NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1301 of 2026

IN THE MATTER OF:

Panshul Agro Food LLP **...Appellant(s)**

Versus

State Bank of India & Ors. **...Respondent(s)**

Present:

For Appellant	:	Mr. Keith Varghese, Advocate.
For Respondents	:	Mr. Siddharth Sangal, Ms. Richa Mishra, Mr. Kashish Tewatia, Ms. Mrinalini Tandon, Advocates for R-1.

O R D E R
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

The instant appeal has been preferred by the appellant/CD against the order dated 29.04.2026 (impugned order) passed by National Company Law Tribunal, Bench No. 1, Ahmedabad (Adjudicating Authority) in CP IB No. 353 of 2025 whereby the petition moved by the appellant under Section 10 of the IBC, 2016 (Code) has been dismissed.

2. Brief facts necessary for disposal of this appeal are that the appellant, who is a designated partner of the Corporate Applicant-M/s Panshul Agro Food LLP filed a petition under Section 10 of the Code before the Ld. Adjudicating Authority for initiation of Corporate Insolvency Resolution Process (CIRP) and also for appointment of an Interim Resolution Professional (IRP) and also for declaration of moratorium for default in payment of debt of Rs. 42,20,27,984.96/-.

3. It is also reflected that in Part III of Form 6 the appellant has revealed the particulars of financial creditors in following manner:

Sr. No.	Name of Financial Creditors	Amount of Debt (In Rs.)
1.	State Bank of India	40,92,06,084.08
2.	Yes Bank Limited	20,83,818.50
3.	IDFC Bank Limited	9,53,052.39
4.	SMFG India Credit Company Limited	3,32,319.23
5.	Godrej Finance Limited	9,28,955
6.	L& T Finance Limited	9,28,955
7.	Tata Capital Limited	10,35,503
8. 9.	Moneywise Financial Services Pvt. Ltd	11,79,506.93
10.	Shriram Finance Limited	6,88,348
11.	M/s. Mahindra & Mahindra Financial Services Ltd.	8,50,748.84
12.	HDFC Bank Limited	23,51,461.99
13.	ECL Finance Limited	1,70,376
14.	Cholamandalam Investment and Finance Company Limited	9,24,878

4. It is further reflected that the appellant had stated before the Ld. Adjudicating Authority that owing to financial constraints and inability to service, debts a resolution was passed on 05.08.2025 approving the filing of the application under Section 10 of the Code as the appellant had availed various credit facilities from multiple financial creditors and also have several operational creditors and default in re-payment of its financial obligations is already occurred on 18.04.2025 with respect to the dues owed to the SBI and thereafter various lenders issued demand notices, loan recall notices and statutory notices under Section 13 (2) of the SARFAESI Act, 2002 calling upon the appellant to repay the outstanding dues and the appellant is not in a position to pay the same.

5. It is further reflected that Rs. 40.92 Crores is shown only to be paid to the Respondent SBI along with the liabilities owed to multiple other financial institutions.

6. As stated earlier by passing the impugned order the ld. Adjudicating Authority dismissed the application filed by the appellant.

7. Ld. Counsel for the Appellant submits that the Ld. Adjudicating Authority has taken filing of SARFAESI Proceedings before the DRT as a ground to reject the application filed by the Appellant. While relying on the law laid down by this Co-ordinate Bench of this Appellate Tribunal in ***Pondicherry Extraction Industries Pvt. Ltd. vs. Bank of Baroda, CA (AT) (Ins) No. 471 of 2020***, it is submitted that the Ld. Adjudicating Authority was only required to see the debt and default and should have confined its jurisdiction to the material which was available on record and thus material illegality has been committed by Ld. Adjudicating Authority.

8. It is further submitted that Appellant is not responsible if some of the machineries are found missing from the site as the possession was already taken by the Respondent Bank and this cannot be a ground to reject the application moved by the appellant.

9. It is further submitted that Ld. Adjudicating Authority should have issued the notices in the petition filed by the Appellant so that the correct state of affairs may come before it however hurriedly without discussing the merits the application the same has been rejected and thus the impugned order may not be sustained and is liable to be set aside.

10. Ld. Counsel appearing for the Respondent No. 1 SBI vehemently opposes the submissions advanced by Ld. Counsel for the Appellant and submits that the petition under section 10 of the Code was filed with an

ulterior motive to deprive the bank from proceeding further under the proceedings pending before the Ld. DRT under SARFAESI Act.

11. It is further submitted that on inspection of the site it was found that machineries installed at the project site has been taken away by the appellant and thereafter the application has been filed.

12. It is also submitted that that account of the appellant was declared NPA on 18.04.2025 and thereafter loan recall notices and statutory notices were issued by various creditors to appellant including the notice under Section 13 (2) of the SARFAESI Act issued by the SBI on 20.06.2025 and thereafter the SBI filed an OA No. 379 of 2025 before Ld. DRT on 20.08.2025 and it was thereafter on 26.08.2025 appellant file Section 10 petition.

13. It is further submitted that the symbolic possession of the property was taken by the SBI under Section 13 (2) of the SARFAESI Act on 06.09.2025.

14. It is also submitted that the appellant does not own any immovable assets and the land on which the factory is constructed belongs to the partners and their family members who are also personal guarantors and they filed Section 94 of the Code which has been rejected by the Ld. Adjudicating Authority.

15. It is further submitted that contention of the appellant that it is mandatory on the part of the Adjudicating Authority to admit the application under Section 10, on mere proof of debt and default is not correct and in this regard the law laid down by this Appellate Tribunal in ***Wave Megacity***

Centre Pvt. Ltd. vs. Rakesh Taneja & Ors., (2023) ibclaw.in 05 NCLAT, Jakhodia Traexim Pvt. Ltd., (2026) ibclaw.in 183 NCLT, has been highlighted.

16. We have heard Ld. Counsel for the parties and have perused the record and it is revealed that the appellant has filed an application under Section 10 of the Code which has been dismissed by the Ld. Adjudicating Authority along with a cost of Rs. 10 lakhs.

17. We notice that the SBI has issued credit facility of Rs. 28.44 crore to the appellant on 13.12.2019 which was renewed to 40.19 Crore on 24.07.2024. On 18.04.2025 the account of the appellant was classified as NPA. The notice under Section 13 (2) of the SARFAESI Act was issued on 20.06.2025 and proceedings before the DRT was filed by the Bank on 20.08.2025 and it was on 26.08.2025 appellant filed application under Section 10 of the Code while the symbolic possession of the property was taken by the SBI on 06.09.2025 and by passing impugned order dated 29.04.2026 the petition filed by the appellant was dismissed.

18. We at the outset notice that the Ld. Adjudicating Authority has noted the law laid down by this Appellate tribunal in ***Agroha Paper Industries Pvt. Ltd. vs. Bank of Maharashtra, (2024) ibclaw.in 456 NCLAT*** wherein it is observed that Section 10 vests right in the CD to dissolve their insolvency but simultaneously it is to be seen that this protective umbrella is not misused or abused in a manner so as to become a tool for taking undue advantage.

19. We also notice that Ld. Adjudicating Authority has noted that the Corporate Applicant is not having any immovable assets and the land on which the factory was constructed belongs to the partners and their family members who also stood personal guarantors and they filed proceeding under Section 94 of the Code resulting in an interim moratorium (during the course of arguments it is brought to our notice that aforesaid Section 94 has been dismissed by the Ld. Adjudicating Authority).

20. We also notice that Ld. Adjudicating Authority has also noted that from the additional affidavit filed by the Appellant it emerges that during inspection conducted by the Bank on 10.02.2026 substantial plant and machinery were found missing from the factory premises and the Bank had submitted that most of the plant and machinery was present at the site during the inspection made on 13.05.2025 and this has been subsequently removed.

21. It is also noted that the Corporate Applicant failed to provide copy of invoices showing purchase value of these plant and machinery and also that the Corporate Applicant in its affidavit has admitted that various machineries are not available at the factory premises and the explanation offered by the Corporate Applicant with regard to the missing machinery is not satisfactory and convincing. More so the Corporate Applicant did not maintain any register to show fixed assets of the LLP and it is thus observed that the removal of hypothetical assets without the consent of secured creditor during the pendency of recovery proceedings is a serious act which directly undermines the interest of creditors.

22. We also notice that Ld. Adjudicating Authority has also noted the timing of filing of petition on 26.08.2025 and formed a view that the application is not a bona fide invocation of the provisions of the Code but is a calculated attempt to misuse the insolvency framework to defeat the legitimate rights of the creditors and the conduct of the Appellant satisfies the threshold of fraudulent or malicious intent as contemplated under Section 65 (1) of the Code.

23. Ld. Counsel for the Appellant submits with considerable force that it was the incumbent duty of the Adjudicating Authority to have admitted the application when the same was showing debt and default. As we have already stated that the unexplained removal of hypothecated assets from the factory premises throws a cloud of suspicion over the bona fide of the appellant in pursuing application under Section 10 of the Code and the timing also is of significance as when coercive action under the SARFAESI Act begins the application under Section 10 has been filed. Thus prima facie it appears that the intent of the application was not of resolution, rather it was to obtain moratorium in order to defeat the proceedings of SARFAESI Act. Moreover, we are not convinced by the submissions of ld. Counsel for the Appellant that it is mandatory for the adjudicating authority to admit the petition under Section 10 of the Code when the same alleges debt and default. In our considered opinion it is not only the jurisdiction but the duty of the Ld. Adjudicating Authority to sift the material available on record in order to assess as to whether the filing of application under Section 10 of the Code is a genuine attempt on the part of the applicant to resolve the

debt or the exercise is being done only to derail the process of recovery initiated by the financial creditors before the Ld. DRT under the SARFAESI Act. Therefore, it could not be said that the duty of the Ld. Adjudicating Authority is to act like a rubber stamp.

24. It is also highlighted by the Ld. Adjudicating Authority that the Corporate Applicant has himself submitted that there are no trade receivables and no loan and advance receivables as well and while highlighting the valuation report dated 16.06.2025 issued by the multi engineers valuer's with regard to the value of plant and machinery and also the value which has been assessed as realizable market value and distress sale value and also the report of the same valuer dated 21.03.2026 with regard to the same plant and machinery, which is at very lower side, it is opined that the machinery of the balance amount has been removed and missing and hold that CD is not a going concern.

25. We are also of the considered view that removal of plant and machinery from the factory site during the process of recovery is a very serious incident. Though, it has been submitted by Ld. Counsel for the appellant that no proceedings have been initiated by the bank with regard to such removal of such machinery and plant but we are not convinced with this superficial submission and we are in agreement with the conclusion drawn by Ld. Adjudicating Authority that the application under Section 10 of the Code has been moved with malicious intent and therefore the same has been correctly dismissed and to that extent the impugned order is liable to be affirmed.

26. However, coming towards the penalty part of judgment whereby the penalty of Rs. 10 lakhs have been imposed upon the appellant, we are of the considered view that such an exercise could be undertaken when any fraudulent intent is per se evident on the face of the record and there is also

a maxim of proportionality which should have been adapted for imposing penalty. The order whereby any penalty is being imposed must reflect the magnitude of the fraudulent act and the reasons which has guided the court to impose the penalty and also the quantum of penalty.

27. Having considered all the facts and circumstances of this case, we are of the considered view that imposition of penalty of Rs. 10 lakhs is on the higher side, more so when no reason has been given for the same. In our considered view the penalty of Rs. 5 lakhs would have been sufficient.

28. Thus, for the reasons given herein before the appeal filed by the appellant is **partly allowed** and the impugned judgment passed by the Ld. Adjudicating Authority so far as the dismissal of the application under Section 10 of the Code is concerned is **sustained**, however, the penalty of Rs. 10 lakhs imposed by the Ld. Adjudicating Authority is reduced to Rs. 5 lakhs.

29. If the penalty of Rs. 10 lakhs has already been deposited by the appellant he would be entitled to receive back Rs. 5 lakhs and if the same has not been deposited, the appellant shall deposit the penalty of Rs. 5 lakhs within 30 days from today in the Prime Minister's National Relief Fund as directed by Ld. Adjudicating Authority.

30. Pending IA's if any are disposed of.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi
25.08.2026
sr