NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1404 of 2024
& I.A. No. 4906, 6157, 7773 of 2025

[Arising out of order dated 11.07.2024 passed by the National Company Law Tribunal, Allahabad Bench, Prayagraj in CP (IB) No. 331/ALD/2018]

In the matter of:

Surender Pal Singh Mangat.

S/o Sh. Channan Mangat, aged about 54years, r/o Village Makhanpur, Khampur Makhanpur, Hapur Jharina, Uttar Pradesh 245205.

……….Appellant

Versus

1. **Oriental Bank of Commerce**

   (Now Punjab National Bank)

   Through Authorised Representative Having its Head Office At: Plot No.4, Sector 10, Dwarka, New Delhi-110075. Having its Branch At: Hapur, Garh Road, District Hapur-UP.

2. **Mr. Anurag Goel as Interim Resolution Professional.**

   IBBI/IPA-001/IP-P00876/2017-2018/11460, R/o 10/349, 1st Floor, Sundar Vihar, Paschim Vihar, New Delhi, 110087.

3. **District Magistrate, Hapur**

   Ms. Prerna Sharma, DM Office Hapur, HPDA Scheme, Anand Vihar, Hapur, Uttar Pradesh 245101.

4. **District Magistrate, Bahraich**

   Ms. Monika Rani, Collectorate Office, SH 13, Kapoorthala, Brahmnipura Bahraich, Uttar Pradesh 271801.

5. **Commissioner of Cane and Sugar,**

Uttar Pradesh

Mr. Prabhu N. Singh,

Cane Commissioner Office, Lucknow

Uttar Pradesh 226001.

.........Respondents

Present

For Appellant	**:**	Mr. Akash Jain, Ms. Abhipsa Sahu, Advocates. Ms. Kritika Goyal, Mr. Lakshya Sachdeva, Advocates for applicant in IA 6653/25.
For Respondents	**:**	Mr. Gopal Jain, Sr. Advocate, Mr. Divyam Agarwal, Mr. Mayank Ratnaparkhe, Ms. Priya Chauhan, Advocates for SBI. Mr. Shivam Shukla, Advocate for R- 3, 4, 5. Mr. Anant Merathia, Mr. A. Goel, Advocates for IRP. Ms. Ekta Choudhary, Ms. Rushali Sikand for CFM ARC (Intervener).

WITH

Company Appeal (AT) (Insolvency) No. 1405 of 2024
& I.A. No. 6158, 7762, 7772 of 2025

[Arising out of order dated 11.07.2024 passed by the National Company Law Tribunal, Allahabad Bench, Prayagraj in CP (IB) No. 331/ALD/2018]

In the matter of:

Gursimran Kaur Mann
D/o Gurmit Singh Mann
Having office at:
A 112, Sector 63, Noida 201307

..........Appellant

Versus

1. **Oriental Bank of Commerce**

   (Now Punjab National Bank)

   Having its head office at Plot No. 5, Sector 32, Institutional Area, Gurgaon and acting through its branch office at Delhi Mussorie Road, Transport Nagar, Meerut, Uttar Pradesh-250002.

2. **Mr. Anurag Goel as Interim Resolution Professional.**

IBBI/IPA-001/IP-P00876/2017-2018/11460, R/o 10/349, 1st Floor, Sundar Vihar, Paschim Vihar, New Delhi, 110087.

3. District Magistrate, Hapur

Ms. Prerna Sharma, DM Office Hapur, HPDA Scheme, Anand Vihar, Hapur, Uttar Pradesh 245101.

4. District Magistrate, Bahraich

Ms. Monika Rani, Collectorate Office, SH 13, Kapoorthala, Brahmnipura Bahraich, Uttar Pradesh 271801.

5. Commissioner of Cane and Sugar,

Uttar Pradesh

Mr. Prabhu N. Singh,

Cane Commissioner Office, Lucknow

Uttar Pradesh 226001.

.........Respondents

Present

For Appellant	**:**	Ms. Prachi Johri, Mr. Sachin Jain, Advocates.
For Respondents	**:**	Mr. Sumant Batra, Ms. Vaidehi Gulati, Mr. Sarthak Bhandari, Ms. Riya Kaur Arora, Advocates for Intervenor and SS Hooda. Mr. Gopal Jain, Sr. Advocate, Mr. Divyam Agarwal, Mr. Mayank Ratnaparkhe, Ms. Priya Chauhan, Advocates for SBI. Mr. Shivam Shukla, Advocate for R- 3, 4, 5. Mr. Anant Merathia, Mr. A. Goel, Advocates for IRP.

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

[Per: Ajai Das Mehrotra, Member (Technical)]

1. The Company Appeal (AT) (Insolvency) No. 1405 of 2024 has been filed by Gursimran Kaur Mann, suspended director of Corporate Debtor, namely, Simbhaoli Sugar Limited against the impugned order dated 11.07.2024 passed by Ld. NCLT, Allahabad Bench in C.P. (IB) No. 331/ALD/2018 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC, 2016**) by Oriental Bank of Commerce wherein the Ld. NCLT has admit the Corporate Debtor in Corporate Insolvency Resolution Process (CIRP).

1.2 I.A. No. 7637 of 2024 is filed by State Bank of India (SBI) seeking impleadment in the Company Appeal (AT) No. 1405 of 2024 on the grounds that it had filed a petition under Section 7 of the IBC, 2016 which was disposed of by the Ld. NCLT, on the ground that the Corporate Debtor is already admitted into CIRP vide impugned order dated 11.07.2024. Further it was submitted that SBI is the lead Bank in the Joint Lender's Forum (JLF). Based on the submissions made, SBI was permitted to file written submissions and make oral pleadings in this case.

2. The Company Appeal (AT) (Insolvency) No. 1404 of 2024 has been filed by Surender Pal Singh Mangat, Sugar Cane Farmer, which was later withdrawn, though some other farmers through Ld. Counsel Mr. Gaurav Mitra, stated that they desire to pursue the said appeal.

3. The brief facts of this case are as under:

i) The Simbhaoli Sugar Limited was established in 1933. As the company was unable to pay its debt, an application under Section 7 was filed by Oriental Bank of Commerce (now merged with Punjab National Bank) on 17.09.2018.

ii) As per Form-1, the total outstanding as on 31.07.2018 was 103.61 crores plus further interest due to the financial creditor, Oriental Bank of Commerce (OBC).

iii) A total credit facility of Rs. 110 crores was extended by the applicant bank to the Corporate Debtor vide letter dated 29.01.2016 and the loan agreement was executed. Subsequently, the Corporate Debtor started to default payment of the principal amount and interest annually charged.

iv) The lender bank classified the account of the Corporate Debtor as NPA on 30.11.2016. A legal notice dated 29.10.2017, and the recall notice dated 01.11.2017 were issued by the Appellant bank asking for payment for outstanding amount. The Corporate Debtor acknowledged its liability and submitted restructuring proposal which was rejected by the bank.

v) The Ld. NCLT on perusal of the records and submissions of the Corporate Debtor and the record of default in the records of NeSL held in the impugned order as under:

> ***"36.*** *After considering the entire facts of the case so far discussed and taking into account the decision of the Apex Court in the case* ***of Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407*** *in which it has been already held that a petition under IBC be admitted if there is clear debt and default, we are of the considered opinion that in the present case, default on repayment of the debt has occurred and the Section 7 Petition filed by the Financial Creditor is complete in all aspects providing all the details of debt and default as required in Part IV of the Application in Form 1 and attaching all the necessary supporting documents including ROD from NeSL as required in Part V of the Application.* ***Considering that all the above criteria are fulfilled as required under the I & B Code, we find that this Application deserves to be admitted u/s 7 for initiating CIRP against the Corporate Debtor."***

vi) The Corporate Debtor has taken loans from SBI and other banks also, and the total outstanding, as recorded in the impugned order at para 11(xx), is Rs. 1436.92 crores.

4. The Learned Counsel for the Appellant submitted that debt of the Corporate Debtor was considered for restructuring by the Joint Lender's Forum (JLF). She referred to page 216 of the Appeal Paper Book and specifically to the following two paragraphs to support her contentions:

> "As *evident from the above, though the numbers required for achieving supermajority are reached (68% in value & 50% in number), however, the Scheme can be pursued further only if all the members agree to the same.*
>
> *The JLF advised the Company to sort the issues amicably with the dissenting members before proceeding with the scheme. The Company was also advised to speed up this process (Preferably within 4 weeks) as the lenders which are agreeable at present may than have to explore other options if the restructuring option is not carried forward."*

4.2 The Learned Counsel referred to the RBI Circular dated 12.02.2018 wherein RBI withdrew the corporate debt restructuring scheme. Accordingly the Joint Lender's Forum, as an institutional mechanism for resolution of stressed account, was also discontinued.

4.3 The Learned Counsel drew attention to the judgment of Hon'ble Supreme Court in *Dharani Sugars and Chemicals Ltd. V. Union of India & Ors. in Transferred Case (Civil) No. 66 of 2018 with analogous cases vide order dated 02.04.2019* wherein in paragraph 45, the RBI Circular dated 12.08.2018 was declared *ultra vires* and applications under Section 7 of the IBC made only because of the operation of the impugned circular were declared non-est. The relevant portion of the judgment is reproduced below:

> *"45……… For these reasons also, the impugned circular will have to be declared as ultra vires as a whole, and be declared to be of no effect in law. Consequently, all actions taken under the said circular, including actions by which the Insolvency Code has been triggered must fall along with the said circular. As a result, all cases in which debtors have been proceeded against by financial creditors under Section 7 of the Insolvency Code, only because of the operation of the impugned circular will be proceedings which, being faulted at the very inception, are declared to be non-est."*

4.4 The Learned Counsel submitted that the application under Section 7 has been filed by the bank on 05.09.2018 and the facts of this case are covered by the said judgment of the Hon'ble Supreme Court and thus, Section 7 petition is non-est.

5. The Ld. Sr. Counsel Mr. Sanjiv Sen, appearing for the Appellant submits that restructuring of debt of the Corporate Debtor was under active consideration of the Joint Lender Forum (JLF) and in the JLF meeting dated 27.11.2017 it was recorded that "the number required for achieving superior majority are reached (68% in value and 50% in number)".

5.2 It is submitted that as per para 4 and 5 of the RBI Circular dated 05.05.2017, once the required percentage of creditors agreed to the restructuring, it is binding on all lenders, subject to the option of exit by dissenting creditors. The relevant paragraphs are as under:

> *"4. In this context, it is reiterated that lenders must scrupulously adhere to the timelines prescribed in the Framework for finalising and implementing the CAP. To facilitate timely decision making, it has been decided that, henceforth, the decisions agreed upon by a minimum of 60 percent of creditors by value and 50 percent of creditors by number in the JLF would be considered as the basis for deciding the CAP, and will be binding on all lenders, subject to the exit (by substitution) option available in the Framework. Lenders shall ensure that their representatives in the JLF are equipped with appropriate mandates, and that decisions taken at the JLF are implemented by the lenders within the timelines.*
>
> *5. It shall be noted that*
>
> *(i) the stand of the participating banks while voting on the final proposal before the JLF shall be unambiguous and unconditional;*
>
> *(ii) any bank which does not support the majority decision on the CAP may exit subject to substitution within the stipulated time line, failing which it shall abide the decision of the JLF;*

(iii) the bank shall implement the JLF decision without any additional conditionalities; and

(iv) the Boards shall empower their executives to implement the JLF decision without requiring further approval from the Board."

5.3 It is submitted that in the JLF meeting held on 19.03.2018, it was noted that the restructuring approach adopted cannot be pursued any further due to the revised RBI Notification dated 12.02.2018. The relevant portion of the minutes of the said meeting is as under:

"Lenders discussed and were also of the view that the restructuring approach adopted in the account during the last meeting cannot be pursued any further due to the revised RBI Notification no. 131 dated 12.02.2018 w.r.t revised framework on stressed assets and therefore, only approach left to them in the account is "Recovery"."

5.4 Subsequently, one of the members of the JLF, namely, Oriental Bank of Commerce (OBC) filed petition under Section 7 on 05.09.2018. It is submitted by Ld. Sr. Counsel the constitutional validity of Section 35 AA and 35 AB of the Banking Regulations Act, 1949 was challenged through *Writ Petition (S) (Civil) No(s). 1124/2018 in Simbhaoli Sugars Limited v. The Reserve Bank of India & Ors.* by Appellant. The real bone of contention was the RBI Circular issued on 12.02.2018, by which the RBI promulgated a revised framework for resolution of stressed assets, Circular which has been cited in the minutes of meeting of the JLF on 19.03.2018. In the said proceeding, the Hon'ble Supreme Court decided as under:

"There is nothing to show that the provisions of Section 45L(3) have been satisfied in issuing the impugned circular. The

impugned circular nowhere says that the RBI has had due regard to the conditions in which and the objects for which such institutions have been established, their statutory responsibilities, and the effect the business of such financial institutions is likely to have on trends in the money and capital markets. Further, it is clear that the impugned circular applies to banking and non-banking institutions alike, as banking and non-banking institutions are often in a joint lenders' forum which jointly lend sums of money to debtors. Such non-banking financial institutions are, therefore, inseparable from banking institutions insofar as the application of the impugned circular is concerned. It is very difficult to segregate the non-banking financial institutions from banks so as to make the circular applicable to them even if it is ultra vires insofar as banks are concerned. For these reasons also, the impugned circular will have to be declared as ultra vires as a whole, and be declared to be of no effect in law. Consequently, all actions taken under the said circular, including actions by which the Insolvency Code has been triggered must fall along with the said circular. As a result, all cases in which debtors have been proceeded against by financial creditors under Section 7 of the Insolvency Code, only because of the operation of the impugned circular will be proceedings which, being faulted at the very inception, are declared to be non-est.

46. In view of the declaration by this Court that the impugned circular is ultra vires Section 35AA of the Banking Regulation Act, it is unnecessary to go into any of the other contentions that have been raised in the transferred cases and petitions. The transferred cases and petitions are disposed of accordingly."

5.5 It is the submission of the Ld. Sr. Counsel proceedings under Section 7 against the Corporate Debtor are in violation of the order of the Hon'ble Supreme Court wherein proceedings initiated under Section 7 of the IBC only because of the operation of the impugned RBI Circular were declared to be non-est from inception. It is pointed out the Ld. NCLT had adjourned the proceeding under Section 7, citing the pendency of case before the Hon'ble Supreme Court on several occasions which was not objected to by the Financial Creditors.

5.6 It is submitted that the issue of 'debt and default' cannot be considered as the petition is not non-est as per the order of the Hon'ble Supreme Court in *Simbhaoli Sugars Limited (supra)* judgment.

5.7 It is submitted that it has been wrongly argued that the Hon'ble Supreme Court in its order dated 18.03.2024 passed in *Special Leave to Appeal (C) No(s). 4092/2024, M/s Simbhaoli Sugars Limited V. State Bank of India & Ors* had rejected the settlement, and has confirmed the petition under Section 7 of the IBC, 2016. The relevant portion of the judgment of the Hon'ble Supreme Court dated 18.03.2024 is as under:

> *"10. The High Court has furnished adequate reasons for declining to grant the relief as sought in the Writ Petition. The Unit of the petitioner has consistently been in default. The decision of the SBI to reject the offer of a One Time Settlement could not be faulted. Moreover, the other reliefs which were sought in the Writ Petition including for convening a meeting of the JLF to finalise the settlement were equally misconceived. The High Court was also justified in declining to interdict the proceedings before the NCLT initiated by the first respondent under Section 7 of the IBC. That part of the order of the High Court is unexceptionable."*

5.8 It is submitted that it is incorrect to interpret that the Hon'ble Supreme Court has confirmed the petition under Section 7 of the IBC, 2016. It is to be noted that last rejection of OTS was in August, 2024 and the JLF had held meetings up to February, 2025 and therefore, it cannot be said that the Hon'ble Supreme Court had rejected the settlement.

5.9 It is also stated in the said order dated 18.03.2024, the Hon'ble Supreme Court has noted in para 14, as under:

> *"14. We clarify that the above observations are confined to the controversy before this Court and shall not amount to any*

> *expression of opinion in the pending proceedings before the National Company Law Tribunal instituted by the first respondent."*

5.10 The Ld. Sr. Counsel stated that the dues as per Part- IV were only Rs. 110 crores whereas more than this amount is due from the Uttar Pradesh Government and the case is covered by the decision of *Vidharbha Industries Power Ltd. v. Axis Bank Ltd.* reported in *2022 SCC OnLine SC 841.* He further stated that pre-CIRP valuation was Rs. 530 crores and present valuation is around Rs. 220 crores. The farmers debts have to be given priority and they amount to Rs. 487 crores. The total enterprise value was less then Rs. 487 crores and the secured creditors are not likely to get anything and eventually the company will go in liquidation. He also referred to the letter of PNB appearing at page 408 of APB which acknowledges that the recovery will be very low.

5.11 On specific query by the Bench, it is submitted that there is no approved OTS at present. The Ld. Counsel for the PNB confirmed and submitted that no proposal for settlement is pending for consideration of banks. The Ld. Counsel for the SBI referred to para 2 of letter dated 15.01.2025 wherein OTS proposal given by the Corporate Debtor was rejected.

6. The Ld. Sr. Counsel Mr. Gopal Jain, appearing for SBI stated that the Hon'ble Supreme Court has accepted that there is debt and default in Appellant's own case (*Special Leave to Appeal (C) No(s). 4092/2024, M/s Simbhaoli Sugars Limited V. State Bank of India & Ors*) and has held as under:

> *"10. The High Court has furnished adequate reasons for declining to grant the relief as sought in the Writ Petition. The Unit of the*

> *petitioner has consistently been in default. The decision of the SBI to reject the offer of a One Time Settlement could not be faulted. Moreover, the other reliefs which were sought in the Writ Petition including for convening a meeting of the JLF to finalise the settlement were equally misconceived. The High Court was also justified in declining to interdict the proceedings before the NCLT initiated by the first respondent under Section 7 of the IBC. That part of the order of the High Court is unexceptionable.*"

6.2 The Ld. Sr. Counsel referred to the impugned order wherein Ld. NCLT in para 37 to para 48 has analysed and given a finding that the decision of *Dharani Sugars and Chemicals Ltd.* is not applicable in this case as the petition under Section 7 of the IBC, 2016 filed by OBC was independent of the RBI Circular. He further stated that much before the RBI Circular on 01.11.2016 the loan was recalled. He stated that since 'debt and default' is proven none of the arguments given by the Counsel for the Appellant are relevant for admission of Section 7 petition. He stated that as per page 88 and 104 of Appeal Paper Book, the total dues payable to the secured creditors is Rs. 1436 crores and the case of *Elegna Co-Op. Housing and Commercial Society Ltd. & Anr. v. Edelweiss Asset Reconstruction Co. Ltd. & Anr.* reported in *(2026) 264 Comp Cas 239* squarely applicable to the facts of this case.

7. The Ld. Counsel Mr. Gaurav Mitra appearing for the farmers submitted that originally Company Appeal (AT) (Ins.) No. 1404 of 2024 was filed by Mr. Surender Pal Singh Mangat representing many other farmer placed in similar situation. Though the Appellant (Mr. Mangat) had desired not to pursue the said appeal, the Ld. Counsel appears for 5 other farmers and has sought impleadment through I.A. No. 6653 of 2024. He informed that 52 farmers had filed application before the Ld. NCLT, which was not considered. The Ld. Counsel was permitted to make oral and written submissions.

7.2 The Ld. Counsel submitted that though insolvency proceeding is normally a bipartite proceeding between the Corporate Debtor and the creditor, the present case is different as the sugar industry works under strict statutory regime. He submitted that the Corporate Debtor is situated in Uttar Pradesh and is governed by the Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953. The said Act, through Section 16, regulates the purchase and sale of cane in the reserved and assigned areas. The Regulation includes quantity of cane to be supplied or sold by each cane grower, the manner in which cane is to be purchased by factory, and the terms and conditions relating to such sale and purchase, etc. Section 17 of the said Act relates to regulation of payments and emphasis is on speedy payments to farmers and prescribes interest of 12% for delay in payment beyond 15 days. The relevant Sections 16 and 17 of the UP Sugarcane (Regulation of Supply and Purchase) Act, 1953 are reproduced below:

> *"16- (1) The State Government may, for maintaining supplies, by order, regulate—*
>
> *(a) the distribution, sale or purchase of cane in any reserved or assigned area; and*
>
> *(b) purchase of cane in any area other than a reserved or assigned -area.*
>
> *(2) Without prejudice to the generality of the foregoing powers such order may provide for-*
>
> *(a) the quantity of cane to be supplied by each cane-grower or Canegrower's Co-operative Society in such area to the factory for which the area has so been reserved or assigned*
>
> *(b) the manner in which cane grown in the reserved area or the assigned area, shall be purchased by the factory for which the*

area has been so reserve or assigned and the circumstance in which the cane grown by a. cane-grower shall not be purchased except through a Cane-growers' Cooperative Society; (c) the form and the terms and conditions of the agreement to be executed by the occupier or manager of the factory for which an area is reserved or assigned for the purchase or cane offered for sale;

(d) the circumstances under which permission may be granted-

(i) for the purchase of cane grown in reserved or assigned area by a [Gur, Rab, or Khandsari manufacturing Unit or any person or factory] other than the factory for which area has been reserved or assigned; and

(ii) for the sale of cane grown in a reserved or assigned area to [a Gur, Rab or Khandsari Manufacturing Unit or any person or factory] other than the factory for which the area is reserved or assigned;

(e) such incidental and consequential matters as may appear to be necessary or desirable for this purpose.

17- [(1) The occupier of a. factory shall make such provision for speedy payment of the price of cane purchased by him as may be prescribed.]

(2) Upon the delivery of cane the occupier of a factory shall be liable to pay immediately the price of the cane so supplied, together with all other sums connected therewith. [***]

(3) Where the person liable under sub-section (2) is in default in making the payment of the price for a period exceeding fifteen days from the date of delivering, he shall also pay interest at a rate of 7 ½ per cent per annum from the said date of delivering, but the Cane Commissioner may, in any case, direct, with the approval of the State Government that no interest shall be paid or be paid at such reduced rate as he may fix.

[Provided that in relation to default in payment of price of cane purchased after the commencement of this proviso, for the figures "7 ½" the figures "12" shall be deemed substituted.]

(4) The Cane Commissioner shall forward to the collector a certificate under his signature specifying the amount of arrears on account of the price of cane plus interest if any due from the occupier and the collector, on receipt of such certificate shall proceed to recover from such occupier the amount specified therein as if it were an arrear of land revenue.

[(5) (a) Without prejudice to the provisions of the foregoing sub-sections, where the owner or any other person having control over the affairs of the factory or any other person competent in that behalf enters into an agreement with a bank under which the bank agrees to give advance to him on security of sugar produced or to be produced in the factory the said owner or other person shall provide in such agreement that [a percentage determined by such authority and in such manner as may be prescribed] of the total amount of price of sugarcane purchased or to be purchased for the factory during the current crushing session from those cane-growers or from or through those societies, and interest thereon and, such societies commission in respect thereof.

(b) Every such owner or other person as aforesaid shall send a copy of every such agreement to the Collector within a week from the date on which it is entered into.]"

7.3 It is submitted that as per Notification issued under the said Act, 85% of the receipts of the sugar factory has necessarily to go towards payments to farmers. The Financial Creditors and other charge holders do not get same priority as in other sectors. It is submitted that the farmers' dues are considered as statutory dues and as per Sub-section 4 of Section 17 of UP Sugarcane Act, 1953, they can be recovered as arrears of land revenue. The Ld. Counsel submitted that it was in this context that this Tribunal in the interim order dated 24.07.2024 had directed as under:

"In the meantime, no further steps shall be taken in pursuance of the impugned order. This order shall not preclude the District Magistrate to carry on disbursement of cane prices in the same manner as was being done prior to passing of the order. With regard to operational expenses, it shall be open for the authorized signatories who were operating banks shall be operating the banks with joint signature of the IRP in the manner as was done before."

7.4 The Ld. Counsel submitted that the Hon'ble High Court of Allahabad in *Rashtriya Kisan Mazdoor Sangathan (Regd.) thru Convenor v. State of U.P. and* *others, reported in 2014 SCC OnLine All 16421* has held that the prior claim of the sugarcane growers cannot be allowed to be defeated by the Financial Creditor. The relevant portion of the judgment is reproduced below:

> ***"41.*** *The submission of the banks is that Section 17(5) does not impede the owner of a sugar factory from creating a pledge in respect of the same stock of sugar which forms the subject matter of a tagging agreement under Section 17(5). It has been urged that multiple financial arrangements in respect of the same security or purpose are not unknown to commercial law. Even if for the purposes of the present discussion, we accept that the owner of the sugar factory is entitled to create multiple financial arrangements, the issue before the Court is more fundamental. The issue is as to whether, once the legislature has provided that an advance on the security of the stock of sugar which is produced or which is to be produced, has to be utilised to the prescribed extent, only for the purpose of repayment of the dues of the cane growers, whether it is open to a sugar factory to enter into a financial agreement in respect of the same stock of sugar which would have the effect of defeating the entitlement of the cane growers under Section 17(5). In our view, the answer to that must be plainly in the negative. The record before the Court indicates that the sugar factories have entered into tagging agreements within the purview of Section 17(5) which are subject to monitoring by the Collector. However, any advance which is made over to the sugar factory by a bank on the security of the stock of sugar which is produced or which is to be produced, must necessarily comply with the rigour and discipline of Section 17(5). Any other construction would defeat the whole object and purpose of Section 17(5). Otherwise, it would enable the sugar factories to enter upon financial arrangements with banks in respect of the same stock of sugar and defeat the rights of the cane grower by utilisation of the entirety of the advance for a purpose other than re-payment of cane dues. This would, in our view, be plainly a subterfuge and a fraud on the provisions of Section 17(5). Both the banks as well as the sugar mills are clearly aware of the provisions of Section 17(5) and in fact it has been submitted that to the extent to which tagging arrangements were entered into, they have been complied with. <u>However, what is sought to be done is that in the course of entering upon working capital arrangements with the banks, a general charge is sought to be created on all the fixed assets of the sugar factories including plant and machinery, receivables and finished or semi-finished goods. In this process, the prior claim of the sugarcane growers cannot be allowed to be defeated</u>."*
>
> (Emphasis supplied)

7.5 The said judgment was affirmed by the Hon'ble Supreme Court of India in its order dated 13.10.2020 in SLP (C) No. 27678/2014.

7.6 The Ld. Counsel stated that the IRP is not able to pay the farmers' dues in time, and subsequently, the Commissioner, Cane and Sugar, UP vide letter dated 25.10.2025 had allocated the sugarcane being supplied to unit Chilwaria, District Bahraich of the Corporate Debtor, to other nearby sugar mills that are making timely cane price payments. The copy of the said order dated 25.10.2025 is placed at page 52 of his compilation.

8. On the concerns of the farmers regarding payments to them, the Ld. Sr. Counsel appearing on behalf of the SBI, through written submissions dated 11.02.2026 submitted as under:

> *"**Treatment of farmers during CIRP***
> *15. The issue of treatment of farmers raised in Company Appeal (AT) Insolvency No. 1404 of 2024 is for the insolvency resolution professional ("IRP")/ resolution professional to address. However, in the interest of justice, SBI submits that pursuant to the procedure prescribed by the State Government, tagging orders are issued annually by the office of the District Magistrate. These orders earmark a specified percentage of the sale proceeds generated during the relevant year for the payment of the price of cane purchased. Since all sugar mills in the state of Uttar Pradesh are mandatorily required to comply with the annual tagging orders issued by the District Magistrate, it is submitted that the same mechanism ought to continue during the CIRP, with uniform rates being applied across all sugar mills in the State.*
>
> *16. Pertinently, the IRP has stated in his affidavit dated 24 October 2025 filed before this Hon'ble Appellate Tribunal that he shall continue to adhere to the tagging orders of office of the District Magistrate dated 11 November 2024 and 26 October 2024. The relevant portion of the said affidavit is extracted hereunder for the ready reference of the Hon'ble Appellate Tribunal:*

"In addition, the cane dues for season 2024-25 for Simbhaoli & Brijnathpur Units are under payment at this point of time, the Respondent No 2 (IRP) shall continue to adhere to the Tagging Orders of office of District Magistrate dated 11.11.2024 for Simbhaoli & Brijnathpur Units & dated 26.10.2024 for Chilwaria Unit, to the extent of sale proceeds from available stocks of Sugar, Molasses, Ethanol & Other Allied Products from the season 2024-25 as well as upcoming season of 2025-26, which is slated to start in first week of November 2025 for Simbhaoli & Brijnathpur Units & last week of November for Chilwaria Unit."

17. Further, it is submitted that similar issues were raised before this Hon'ble Appellate Tribunal in the case of Excel Engineering & Ors. v. Vivek Murlidhar Dabhade & Ors, 2022 SCC OnLine NCLAT 4461, decided on 16 November 2022 wherein the farmers were given 100% of their dues in the approved resolution plan and the said resolution plan was upheld by this Hon'ble Appellate Tribunal. It is necessary to highlight that the said order dated 16 November 2022 was challenged before the Hon'ble Supreme Court by Excel Engineering. However, the Hon'ble Supreme Court vide order dated 21 April 2023 (in Civil Appeal Diary No. 9176 of 2023) dismissed the civil appeal and upheld this Hon'ble Appellate Tribunal's order."

9. We have heard the Ld. Counsels appearing for the parties and have perused the records with their able asistance.

9.2 The first issue raised by the Appellant on behalf of the Corporate Debtor is that the proceedings undersection 7 of the IBC, 2016 have been initiated following the RBI Notification dated 12.02.2018 which has been struck down by the Hon'ble Supreme Court in *Dharani Sugars and Chemicals Ltd. V. Union of India & Ors. in Transferred Case (Civil) No. 66 of 2018* wherein it was held that the proceedings initiated only because of the operation of the impugned circular are declared to be non-est.

9.3 We find that the submissions on this issue by the Corporate Debtor had been duly considered by the Ld. NCLT in para 39 to 48 of the impugned order while holding that the said judgment of *Dharani Sugars case* is not applicable to this case. The relevant portion of the impugned order is as under:

> ***"39.*** *The Corporate Debtor filed a writ petition (WP NO. 1124 of 2018) to quash the RBI circular on the grounds that it is violative of Article 14 of the Constitution of India, and to restrain the insolvency proceedings initiated by the Financial Creditor pursuant to the circular. Further, the petition of the Corporate Debtor was clubbed with the main petition, i.e. Dharani Sugars & Chemicals Ltd.*
>
> ***40.*** *The Corporate Debtor further argued that its petition was upheld in the* ***Dharani Sugars & Chemicals Ltd. V. Union of India (Transferred Cases (Civil) No. 66 And 1399 Of 2018),*** *where the circular dated 12.02.2018 was declared ultra vires and held to have no legal effect. It was further held that "consequently all actions taken under the said circular, including the action by which the Insolvency Code has been triggered, must fall along with the said circular." Therefore, it is argued by the CD that the Financial Creditor, in isolation and exclusion of the JLF lenders, undertook actions based on a circular, now declared ultra vires, thereby warranting the dismissal of the present petition.*
>
> ***41.*** *Ld. Counsel for the Financial Creditor reiterated that the legal action undertaken by the Financial Creditor for repayment of loan was initiated prior to the publishing of the said circular. Before filing the insolvency proceedings, the Financial Creditor had taken various steps under the law to seek repayment of the sanctioned loan, including identifying the account of the Corporate Debtor as fraud, reporting the same to CBI and ED, recalling the loan through a letter dated 01.11.2017, and further filing for recovery proceedings before the Debt Recovery Tribunal on 23.11.2017. The Financial Creditor had also sent a legal notice dated 29.10.2017 seeking repayment of the loan, to which a restructuring plan was proposed by the Corporate Debtor and submitted to the Financial Creditor on 10.11.2017. The Financial Creditors subsequently rejected the said plan on the basis that the amount offered was too low. However, to mitigate the liability, it was seen that the Financial Creditor appropriated the TDR of Rs. 5 crores provided by the Corporate Debtor as additional security for the repayment of the Term Loan Facility.*
>
> ***42***. *The Financial Creditor emphasized that the total borrowing owed by the CD to the present financial creditor was only Rs. 103.61crores which was not within the ambit of the circular and,*

therefore, the said circular could not have been applicable on debts owed to the present financial creditor as the said circular was applicable on an aggregate exposure of INR 2000 crores & above, on or after 01.03.2018. It is also emphasized by the Financial Creditor that present application under section 7 was not filed in compliance of circular of RBI dated 12.02.2018 as nowhere either in the JLF meeting or in the application, it has been mentioned that the action taken by the Financial Creditor under IBC is in compliance of RBI Circular dated 12.02.2018.

43. *The Financial Creditor also highlighted that the application under section 7 of IBC, 2016 was filed on 05.09.2018 which was 180 days beyond the reference date i.e., 01.03.2018 as mentioned in the RBI Circular. The relevant paragraph from the RBI Circular dated 12.02.2018 is extracted herein below:*

> *"D. Timelines for Large Accounts to be Referred under IBC*
>
> *8. In respect of accounts with aggregate exposure of the lenders at 20 billion and above, on or after. March 1, 2018 (reference date'), including accounts where resolution may have been initiated under any of the existing schemes as well as accounts classified as restructured standard assets which are currently in respective specified periods (as per the previous guidelines), RP shall be implemented as per the following timelines:*
>
> *i) If in default as on the reference date, then 180 days from the reference date.*
>
> *ii) if in default after the reference date, then 180 days from the date of first such default.*
>
> *9. If a RP in respect of such large accounts is not implemented as per the timelines specified in paragraph 8, lenders shall file insolvency application, singly or jointly, under the Insolvency and Bankruptcy Code 2016 (IBC) within 15 days from the expiry of the said timeline."*

44. *Considering all the above submissions made by both parties, we find that the insolvency proceeding initiated by the Applicant/Financial Creditor is independent of the RBI circular dated 12.02.2018. Moreover, in the petition, the petitioner has no way relied upon the RBI circular of 2018. Since, the petition has not been actuated on this circular of 2018, the contention of the corporate debtor seems far-fetched.*

(III) *APPLICABILITY OF THE DECISION OF THE HON'BLE SUPREME COURT IN DHARANI SUGARS & CHEMICALS LTD. V. UNION OF INDIA (TRANSFERRED CASES (CIVIL) NO. 66 AND 1399 OF 2018) DATED 02.04.2019 IN THE PRESENT PETITION.*

45*. The last submission made by the Ld. Counsel representing the Corporate Debtor is that the instant Application filed under section 7 should be dismissed in the light of Dharni Sugar* ***(Supra)*** *since this Judgment specifically dealt with the RBI's Circular dated 12.02.2018, which was struck down by the Hon'ble Apex Court. 46. The Ld. Counsel representing the Financial Creditor, on the other hand, argued that since the insolvency proceedings were never initiated under the said circular, therefore, there shall be no applicability of the said judgment on the present proceedings. The relevant excerpt of the judgment has been reproduced hereunder:*

> *"…For these reasons also, the impugned circular will have to be declared ultra vires as a whole, and be declared to be of no effect in law. Consequently, all actions taken under the said circular, including actions by which the Insolvency Code has been triggered must fall along with the said circular. As a result, all cases in which debtors have been proceeded against by financial creditors under Section 7 of the Insolvency Code, only because of the operation of the impugned circular will be proceedings which, being faulted at the very inception, are declared to be non est."*

47. *Thus, the Ld. Counsel for Applicant vehemently stated that the insolvency proceeding was initiated by the Financial Creditor even before the reference date mentioned in the circular and the debts of the Corporate Debtor did not meet the threshold for the said circular to be operational, thus the Dharni Sugars Judgement shall have no impact on the present proceedings.*

This judgment clearly establishes its applicability on the cases wherein Section 7 of the IBC was invoked due to the impugned circular dated 12.02.2018.

48*. Considering all the above submissions made by both the parties, we find that the Dharani Sugars Judgement is not applicable on the present insolvency proceeding initiated by the Applicant/Financial Creditor since the proceeding is independent of the RBI circular dated 12.02.2018."*

9.4 We find that the loan was recalled by the financial creditor on 01.11.2017. The legal notice was issued to the Corporate Debtor on

29.10.2017. The recovery proceedings were filed before the Debt Recovery Tribunal (DRT) on 23.11.2017. All these actions were taken much prior to the RBI Circular dated 12.02.2018. Further at no stage the OTS proposal of the Corporate Debtor was approved by the Joint Lenders Forum (JLF). The financial creditor nowhere in the JLF meeting or application filed before the Ld. NCLT has stated that action has been taken by the financial creditor in compliance of RBI Circular dated 12.02.2018. Further the application under Section 7 was filed much beyond the reference date 05.09.2018 mentioned in the RBI Circular.

9.5 Considering the facts of this case, we hold that the Ld. NCLT has not committed any error in concluding that the judgment of *Dharani Sugars and Chemicals Ltd. V. Union of India & Ors. in Transferred Case (Civil) No. 66 of 2018* is not applicable in this case as the proceedings under Section 7 were initiated independent of the RBI Circular dated 12.02.2018.

9.6 The next defence taken by the Corporate Debtor is that certain sums are due from the Uttar Pradesh Government and that its case is covered by the judgment of Hon'ble Supreme Court in the case of *Vidharbha Industries Power Ltd. v. Axis Bank Ltd.* reported in *2022 SCC OnLine SC 841.*

On this issue, we find that there is no adjudicated and realizable claim in favour of the Corporate Debtor which exceeds the debt owed. We seek guidance from the decision of the Hon'ble Supreme Court in *Elegna Co-Op. Housing and Commercial Society Ltd. & Anr. v. Edelweiss Asset Reconstruction Co. Ltd. & Anr.* reported in *(2026) 264 Comp Cas 239* delivered on 15.01.2026 wherein in paras 12.5 and 12.6, the Hon'ble Supreme Court held as under:

> *"12.5. The reliance placed by the corporate debtor on Vidarbha Industries Power Ltd. v. Axis Bank Ltd. is wholly misconceived. That decision has consistently been recognised as a narrow exception confined to its peculiar facts, namely the existence of an adjudicated and realisable claim in favour of the corporate debtor exceeding the debt owed.*
> *12.6. This position now stands authoritatively clarified in M. Suresh Kumar Reddy v. Canara Bank, wherein this court held that Vidarbha Industries Power Ltd. v. Axis Bank Ltd. does not dilute the binding ratio of Innoventive Industries Ltd. v. ICICI Bank and E.S. Krishnamurthy v. Bharath Hi-Tech Builders P. Ltd. Admission under section 7 thus remains mandatory once debt and default are established, with Vidarbha Industries Power Ltd. v. Axis Bank Ltd. operating only in exceptional circumstances."*

9.7 We note that the Corporate Debtor has repeatedly offered restructuring/OTS proposals to delay the CIRP admission. These OTS proposals were not accepted by the Banks. On specific query by the Bench, the Corporate Debtor fairly admitted that there is no approved OTS proposal at present. The Ld. Counsels for the financial creditors-Punjab National Bank and State Bank of India also confirmed that there is no pending settlement proposal.

9.8 We are conscious that this is a case where "debt" and "default" has not been challenged by the Corporate Debtor. The Hon'ble Supreme Court in the case of *Elegna Co-Op. Housing and Commercial Society Ltd.* cited *supra* has held as under:

> *"12.7. In any event, the scope of the Adjudicating Authority's powers stands elaborately discussed by a three-Judge Bench of this court in Indus Biotech P. Ltd. v. Kotak India Venture (Offshore) Fund. While recognising that the National Company Law Tribunal is not expected to act mechanically and is empowered to examine the material on record to satisfy itself that a default has in fact occurred, this court unequivocally held that once the ingredients*

> *of section 7, most importantly, default, are satisfied, admission must follow........"*

9.9 In the present case as the "debt" and "default" are conclusively established, and the narrow exception carved out in *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.* is clearly not applicable, the Ld. NCLT was justified in admitting the Corporate Debtor into CIRP. We find no infirmity in the order of the Ld. NCLT regarding admission of the Corporate Debtor into CIRP. Company Appeal (AT) (Ins.) No. 1405 of 2024 is accordingly dismissed.

10. We are conscious of the concerns of sugarcane farmers and are of the view that the Resolution Professional should duly consider their claims in accordance with law while undertaking the resolution of the Corporate Debtor. The Resolution Professional may also consider the response submitted by the Ld. Sr. Counsel appearing on behalf of the SBI, which is lead Bank in the group of financial creditors, reproduced in para 8 above as also the decision of this Tribunal, duly affirmed by the Hon'ble Supreme Court, in the case of *Excel Engineering* cited *supra.* Company Appeal (AT) (Ins.) No. 1404 of 2024 is disposed of accordingly.

11. All interim orders are vacated. All pending I.As, if any, are closed. No order as to costs.

[Justice Yogesh Khanna]
Officiating Chairperson

[Mr. Ajai Das Mehrotra]
Member (Technical)

Place: New Delhi
Dated: 13.07.2026
Ram N.