NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT VI

Item No. P-1

C.P. (IB)/9/MB/2026

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **04.09.2026**

NAME OF THE PARTIES: **Jagdish Kumar, Liquidator of**

M/s. B.Y. Agro And Infra Ltd.

Vs.

M/s. Wardha Mega Food Park Private Limited

Under Section 7 of the IBC, 2016

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, *vide* separate order. A detailed order is being uploaded on the NCLT portal today.

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

//AS//

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

C.P. (IB)/9/MB/2026

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

JAGDISH KUMAR PARULKAR,

Liquidator Of

M/s. B.Y. AGRO AND INFRA LIMITED

B-56, Wallfort City, Bhatagaon

Ring Road No. 1, Raipur – 492001

…Financial Creditor/Applicant

V/s

M/s. WARDHA MEGA FOOD PARK PRIVATE LIMITED

[CIN: U93030MH2011PTC224346]

Batul, Plot No. 14, Queta Colony

Lakadganj, Nagpur – 440008

...Corporate Debtor

Pronounced: 04.09.2026

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

<u>Appearances: Hybrid</u>

For Applicant: Adv. Bilal Ali

For Respondent: Adv. Ankanksha Nehra, Adv. Sanjana Srivastava.

ORDER

[PER: BENCH]

1. BACKGROUND

1.1 This C.P. (IB) No. 9 of 2026 (Application) was filed on 26.12.2025 by Mr. Jagdish Kumar, Liquidator of M/s. B.Y. Agro And Infra Limited, the Financial Creditor (FC), under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. Wardha Mega Food Park Private Limited, the Corporate Debtor (CD), having CIN No.: U93030MH2011PTC224346.

1.2 As per Part IV of the Application, the amount claimed to be in default is Rs.1,48,09,921/- (Rupees One Crore Forty-Eight Lakhs Nine Thousand Nine Hundred and Twenty-One only). The date of default is stated as 26.05.2022.

1.3 The Applicant has proposed Mr. Sanjay Shrivastava, having Registration No. IBBI/IPA-001/IP-P01528/2018-19/12425, to act as the Interim Resolution Professional (IRP), in case the Application is admitted.

2. CONTENTIONS OF THE APPLICANT

2.1 M/s. B Y Agro and Infra Limited, the Applicant/FC herein, is engaged in the principal business of agricultural and animal husbandry service activities and processing of frozen vegetables.

2.2 M/s. Wardha Mega Food Park Private Limited (CD) is a sister concern of the Applicant Company, as the directors and shareholders of both the

Financial Creditor and CD are the same as well as related. Therefore, CD is a related party of the Applicant Company, as defined under Section 5 (24) of the Code.

2.3 Somewhere in the year 2015-16, Applicant Company had advanced an unsecured loan of Rs. 3,90,15,000/- free of interest to the CD, to enable it to meet its working capital requirements. Subsequently, in the year 2016-17, the amount of loan was reduced to Rs. 1,60,77,628/-. The ex-management of the Applicant Company as well as of the CD have not provided the Liquidator with the ledger accounts of the said year, and therefore, the Applicant is unable to comment on the reduction of loan balance.

2.4 The Applicant Liquidator has also requested the CD to provide the ledger accounts of the Financial Creditor for the year 2015-17 as maintained in their books of accounts, so as to ascertain the mode/manner/medium of transaction between the parties; however, no response has been received from the CD.

2.5 However, it is to be noted that as on the CIRP commencement date of Applicant Company, i.e. 26.05.2020, in terms of the Books of Accounts, an amount of Rs. 1,48,09,921/- was due from CD, which was advanced as an unsecured loan to it by the Applicant.

2.6 The reference of the said loan transaction was duly recorded and acknowledged as “Unsecured Loan from M/s B Y Agro and Infra Limited (Applicant) in the “note 4 titled as Long-Term Borrowing” of the Balance Sheet of the CD for the years 2018-19, 2019-20, 2020-21 and 2021-22.

2.7 Starting from the year 2018 and till the commencement of CIRP against the Applicant Company, i.e. 26.05.2020, all the loan transactions, including other small lending's, being given to CD to enable it to meet its working capital requirements, were duly reflected as Assets in the Balance Sheet of the Applicant Financial Creditor Company.

2.8 It is humbly stated that the Hon'ble Supreme Court in *Asset Reconstruction Company (India) Limited vs. Bishal Jaiswal* (Civil Appeal No 323 of 2021) and related matters, has held that for the purposes of the IBC, 2016, balance sheet entries could constitute an acknowledgement of debt under Section 18 of the Limitation Act, 1963 (Limitation Act). Further, it was also categorically held that Section 18 of the Limitation Act is applicable to the Code by virtue of Section 238A of the IBC, 2016.

2.9 Further, since the Hon'ble Supreme Court in matter of *M/s Orator Marketing Pvt. Ltd. v/s M/s Samtex Desinz Pvt. Ltd.*(Civil Appeal No. 2231 of 2021), has categorically held that for purpose of maintainability of Section 7 petition, the definition of 'Financial Debt' in Section 5(8) of IBC does not expressly exclude an interest free loan and 'Financial Debt' would have to be construed to include "interest free loans" advanced to finance the business operations of a corporate body. Relevant part of said Judgment is extracted herein below for this Hon'ble Court perusal:

> *"31. At the cost of repetition, it is reiterated that the trigger for initiation of the Corporate Insolvency Resolution Process by a Financial Creditor under Section 7 of the IBC is the occurrence of a default by the Corporate Debtor. Default' means non- payment of debt in whole or part when the debt has become due and payable and debt means a liability or obligation in respect of a claim which is due from any person and includes financial debt and operational*

> *debt. The definition of 'debt' is also expansive and the same includes inter alia financial debt. The definition of 'Financial Debt' in Section 5(8) of IBC does not expressly exclude an interest free loan. 'Financial Debt' would have to be construed to include interest free loans advanced to finance the business operations of a corporate body."*

Therefore, on applying the principle laid down by the Hon'ble Supreme Court in the above mentioned Judgments upon the present factual position, the unsecured interest free loan amount, as given by the Applicant Company to CD, which is also acknowledged by it in its Balance Sheet of the above mentioned years, would constitute a financial debt as per Section 5 (8) of the Code and Applicant Company for the purpose of Section 7 Petition would be treated as Financial Creditor of M/s. Wardha Mega Food Park Private Limited (CD) in terms of Section 5 (7) of the Code.

2.10 Accordingly, on 18.04.2022, a legal notice was sent to CD by the Applicant herein in the capacity of Resolution Professional. It was clearly stated in the said notice that as per the Books of Accounts of the Applicant Company, an amount of Rs. 1,48,09,921/- is realisable from the CD, which has been given as a loan. Therefore, through the said notice M/s. Wardha Mega Food Park Private Limited (CD) was called upon to pay an amount of Rs. 1,48,09,921/- within a period of 15 days from the date of receipt of the said notice; however, no steps as required to be taken in furtherance of the said notice are being taken by the CD till date.

2.11 Through its email dated 12.05.2022, CD has duly acknowledged the receipt of the Notice dated 18.04.2022. However, to date have not acted in compliance with the contents of the said Notice. It is stated that, considering 12.05.2022 is the day when the CD was served, then26.05.2022 is the day when the CD has committed default for the purpose of Section 7 under the Code.

2.12 In the meanwhile, owing to the resolution passed by the committee of creditors in its 14th CoC Meeting, as held on 22.10.2021, an application under Section 33(2) of the Code was filed by the Applicant herein for seeking liquidation of the Applicant Company and consequentially on 26.07.2022, an order initiating the Liquidation Process of the Applicant Company was passed by the Hon'ble Bench III of this Hon'ble Court in I.A. no. 888 of 2022.

2.13 Through its order dated 10.05.2024 passed in I.A. 1359/2023, which was filed on 03.04.2023 while exercising powers under Section 33(5) of IBC 2016, the Hon'ble Bench III of this Hon'ble Tribunal has considered the present case as fit to initiate CIRP against the Corporate Debtor and accordingly, permission to file Section 7 application against CD was granted.

2.14 On 02.05.2025, the Applicant has also obtained record of default against the Respondent from Information Utility termed as "**Deemed to be Authenticated**" where the date of default has also been recorded as of 26.05.2022.

2.15 As on date, the Applicant Company is entitled to an amount of Rs.1,48,09,921/- from the CD.

2.16 Further, in terms of the Legal Notice dated 18.04.2022 and its acknowledgement by the CD through its email dated 12.05.2022, it can be easily ascertained that on 26.05.2022, the CD has committed "default of financial debt owed to Applicant Company", in terms of the provisions of the

Code. This Court, under Section 7 of the Code, has the power to initiate Corporate Insolvency Resolution Process against the CD.

2.17 Lastly, in terms of Section 15 (2) of the Limitation Act 1963, the time period taken in obtaining the permission from this Hon'ble Tribunal, i.e. from 03.04.2023 to 10.05.2024, would be excluded in computing the 3 years from the date of default under which Applicant has the right to file the present Petition.

2.18 The amount involved in the present matter is huge and hence, the Applicant Liquidator, who is to hold the Liquidation estate and the assets of the Applicant Company as a fiduciary, is bound to initiate the proceedings in the name of the Applicant Company, on account of default of financial debt owed to it by the CD.

2.19 In terms of the provisions of Section 36 of the Code, the amount which has not been paid by CD will be treated as an asset of the Applicant Company and shall form part of the liquidation estate. Hence, it is submitted that the Applicant Liquidator may be allowed to initiate Section 7 proceedings against the CD.

2.20 Further, *in lieu* of the explanation II attached to Section 11 of the Code, and recent Hon'ble NCLAT Judgments, there is no express or implied bar upon the Applicant herein to initiate the CIRP against the CD even for recovery.

2.21 The Applicant has attached the following supporting documents along with the Application and the Written Submission:

a) Copy of Master Data, Memorandum of Association and Articles of Association of B.Y. Agro and Infra Limited (Financial Creditor)

b) Copy of order dated 26.07.2022, passed by Hon'ble Bench III appointing the Applicant as Liquidator of M/s B.Y. Agro and Infra Limited

c) Copy of Consent of the proposed Interim Resolution Professional in FORM No. 2 along with Certificate issued by IBBI

d) Copy of the Financial Statement of the applicant Company for the FY 2016-17 in note 18, reflecting the amount of Rs. 3,90,15,000/- as short-term loan advanced to CD

e) A copy of the email dated 24.01.2023, sent to CD seeking ledger account of the Applicant Company for the year 2015-17 as maintained in the books of accounts of the CD

f) A copy of financial statements of Wardha Mega Food Park Pvt. Ltd. (CD) comprising Balance Sheet along with the Profit and Loss Statement and Cash flow Statement as of March 31st 2019, March 31st 2020, March 31st 2021 and March 31st 2022.

g) A copy of the Ledger account of Applicant Company as maintained in the books of the CD for the period 1st April 2018 to 31st March 2022

h) Copy of Legal Notice dated 18.04.2022 sent by the Applicant Liquidator to CD in the capacity of Resolution Professional to the applicant company asking to release due and payable amount and response dated 12.05.2022 received from CD

i) Copy of e-filing receipt dated 05.04.2023 generated *qua* I.A. 1359/2023

j) Copy of order dated 10.05.2024 passed in I.A no. 1359/2023 granting permission under proviso to Section 33 (5) of the Code to the Applicant Liquidator for filing the present petition

k) Copy of record of default obtained from information utility by the Applicant against the Respondent

l) Copy of Financial Statements/Auditor's Report of Respondent Company as on 31.03.2025

m) Copy of latest Form B (AFA) of the proposed IRP reflecting valid authorization from 20.12.2025 till 31.12.2026

3. <u>REPLY</u>

3.1. The Reply through Affidavit dated 02.06.2026 was filed belatedly by the CD and the directions in the order dated 20.04.2026 to the Respondent to deposit the cost of Rs. 1 Lakh in Prime Minister National Relief Fund within a period of 7 days subject to which the fine for filing the Reply was extended by 7 days, were not followed by the CD, this Tribunal disregarded the Reply filed by the CD *vide* Order dated 15.06.2026. Vide the same order, this Tribunal dismissed the I.A. bearing IA (I.B.C)/ 2364(MB)2026, filed by the CD requesting for taking on record the said Reply without complying with the directions as to deposit of cost.

3.2. Relevant paras of order dated 20.04.2026 are reproduced hereunder:

> *"4. Ld. Counsel appearing on behalf of the Respondent seeks seven days' time for filing of reply, along with Vakalatnama.*
> *5. It is observed that the service upon the Respondent was made on 28.02.2026 and more than one and half months have passed and still reply has not been filed by the Respondent.*
> *6. The Extension of 7 days for filing of Reply is allowed subject to a Cost of Rs. 1,00,000/- to be deposited by the Respondent in the Prime Minister's National Relief Fund within a period of seven days from the date of this order. Proof of deposit of Cost is to be filed by*

along with the reply. The reply will be served before this tribunal as well as on the Applicant within seven days from the date of this order.”

3.3. Relevant paras of order dated 15.06.2026 are reproduced hereunder:

“1. In the order dated 20.04.2026, it is recorded that service of the Notice and Application upon the Respondent was made on 28.02.2026. However, the reply was not filed by the Respondent within the specified time.

2. At the request of Ld. Counsel appearing on behalf of the Respondent, 7 days extension was granted for filing of Reply, subject to deposit of cost of Rs. 1 lakh in the Prime Minister’s National Relief Fund (PMNRF) within a period of 7 days.

3. The Respondent has filed an IA No. 2364/2026 making the following prayers;

(a) Waive / recall / set aside the cost of Rs. 1,00,000/- imposed upon the Applicant/ Corporate Debtor vide Order dated 20.04.2026;

(b) Pass any other Order(s) as deemed fit and appropriate by this Hon'ble Adjudicating Authority in the given facts and circumstances.

4. Ld. Counsel appearing on behalf of the Respondent states that due to her ill health, the Reply could not be filed in time and therefore, the costs as imposed may be waived.

5. Along with the IA, as annexure A-3, a discharge summary in respect of the Ld. Counsel appearing on behalf of the Applicant has been attached. The same reflects that the Ld. Counsel was admitted to the hospital on 19.04.2026 and was discharged on 20.04.2026.

6. It is pointed out to the Ld. Counsel that service upon the Respondent was made on 28.02.2026, whereas she was admitted to the hospital only on 19.04.2026 and was discharged on 20.04.2026 and therefore the entire period of delay in filing the Reply has not been explained.

7. It is also observed that Ld. Counsel has appeared on the date of hearing on 20.04.2026 herself.

8. Considering that the Respondent has failed to give any reasonable justification for the delay in filing of the Reply and that the directions as given vide order dated

> *20.04.2026 in regard to the deposit of cost, subject to which the Reply was allowed to be filed within the extended period of 7 days, have not been complied with by the Respondent, we disregard the Reply, which has been filed by the Respondent.*
> *9. For the reasons stated above, the* ***IA No. 2364/2026 is also dismissed.****"*

3.4. Since the Reply was stuck-off, the same is not considered here.

4. <u>WRITTEN SUBMISSIONS (FC)</u>

4.1 Starting from the year 2018 and till the commencement of CIRP against the Applicant Company i.e. 26.05.2020, all the loan transactions including other small lending's', being given to Corporate Debtor to enable it to meet its working capital requirements, were duly recorded in the ledger account of the Applicant Financial Creditor as maintained in the books of Corporate Debtor.

4.2 The advance service of the Petition was duly served upon the Respondent on 05.01.2026. In *lieu* of the advance service, a settlement proposal was also received from the Respondent through email dated 28.01.2026. That notice was issued in the present Petition on 29.01.2026, and after notice service was completed on 28.02.2026. (Relevant) Affidavit of service dated 03.02.2026, Affidavit of service dated 06.03.2026, Affidavit placing amended memo dated 03.02.2026.

4.3 That this Hon'ble Tribunal, through its order dated 29.01.2026, directed the applicant to place the latest balance sheet of the CD on record. The same was placed on record through an affidavit dated 03.02.2026 by the Applicant, which records the name of the Applicant Company under the head of 'Long Term Borrowings'. The relevant extract of the notes to the financial statement for the year 2024-2025 is as follows:

Note No 4. Long Term Borrowings **Amount in Hundred**

Particulars	As at 31st March, 2025	As at 31st March, 2024
From Related Party : -		
Unsecured Loan from		
i. Directors:		
a.Hasan Shafiq	417828.14	422928.14
b.Sarah Shafiq	0.00	6640.00
ii. Others:		
a. BY Agro & Infra Ltd	150088.84	150088.84
Unsecured Loan from others:-		
Inter- c rporate Deposit (ICD)		
a. Manas Agro Industries & Infrastructure Ltd	56920.44	52124.64
		0.00
Total	624837.42	631781.62

4.4 In terms of the amended Section 7 of the Code, when the default record from the information utility is on record, disclosing the default in repayment of the admitted due and payable amount of and more than 6 Month time period have already been lapsed from the advance service of the Petition on the Respondent, then it is humbly stated that the present Petition deserves to be admitted by this Hon'ble Tribunal.

5. WRITTEN SUBMISSIONS (CD)

5.1 One of the essential requirements under Section 5(8) of the Code is that there must be a disbursement of debt against consideration for the time value of money. The Applicant has completely failed to establish this foundational requirement. It is submitted that even as per the Applicant's own case, the alleged claim is premised only upon:

a) the ledger account allegedly maintained in the books of the Petitioner;

b) balance sheets of the Respondent Company; and

c) the Record of Default generated with the NeSL reflected as 'deemed to be authenticated';

5.2 Merely because an amount is appearing in the balance sheet under the accounting head "Long Term Borrowings", the same does not automatically acquire the character of "financial debt" under Section 5(8) of the Code. A balance sheet entry or ledger entry cannot substitute for the essential requirement of

a) proof of actual disbursement,

b) Terms showing disbursement against consideration for time value of money.

It is further submitted that the Applicant has not placed on record any primary document evidencing the alleged disbursement, the terms of repayment, tenure, maturity date, repayment schedule, interest obligation, sanction terms, board approval, or any other essential condition ordinarily associated with a loan or financial borrowing.

5.3 In the absence of these essential particulars, a mere carry-forward accounting entry in the own account of the Petitioner cannot satisfy the statutory requirement of "financial debt". Reliance is placed on:

a) Judgment dated 28.02.2025 passed by NCLAT in *ILD Owners Welfare Association v. ALM Infotech City Pvt. Ltd*. (Para 10, 11 and 13) and

b) Judgment dated 13.02.2025 passed by the Hon'ble NCLAT in *Global Indian School Education Services Pvt. Ltd. v. Abhay Narayan Manudhane*, (Para 70 - 73).

c) Judgement of the Hon'ble Supreme Court in *Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd. & Ors.*, (2021) 3 SCC 475, Para 43 and 44, 46, wherein it has been emphasised that a disbursal by the alleged lender to the alleged borrower for the time value of money has to be proved as a primary requirement of proving "financial debt".

5.4 Furthermore, it is settled law that balance sheet entries have to be examined in light of the surrounding circumstances, including the nature of the transaction, the relationship between parties, notes to accounts, auditor's remarks, directors' report and the entire commercial background. However, in the present case, no surrounding circumstances have been made out.

a) Judgment dated 10.07.2023 passed by NCLAT in *Asset Reconstruction Company (India) Ltd. v. Uniworth Textiles Ltd*, Para 32 and

b) Judgment dated 08.05.2024 passed by NCLAT in *Metamorphosis Trading LLP v. Sankalp Engineering and Services Pvt. Ltd*., Para 21 – 22 and

c) Judgment dated 23.07.2024 passed by the Hon'ble NCLT, Principal Bench, New Delhi in *Proplarity Infratech (P) Ltd. v. Sky High Technobuild (P) Ltd*, Para 22.

5.5 Therefore, it is the submission of the Respondent that the captioned Petition is liable to be dismissed for failure to establish "financial debt" as required under Section 7 read with Sections 5(8), 3(11) and 3(12) of the Code. Furthermore, the second requirement of proving a default has also not been made out by the Applicant as no terms of the alleged financial debt have been placed on record which establishes any obligation of repayment of the debt by the Respondent to the Applicant.

5.6 The Applicant has relied upon the Record of Default obtained from NeSL. However, it is relevant that the Record of Default itself records the status as "deemed to be authenticated". Such deemed authentication cannot be treated as a primary source of liability by the Respondent. Furthermore, the NeSL record also records that the "Date of Last Acknowledgment of Debt" is "Not Available". A petition under Section

7 is not maintainable solely by placing reliance on the record of the Information Utility as these records are merely substantiating in nature.

5.7 Without prejudice to the Respondent's primary submission that no financial debt exists, it is submitted that even on the Applicant's own showing, the present petition is barred by limitation. The Applicant itself has pleaded and relied upon 26.05.2022 as the alleged date of default. The present Company Petition came to be filed on 30.12.2025. Therefore, the petition has been filed beyond three years from the alleged date of default and is *ex facie* barred by limitation.

5.8 The Applicant has attempted to overcome limitation by relying on Section 15(2) of the Limitation Act, 1963 and by seeking exclusion of the period allegedly spent in obtaining permission under Section 33(5) of the Code from the Hon'ble NCLT, which was granted vide Order dated 10.05.2024. However, such contention is misplaced, considering the judgement dated 21.01.2025 passed by the Hon'ble NCLAT in *WPIL Ltd. v. Gammon India Ltd.* Appeal (AT) (Ins.) No. 12 of 2024, Para 19 and 20, wherein it has been held that the benefit of exclusion under Section 15(2) is confined to proceedings in the nature of suits and the same cannot be mechanically extended to proceedings under the IBC.

5.9 Furthermore, even if the permission under Section 33(5) was granted on 10.05.2024, the captioned petition was filed only on 30.12.2025 over more than one year later. The Applicant had more than sufficient time after grant of permission to take steps within limitation, which he clearly failed to do.

5.10 The Applicant also seeks to rely upon the order dated 10.05.2024 passed in IA No. 1359/2023 as proof of debt. However, the said order merely granted liberty/permission to institute proceedings and does not prove the essential requirements of a financial debt. It did not adjudicate upon the existence of financial debt, default, limitation or maintainability of the Section 7 petition. (Ref, Annexure A-13, Page 203, Vol 2 of the Petition). Therefore, on this account alone the captioned petition deserves to be dismissed.

5.11 Even the Applicant's reliance on the balance sheet of FY 2021 – 2022 dated 24.09.2022 does not render the Petition maintainable as it was filed after lapse of three years from the said date, i.e. on 30.12.2025.

5.12 The Code is not a substitute for civil recovery proceedings. Such recovery claims, particularly when arising out of disputed inter-se commercial dealings between related entities, cannot be converted into insolvency proceedings against the Respondent.

a) Judgment dated 25.04.2022 passed by Hon'ble Supreme Court in *Invent Asset Securitisation and Reconstruction Pvt. Ltd. v. Girnar Fibres Ltd.* and

b) Judgment dated 15.07.2022 passed by the Hon'ble Supreme Court in *S.S. Engineers v. Hindustan Petroleum Corporation Ltd.*, Para 30 – 31.

5.13 It is contended that the captioned petition is defective; the petition has been filed in the name of Jagdish Kumar, the Liquidator, as the Financial Creditor in Part 1 of Form 1. It is a matter of record that even as per the claims of the Petitioner, there is no debt owed to the Liquidator, and at best he can be the representative of the Petitioner. Therefore, even the petition is defective and deserves to be rejected.

5.14 Thus, the entire Petition is premised only upon self-serving and unilateral documents, namely ledgers and balance sheets, which by themselves cannot create or prove a financial debt or its default under the Code. Instead of approaching such a serious remedy with due diligence and proper documentary foundation, the Applicant has mechanically invoked the provisions of the Code, in order to coerce the Respondent into succumbing to an alleged claim which does not satisfy the statutory ingredients of a financial debt. Hence, such a *mala fide* attempt to use the Code as a recovery mechanism deserves to be dismissed with costs.

6. ANALYSIS AND FINDINGS

8.1 We have heard the Ld. Counsels for the Applicant and the Respondent and have perused the records as placed before us.

8.2 At the outset, it is clarified that this Tribunal disregarded the Reply dated 02.06.2026 filed by the CD *vide* order dated 15.06.2026, and I.A. No. 2364/2026 filed for waiver/relaxation of the conditions for taking the said Reply on record was also dismissed. Accordingly, the said Reply does not form part of the pleadings considered by us. The Written Submissions subsequently filed by the CD, however, are on record and the objections contained therein are being considered. The CD has stated that the order dated 15.06.2026 has been challenged before the Hon'ble NCLAT. No order staying or setting aside the said order has been brought on record.

8.3 The undisputed/admitted facts in this matter are:

i. The Applicant Company, M/s. B.Y. Agro and Infra Limited, had advanced an unsecured loan to the CD for its working capital requirements. The original advance is stated to have been Rs.3,90,15,000/- in the financial year 2015-16. The Applicant has, however, claimed in the present proceedings only the outstanding amount of Rs.1,48,09,921/-. The Applicant's own financial statement for FY 2016-17 records the advance as a short-term loan.

ii. The CD and the Applicant Company are sister concerns and have common/related directors and shareholders. The CD is, therefore, stated to be a related party of the Applicant Company within the meaning of Section 5(24) of the Code.

iii. The Applicant has placed on record the financial statements of the CD for the financial years 2018-19, 2019-20, 2020-21 and 2021-22, wherein the amount due to the Applicant Company is reflected under Note 4 relating to "Long-Term Borrowings" as an unsecured loan from M/s. B.Y. Agro and Infra Limited. The ledger of the Applicant Company maintained in the books of the CD for the period 01.04.2018 to 31.03.2022 has also been placed on record.

iv. As on the commencement of CIRP against the Applicant Company on 26.05.2020, an amount of Rs.1,48,09,921/- was shown as due from the CD.

v. A legal notice dated 18.04.2022 was issued by the Applicant, through the Resolution Professional, demanding payment of Rs.1,48,09,921/-. The Corporate Debtor acknowledged receipt of the said notice by email dated 12.05.2022. The Applicant has pleaded 26.05.2022 as the date of default.

vi. The Applicant Company was subsequently ordered to be liquidated on 26.07.2022. The Applicant Liquidator thereafter approached this Tribunal under the proviso to Section 33(5) of the Code seeking permission to institute proceedings against the CD. By order dated 10.05.2024 passed in I.A. No.1359/2023, permission was granted to institute the present proceedings.

vii. A Record of Default was subsequently obtained from the Information Utility on 02.05.2025, recording the date of default as 26.05.2022 and its status as "Deemed to be Authenticated".

8.4 The principal disputes which arise for determination are:

i. Is there sufficient evidence of the underlying transaction/disbursement?

ii. Does the absence of a formal loan agreement, repayment terms, Board resolution, etc. defeat the claim?

iii. Does the interest-free nature of the transaction mean there is no financial debt/time value of money?

iv. What is the evidentiary value of the CD's own ledger and successive audited balance sheets?

v. Does the legal notice and acknowledgement establish default?

vi. Is the NeSL record sufficient/corroborative?

vii. Is the claim barred by limitation, considering the balance-sheet acknowledgements?

viii. Does Section 33(5) permission have any effect on limitation?

8.5 The first and fundamental question is whether the Applicant has established the existence of a debt arising out of a transaction which answers the description of “financial debt” under Section 5(8) of the Code. The CD's principal contention is that there is no formal loan agreement, sanction letter, repayment schedule, maturity date, Board resolution or other document contemporaneous with the alleged advance which sets out the terms of the transaction. It is therefore contended that the Applicant has failed to establish the very foundation of its claim.

8.6 The absence of a formal loan agreement, however, cannot be considered in isolation or treated as determinative of the character of the transaction. At the stage of considering an application under Section 7, what is required to be examined is whether, on the material placed before the Adjudicating Authority, there is a financial debt and a default in respect thereof. The Code does not prescribe that a financial debt can be established only by producing a document styled as a “loan agreement". The nature of the transaction has to be gathered from the substance of the dealings between the parties and the documentary record relating thereto.

8.7 In the present case, there is material beyond the Applicant's own assertion. The Applicant's financial statements record the advance made to the CD. More importantly, the CD's own financial statements for successive financial years have recognised the Applicant under "Long-Term Borrowings". The CD's own ledger also records the Applicant as the creditor. These entries have not been made for a single isolated period; the liability has continued to be reflected in the CD's books over a number of years. The FY 2024-25 audited financial statements, signed on 04.09.2025, once again recognise the Applicant under "Long-Term Borrowings". Thus, the evidence of the transaction is not founded merely upon a unilateral ledger prepared by the Applicant, but is materially corroborated by the CD's own books and audited financial statements.

8.8 This distinction is important while considering the authorities relied upon by the CD. The decisions in *ILD Owners Welfare Association v. ALM Infotech City Pvt. Ltd., Global Indian School Education Services Pvt. Ltd. v. Abhay Narayan Manudhane, Asset Reconstruction Company (India) Ltd. v. Uniworth Textiles Ltd., Metamorphosis Trading LLP v. Sankalp Engineering & Services Pvt. Ltd.* and *Proplarity Infratech (P) Ltd. v. Sky High Technobuild (P) Ltd.* emphasise that an entry in a balance sheet or ledger cannot, in every case, be treated as conclusive proof of a financial debt and that the underlying transaction and its surrounding circumstances have to be examined. That proposition is well settled and is also consistent with the statutory requirement under Section 5(8). However, those authorities cannot be read to mean that a formal loan agreement is an indispensable condition for establishing a financial debt. The evidentiary value of an accounting entry depends upon the circumstances in which it appears and the other material available on record.

8.9 Here, the entries relied upon are not isolated entries appearing only in the books of the Applicant. The CD itself has repeatedly treated the Applicant as a lender and the amount as a borrowing. Its own ledger supports the same position. The liability has continued to be shown even in the latest audited financial statements. Thus, the accounting entries are not being treated as conclusive by themselves; rather, they form an important part of a larger evidentiary chain which includes the original advance, the subsequent recognition of the liability by the CD, the demand for repayment and the subsequent conduct of the parties.

8.10 The CD has also placed reliance upon *Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd. & Ors*., (2021) 3 SCC 475, to contend that the foundational requirement of a financial debt has not been established. The principle stated by the Hon'ble Supreme Court is undoubtedly relevant. The Court observed that “the essential ingredient of a financial debt is disbursal against consideration for the time value of money.” The Court also examined the surrounding circumstances in determining whether the transactions in question were genuine financial transactions or arrangements which could not be treated as financial debt. The decision, therefore, requires this Tribunal not to proceed merely on the nomenclature assigned to a transaction but to examine its substance.

8.11 When that test is applied to the present facts, the circumstances do not support the CD's contention that there was no underlying financial transaction. The Applicant has shown that the CD's own books repeatedly recognise the liability and there is no material on record demonstrating that the amount was never received by the CD. More significantly, the CD itself has classified the amount as a borrowing in its audited accounts. There is, therefore, a substantial factual distinction between a case where a financial debt is asserted solely based on a unilateral entry and the present case, where the alleged borrower itself has repeatedly acknowledged the transaction.

8.12 The objection regarding the absence of a stipulated rate of interest also requires examination in this factual context. Section 5(8) indeed refers to a debt disbursed against the consideration for the time value of money. The CD accordingly contends that an interest-free advance, without any contractual return or repayment schedule, cannot constitute a financial debt. The proposition, however, cannot be stated in such absolute terms.

8.13 In *Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd.*, the Hon'ble Supreme Court considered the precise question of an interest-free loan and held that the definition of financial debt does not expressly exclude an interest-free loan. The Court recognised that "'Financial Debt' would have to be construed to include interest free loans advanced to finance the business operations of a corporate body." The absence of interest is therefore not, by itself, sufficient to take a transaction outside Section 5(8).

8.14 In the present case, the Applicant has consistently pleaded that the advance was made for the working-capital requirements of the CD. This assertion is also consistent with the manner in which the CD subsequently treated the amount in its books, namely, as "Long-Term Borrowings". The commercial substance of the transaction, therefore, is not that of an unexplained or gratuitous payment. It is an amount advanced by one corporate entity to another for its business requirements and thereafter recognised by the recipient as a borrowing. The absence of contractual interest may affect the precise computation of the amount due, but it does not, in these circumstances, by itself extinguish the financial character of the transaction.

8.15 At the same time, *Orator Marketing* cannot be understood as dispensing with the requirement of establishing the underlying transaction. An interest-free payment does not automatically become a financial debt merely because it is described as a loan. What is material is the nature and commercial purpose of the transaction. In the present case, the CD's own classification of the amount as a borrowing supplies important corroboration of the Applicant's case.

8.16 The CD submits that the related-party relationship, coupled with the absence of a formal loan document and the interest-free nature of the transaction, creates a serious doubt regarding the genuineness of the alleged financial debt. The relationship between the parties is certainly a relevant circumstance, particularly in light of the observations in *Phoenix ARC* concerning transactions between related entities. However, the existence of a related-party relationship cannot, by itself, lead to the conclusion that a transaction is sham or collusive.

8.17 For such a conclusion, there must be some material from which the Tribunal can reasonably infer that the transaction was fictitious, that the funds were never actually disbursed, that the liability was subsequently fabricated, or that the transaction was structured solely for the purpose of conferring an artificial status upon the claimant. No such material has been demonstrated in the present case. On the contrary, the very entity against whom the debt is asserted has repeatedly acknowledged the liability in its own books and audited financial statements. The related-party character therefore warrants scrutiny, but it does not, in the absence of further evidence, outweigh the repeated documentary acknowledgement by the CD itself.

8.18 The evidentiary value of the CD's financial statements becomes particularly significant for this reason. An audited balance sheet is not a conclusive adjudication of every liability appearing therein. Nor does every entry necessarily constitute an acknowledgement for all purposes. The Tribunal must examine whether the entry represents a clear recognition of an existing liability and whether it is consistent with the surrounding material. In the present case, however, the liability is not reflected once and thereafter abandoned. It appears consistently over successive years, is also reflected in the CD's ledger, and continues to be shown in the latest audited accounts.

8.19 The continuing recognition is therefore a circumstance which substantially corroborates the Applicant's case. If the transaction were wholly fictitious, one would expect some contemporaneous material from the CD disputing the alleged advance or treating the entries as erroneous or otherwise explaining why the Applicant was being shown as a lender. No such material has been brought before this Tribunal. Instead, the CD’s own financial statements continue to carry the liability. Moreover, as both the entities, i.e., the Applicant and the CD, before initiation of CIRP proceedings, in respect of the Applicant belonged to and were under the same management when these transactions took place and were accounted for the books of both the entities, the CD cannot take the plea that these transactions were fictitious.

8.20 The NeSL record has to be viewed in the same manner. The record showing the status as “Deemed to be Authenticated” cannot independently establish the original disbursal or create a financial debt where none otherwise exists. It is not being treated as such. Its relevance is corroborative. Once the existence of the transaction is supported by the parties' financial records, particularly the CD's own books, the NeSL record lends further support to the Applicant's assertion regarding the default.

8.21 The objection that the present proceedings amount to a recovery proceeding under the guise of insolvency also does not, in the facts of the present case, furnish a ground for rejection. The Code is undoubtedly not intended to be used as a substitute for ordinary debt-recovery proceedings. However, the mere fact that a creditor has filed an Application under Section 7 of the IBC, 2016, the same does not make it a recovery proceeding. The statutory jurisdiction is attracted where the requirements of Section 7 are satisfied. In the present case, the Applicant is the Liquidator of the creditor company and is seeking to initiate the said proceedings for resolution of the CD and recovery of the dues of the creditors is only a by-product of this process, the main product being resolution.

8.22 The question of limitation, however, requires a more careful examination. The Applicant has stated the date of default as 26.05.2022, and the application was filed in December 2025. If the matter were to be considered solely from the original date of default, the application would require an explanation for the apparent delay beyond 3 years. The Applicant has relied, *inter alia*, upon the order dated 10.05.2024 passed under the proviso to Section 33(5) of the Code and upon acknowledgements contained in the CD's balance sheets.

This Tribunal, through its order dated 29.01.2026, has directed the applicant to place the latest balance sheet of the CD on record. The same was placed on record through an affidavit dated 03.02.2026 by the Applicant, which records the name of the Applicant Company under the head of ‘Long Term Borrowings’. The relevant extract of the notes to the financial statement for the year 2024-2025 is as follows:

Note No 4. Long Term Borrowings **Amount in Hundred**

Particulars	As at 31st March, 2025	As at 31st March, 2024
From Related Party : -		
Unsecured Loan from		
i. Directors:		
a.Hasan Shafiq	417828.14	422928.14
b.Sarah Shafiq	0.00	6640.00
ii. Others:		
a. BY Agro & Infra Ltd	150088.84	150088.84
Unsecured Loan from others:-		
Inter- c rporate Deposi't (ICD)		
a. Manas Agro Industries & Infrastructure Ltd	56920.44	52124.64
		0.00
Total	624837.42	631781.62

8.23 The order dated 10.05.2024 cannot, by itself, extend the period of limitation. The permission contemplated by Section 33(5) is a statutory requirement governing the institution or continuation of proceedings by a corporate person undergoing liquidation; it is not an adjudication that the debt is within limitation and does not automatically enlarge the period prescribed under the Limitation Act. The principle emerging from *WPIL Ltd. v. Gammon India Ltd.* is relevant in this regard. The period during which permission was sought or obtained cannot simply be excluded without identifying a statutory provision which authorises such exclusion.

8.24 The more substantial question is whether the CD acknowledged the liability within the meaning of Section 18 of the Limitation Act. Section 238A of the Code makes the provisions of the Limitation Act applicable to proceedings before the AA. In *Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal*, (2021) 6 SCC 366, the Hon'ble Supreme Court recognised that an acknowledgement of liability contained in a balance sheet may attract Section 18, provided the statutory requirements are satisfied. The Court specifically emphasised that the acknowledgement must be in writing and signed by the party against whom the right is claimed.

8.25 The principle is important because the present case is not one where the Applicant seeks to rely upon an acknowledgement made after the debt had already become time-barred. The CD's FY 2021-22 financial statements are stated to have been signed on 24.09.2022 and contain the Applicant under “Long-Term Borrowings”. If this entry is found to constitute an acknowledgement within Section 18, a fresh period of limitation would commence from the date of that acknowledgement.

8.26 Thereafter, the CD's FY 2024-25 audited financial statements, signed on 04.09.2025, again recognised the Applicant under “Long-Term Borrowings”. This date is material. It precedes the expiry of the period running from the FY 2021-22 acknowledgement dated 24.09.2022. Consequently, the FY 2024-25 entry cannot be disregarded merely because it was made shortly before the filing of the present application. If the entry amounts to a valid acknowledgement of liability under Section 18, it furnishes a further commencement of limitation from 04.09.2025.

8.27 The position is also consistent with the caution expressed by the Hon’ble Supreme Court in *Bishal Jaiswal* that the nature of the entry must be examined. A balance-sheet entry containing a clear acknowledgement of liability may have the statutory effect contemplated by Section 18, whereas an entry accompanied by appropriate caveats or disclaimers may require a different consideration. The entries in the present case therefore have to be read in the context of the actual financial statements. On the material presently before the Tribunal, there is consequently sufficient basis to consider the entries as acknowledgements of liability for limitation.

8.28 Viewed cumulatively, the material before this Tribunal presents a consistent course of conduct. There was an advance from the Applicant to the CD; the transaction was subsequently reflected in the CD's own books as a borrowing; the liability continued to be recognised in successive audited financial statements; the

Applicant raised a specific demand for Rs.1,48,09,921/-; the demand was acknowledged as received; the default was thereafter recorded in the NeSL system; and the liability continued to be reflected even in the FY 2024-25 audited financial statements.

8.29 It is this cumulative evidentiary picture which distinguishes the present matter from a case where a creditor seeks to establish a financial debt merely through a self-serving or isolated accounting entry. The objections raised by the CD are relevant circumstances, but they do not transfer the positive documentary evidence deriving from the CD itself.

8.30 The Tribunal is conscious that proceedings under Section 7 cannot be admitted merely because some amount is shown as payable in the books of account. The statutory requirements of Section 5(8) and Section 7 must nevertheless be satisfied. On the present record, however, the absence of a formal loan agreement, the interest-free nature of the advance and the related-party relationship, when considered individually or cumulatively, do not establish that the transaction was fictitious or that the amount did not constitute a financial debt. Rather, the CD's own treatment of the transaction over several financial years supports the Applicant's case regarding the nature and existence of the debt.

8.31 Accordingly, on the material presently available, this Tribunal is satisfied that the Applicant has established the existence of a financial debt within the meaning of Section 5(8) of the Code and the occurrence of default within the meaning of Section 3(12). The CD's objections regarding absence of a formal loan agreement, absence of interest, related-party status, insufficiency of accounting entries, evidentiary value of the NeSL record and limitation, considered in the factual circumstances of the present case, do not constitute sufficient grounds for rejecting the application under Section 7.

8.32 We make it clear that at this stage we have not crystallised the amount as claimed in this Application; the same is left to be collated by the IRP.

ORDER

In view of the aforesaid findings, this Application, being C.P. (IB) 9/MB/2026, filed under Section 7 of IBC, 2016, by Mr. Jagdish Kumar, Liquidator of M/s. B.Y. Agro And Infra Ltd., the FC, for initiating CIRP in respect of M/s. Wardha Mega Food Park Pvt. Ltd., the CD, is **admitted.**

We further declare a moratorium under Section 14 of IBC, 2016, with consequential directions as mentioned below:

I. We prohibit:

a) the institution of suits or continuation of pending suits or proceedings against the CD including the execution of any judgment, decree, or order in any court of law, tribunal, arbitration panel, or other authority;

b) transferring, encumbering, alienating, or disposing of by the CD any of its assets or any legal right or beneficial interest therein;

c) any action to foreclose, recover, or enforce any security interest created by the CD in respect of its property, including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and;

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.

II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the IBC or passes an order for the liquidation of the CD under Section 33 thereof, as the case may be.

IV. That the public announcement of the CIRP shall be made immediately as specified under Section 13 of the IBC read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

V. That this Bench hereby appoints **Mr. Sanjay Shrivastava**, having Registration No. as IBBI/IPA-001/IP-P01528/2018-19/12425 and **e-mail – casanjayshrivastava@gmail.com,** having valid Authorisation for Assignment up to 31.12.2026, from the panel as provided by the IBBI, as the IRP in this matter.

VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.

VII. That during the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the CD are directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the CD. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules, 2016 for any violation of the law.

VIII. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the CD.

IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the OC is directed to deposit a sum of Rs.3,00,000/- (Three Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the OC on priority upon the funds becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.

X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.

XI. Order to be communicated to all the Statutory Authorities by the IRP.

XII. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.

XIII. The Registry is directed to immediately communicate this Order to the OC, the CD and the IRP by way of Speed Post, e-mail and WhatsApp.

XIV. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-	**Sd/-**
NILESH SHARMA	**SAMEER KAKAR**
MEMBER (JUDICIAL)	**MEMBER (TECHNICAL)**

//AS//