavit of service on record, which clearly proves that service was affected by the email sent by them. In addition to the service of notice by email dated 24.10.2024, as per order issued by the adjudicating authority on 24.10.2024, subsequent email was also sent informing the next date fixed in the matter, i.e., 26.11.2024, which email we have already extracted above.
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> 15. Learned counsel for the respondent during submissions have submitted that service was also affected physically through by the bank and report of agency who went to serve the notice has also been brought on record by affidavit of service dated 14.11.2024, which affidavit of service has not been brought on record by the appellant. Learned counsel for the respondent has handed over the affidavit of service as e-filed on 14.11.2024 for perusal of the Court. Service report indicates that the address as entered on the address as registered with the financial creditor. The premises of the corporate debtor was visited, however, entry was not allowed on the premises. Along with the affidavit of service, notice and photographs were also annexed.

16. We have noted above the submissions of the appellant that corporate debtor having not filed any application, petition or reply service by email address cannot be accepted. In Rule 38(1), the expression "at the email address as provided in the petition or application or in the reply". It clearly refers to petition which was filed by the financial creditor under Section 7 and email address as provided in Section 7 is the address on which process can be served on the corporate debtor. Thus, we are not persuaded to accept the submission of the appellant that in the present case service under Rule 38(1) was not possible, the corporate debtor having not been filed any petition, application or reply. The authorised representatives of the bank also physically visited the premises who have submitted a report.

17. We, thus are satisfied that service of the notice was duly made to the appellant and the adjudicating authority proceeded to hear the matter only after service was duly affected on corporate debtor. It is relevant to notice that the appellant during his submissions has not even questioned the debt and default on the part of the corporate debtor. The debt and default was fully proved by the financial creditor. The copy of CIBIL Reports and statements of account were also filed by the financial creditor. The corporate debtor was well aware of the several proceedings initiated by the financial creditor against the corporate debtor.

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66. We also note that this Tribunal in **Rajnish Gupta (supra)** and in **Akhilesh Kumar (supra)** has held that a service of Section 7 petition on the registered email address appearing in the company master data maintained by the MCA constitutes valid and sufficient service. Therefore, we cannot find that serving the petition on the Corporate Debtors registered email address was not a complete service. Furthermore, the notice was also sent to the Corporate Debtors registered address both by the registry of the NCLT

and also by the Respondent but it was returned as the Corporate Debtor was not available at its registered address.

67. Thereafter, the Respondent took further steps for publication in the newspapers in accordance with the NCLT Rules, 2016. Despite that Corporate Debtor failed to mark its appearance and therefore NCLT set the proceedings against the CD ex-parte vide order dated 18.11.2024. Therefore, at this stage the Corporate Debtor cannot take the advantage of its wrong doing and we do not find any justification in its arguments that they were not duly served and they were not given an opportunity of hearing and there is a violation of the principles of natural justice.

68. In the facts and the circumstances of the case, reliance placed by the appellant on **Dharampal Satyapal Limited (supra)** that due to denial of opportunity of hearing renders any order void may not be of any assistance to the appellant as it has chosen not to act on the summons or to receive the summons. Thus, this argument that there is deliberate incomplete service and consequently there is a violation of the principle of natural justice cannot be accepted.

69. Another argument of the appellant is that the appropriate forum is DRT under the SARFAESI Act and resorting to Section 7 of the IBC for recovery purposes is impermissible as in terms of OTS-2, essentially it concerns recovery of alleged interest dues with principal already paid. Such an argument is untenable as the Insolvency and Bankruptcy Code is a self-

sufficient code and does not have any bar to the filing of the Section 7 proceedings even in case of debt and default of interest. For debt and default of interest also, as noted by us here earlier, there is no bar and the respondent could have initiated the Section 7 proceedings.

70. Appellant has also questioned the malicious conduct of Respondent No. 1 and claims that Respondent's first attempt is at recovery. We do not find the conduct of Respondent No. 1 to be malicious and therefore such an argument is untenable and is dismissed.

71. We also note that Section 12 of the Companies Act, 2013 places the onus on the company to maintain a registered office capable of receiving and acknowledging all communications and notices addressed to it. Therefore, the Appellant had to ensure that the CDs registered address remained functional for receiving notices or in case of cessation of business operation, they should be updating the same in the records maintain with the MCA. We cannot find any fault on the Respondent for the non-compliance of the Appellant in not updating the CDs registered address.

72. We further observe that service of summons at the registered office of a company constitutes valid service under Order XXIX Rule 2 of the Code of Civil Procedure, 1908 is well supported by the two Delhi High Court in **V.K. Constructions Works Ltd. v. Abdul Khalique, (2011) 162 Comp Cas 214** and **Ajay Ahuja & Anr. v. M/S Subhiksha Trading Services Ltd. CS(OS) No. 241/2010**.

73. In **V.K. Constructions (supra)** the Court expressly held that summons had been issued to the registered office of the company; service by registered post at that address carried the statutory presumption of valid service; there was no legal requirement that directors must also be served personally at their residential addresses; Order XXIX Rule 2 CPC specifically permits service on a corporation by sending or leaving the summons at its registered office; and this position is reinforced by the corresponding provision of the Companies Act governing service upon companies. Thus, the service effected by sending or leaving summons at the registered office of the company is valid service under Order XXIX Rule 2 CPC, and separate service upon each director at his residential address is not mandatory.

74. In **Ajay Ahuja (supra)** the Court held that if a company shifts its office, closes operations, or avoids accepting postal articles, without informing persons dealing with it, such conduct cannot defeat valid service. The Court observed that a company having a registered office is expected to make arrangements for receiving postal communications; intimate any change of address; or provide forwarding arrangements. If it fails to do so, the sender cannot be prejudiced. Consequently, the statutory presumption of service under the General Clauses Act, 1897 applies when notices are correctly addressed and dispatched by registered post to the registered office.

75. Thus, Order XXIX Rule 2 CPC expressly recognizes service upon a company by delivering or posting summons to its registered office. Once summons is properly addressed to the registered office, service is ordinarily

deemed valid**,** even if the company has shifted, the premises are locked, the company has ceased operations there, or the postal article is returned with endorsements such as "left," "shifted," or "left without instructions," provided the sender has acted correctly. The law does not require separate personal service upon every director at his or her residential address where the company itself has been validly served under Order XXIX Rule 2 CPC.

76. We further note that the Appellant was communicating from the CDs registered address as early as August, 2024, which is evident from letter dated 17.04.2024 at page 175 to 191 APB and also letter dated 27.08.2024 at page 184 to 202 APB. Therefore, Appellants contention is devoid of any merit and cannot be countenanced.

77. We further observe that the determining factor for admission of section 7 petition is the existence of debt and default, which in the facts and circumstances of the case is clearly established as the debt and default has been admitted by the Appellant. Appellant has on its own admitted that the CD owes an amount of ₹2,98,85,658/- towards interest to the Respondent this amount is above the threshold of ₹1 crore.

78. Furthermore, we note that the Section 7 petition is maintainable even on the component of the interest, if it crosses the threshold limit this has been clearly held in various cases particularly in **Base Realtors Pvt. Ltd. (supra)**

79. We note that as per the Code and various judicial pronouncements the only requisite for admission of Section 7 petition is the existence of debt and default and the debt should be above the threshold and this has been met in this case and therefore, we find no ground for the Appellate Tribunal to interfere with the order of the Adjudicating Authority on this ground also.

80. The Respondent has also furnished various documents which constitute conclusive proof of the debt which include the NeSL report and the certified ledger prepared in compliance with the Bankers Book Evidence Act, 1891 which confirms that as on 22.03.2023 the Corporate Debtor owed ₹25.99 Crs. Approximately.

81. We further observe that OTS is a conditional arrangement and in the event of a breach, the defaulting party cannot insist on the continuance for enforcement of the arrangement. Therefore, the contention of the Appellant that it is liable to pay only the shortfall amount under the OTS is untenable. This was also dealt by this Appellate Tribunal in **Glamour India Private Limited Vs. Canara Bank, CA (AT)(Ins) No. 443 of 2023**, wherein it was held that a breach of OTS entitles the Financial Creditor to revive and entire dues and such claim cannot be restricted merely to the balance amount due under the OTS. This judgment clearly supports the case of the Respondent.

82. In a similar judgment in **Bahadur Ram Mallah, Ex-Director Vs. Asset Reconstruction Company (India) Limited, CA (AT)(Ins) No. 66 of 2025** and **Priyal Kantilal Patel Vs. IREP Credit Capital Pvt. Ltd., CA (AT)(Ins)**

No. 1423 of 2022, this Appellate Tribunal reiterated that the execution of a settlement agreement does not alter the nature of the underlying financial debt, and in the event of a breach, the financial creditor is entitled to claim the entire dues under the original financial arrangement.

83. Therefore, we find that in view of the submissions of both sides, we find that due to withdrawal of the effective OTS, the CDs obligation under the loan agreement were revived and any purported payments made subsequently must be read to be adjusted against the outstanding amount thereunder and not under the effective OTS.

Order

84. In this background, we don't find any justification in the Appeal. There is no infirmity the orders of the Adjudicating Authority in allowing the Section 7 petition against the Corporate Debtor and therefore the Appeal is dismissed. All related IAs are also disposed of. No order as to costs.

[Justice N Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
June 30, 2026.

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