NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1474 of 2026

[Arising out of the Impugned Order dated 12.06.2026 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench – Court III in C.P.(IB) No. 169(ND)/2026]

IN THE MATTER OF:

Affle 3i Limited
Formerly known as Affle India Limited
A47, Lower Ground Floor, Off Amar Bhawan,
Hauz Khas, New Delhi 110016
Through its authorised representative
Mr. Kapil Mohan Bhutani
Email: legal@affle.com **...Appellant**

Versus

Axis Trustee Services Limited
Axis House, P.B. Marg, Worli,
Mumbai, Maharashtra 400025
Also at: Plot 25, 2nd Floor, Pusa Road,
Karol Bagh, New Delhi 110005
Email: atsl.legal@axistrustee.in,
debenturetrustee@axistrustee.in **...Respondent No. 1**

Talent Unlimited Online Services Private Limited
Through Mr. Manish Agarwal
Interim Resolution Professional
808, Devika Tower, Nehru Place,
South Delhi, Delhi 110019
Email: cirp.tuos@gmail.com **...Respondent No. 2**

Present:

For Appellant	:	Mr. Abhijeet Sinha, Sr. Advocate with Mr. Nakul Sachdeva, Mr. Abhishek Ghai, Mr. Sagar Arora, Mr. Abhinandan Sharma, Advocates.
For Respondents	:	Mr. Harshit Khare, Mr. Prafful Suri, Mr. Ayuj Agarwal, Mr. Brijesh Gupta, Advocates for R1 Mr. Apoorv Agarwal, Ms. Vaishnavi, Advocates for R2 Ms. Shruti Munjal, Ms. Trisha Dhara, Ms. Chitna Verma, Advocates for Suspended Board.

<u>J U D G M E N T</u>
<u>(Hybrid Mode)</u>

<u>Per: Barun Mitra, Member (Technical)</u>

The present appeal filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 12.06.2026 (hereinafter referred to as the '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi-Court III) in C.P.(IB) No. 169(ND)/2026. By the said impugned order, the Adjudicating Authority admitted the Section 7 application filed by Respondent No. 1-Axis Trustee Services Ltd. admitting the Corporate Debtor-Talent Unlimited Online Services Pvt. Ltd. into the rigours of Corporate Insolvency Resolution Process ('**CIRP**' in short). Being aggrieved by the impugned order, the Appellant has come up in appeal.

2. Before we go into the merits of the matter, we would like to deal with I.A No. 5683 of 2026 filed by the Appellant seeking condonation of delay of 13 days in filing the appeal.

3. Explaining the reasons for delay, the Ld. Sr. Counsel for the Appellant submitted that since it was not a party to the proceeding before the Adjudicating Authority, they could acquire knowledge of the impugned order only on 16.06.2026. Thereafter they needed some time to collect, collate, examine and organise the relevant records necessary for preferring the appeal. Moreover, some more time got consumed as before preferring the appeal, the Appellant had made a proposal to the Debenture Holders through the Debenture Trustee-Axis Trustee Services Ltd. to acquire the entire financial debt of the Corporate Debtor without any haircut. On finding that their efforts to resolve the matter through their bonafide settlement proposal did not evoke any meaningful response, they took recourse to filing of appeal proceedings and this wait led to delay in the filing of the appeal. It was submitted that delay was not intentional and denial of delay condonation would result in miscarriage of justice. The condonation of delay application was opposed by the Respondent No. 1 on the ground that the Appellant was well aware of the impugned order initiating CIRP which is evident from the fact that they had already filed their claim before the Resolution Professional ('**RP**' in short) on 26.06.2026 while the appeal was filed on 25.07.2026, which clearly shows that the Appellant was sleeping over their rights and hence the delay does not deserve condonation.

4. We have perused para 2 of the IA No. 5683 of 2026 wherein the reasons for the delay have been elaborated by the Appellant. We find that sufficient basis has been provided justifying the condonation of delay. Since the period of delay is within the extended period of 15 days as provided under Section 61(2) of the IBC, we allow the delay condonation application.

5. For better appreciation of the substantive issues, it would be useful to begin by taking notice of the broad factual background of the instant case at hand. On a Section 7 application filed by Axis Trustee Services Ltd.-Respondent No.1 in its capacity as the Debenture Trustee, the Corporate Debtor was admitted into CIRP vide impugned order dated 12.06.2026 passed by the Adjudicating Authority, following which the RP had made the public announcement on 14.06.2026 inviting claims from the creditors of the Corporate Debtor. Basis the claims filed by the creditors and subsequent to verification thereof, the RP had constituted the Committee of Creditors ('**CoC**' in short). At this stage, it will also suffice to note that the present Appellant-Affle 3i Ltd. ('**Affle**' in short) which had a share-holding in the Corporate Debtor had purportedly submitted an assignment/settlement proposal on 03.07.2026 to the Respondent No.1 to bring the CIRP to an end, on which no positive response having been received, the Appellant has preferred the present appeal, assailing the impugned order admitting the Corporate Debtor into insolvency.

6. Making submissions on behalf of the Appellant, Shri Abhijeet Sinha, Ld. Sr. Counsel of the Appellant submitted that the Adjudicating Authority while admitting the Section 7 application had proceeded on a narrow debt and default analysis while disregarding the material circumstances that the CIRP was invoked fraudulently. It was further submitted that the Appellant was a substantial investor in the Corporate Debtor including holding of Compulsory Convertible Preference Shares ('**CCPS**' in short) and therefore not a shareholder simplicitor. It was also asserted that the Appellant possessed independent and enforceable contractual rights under the Shareholders Agreement. The Appellant as a creditor/decree holder of the Corporate Debtor and by virtue of having a direct and subsisting legal and commercial interest in the affairs of the Corporate Debtor, it enjoyed locus to file the present appeal as an aggrieved party. It was contended that since CIRP was initiated against the Corporate Debtor not for the statutory purpose of insolvency resolution but initiated in a fraudulent manner for ulterior motives, the Adjudicating Authority had erred in having failed to examine the matter on the touchstone of Section 65 of the IBC while admitting the Section 7 application.

7. Elaborating further it was submitted that there were on-going disputes between the Appellant, Corporate Debtor and its suspended management prior to the initiation of CIRP. Due to these disputes, the Appellant, in exercise of its contractual inspection rights, had issued inspection notices to the Corporate Debtor on 02.12.2022 and 07.12.2022 seeking access to material contracts, financial accounts, funding requirements and other affairs of the Corporate Debtor. However, as the Appellant was denied access to the records, it had initiated inspection related proceedings before the High Court of Delhi leading to the orders of the Delhi High Court dated 31.07.2023 allowing informational and inspection rights of the books and records of the Corporate Debtor. Attention was also adverted to the fact that Singapore International Arbitration Centre ('**SIAC**' in short) had also passed an Inspection Order dated 11.03.2024 and an Award on Reimbursement of Costs dated 02.04.2024. It was also added that the Delhi High Court by its judgment dated 04.04.2026 had dismissed the challenge to the Arbitral Tribunal's order and permitted execution of the inspection order passed by SIAC on 11.03.2024. The Appellant had clearly been accorded judicial recognition of its enforceable rights concerning access to the affairs and records of the Corporate Debtor. It was therefore emphatically asserted that besides being a substantial strategic investor and a contractual inspection rights-holder, the Appellant was an award-holder and decree-holder.

8. It was strenuously contended that the CIRP was fraudulently initiated with a view to resist implementation of the arbitral award. The suspended management had deliberately pushed the Corporate into rigours of CIRP so as to absolve itself from implementation of the arbitration award by taking advantage of the provisions of moratorium. It was asserted that this was not a case of genuine insolvency but one where the IBC framework was being misused so that no contractual rights could be asserted by the Appellant nor any award executed. This clearly prejudiced the interest of the Appellant and the creditors of the Corporate Debtor. However, this aspect was totally overlooked by the Adjudicating Authority. It was also submitted that in terms of the judgment of the Hon'ble Supreme Court of India in ***Independent Sugar Corporation Ltd. Vs. Girish Shriram Juneja & Ors. in Civil Appeal No. 6071 of 2023,*** a person aggrieved under Section 61 of the IBC cannot be subjected to an unduly rigid conception of locus which principle has also been followed by this Tribunal in ***Chandra Shekhar Jha & Anr. Vs. Religare Enterprises Ltd. & Ors in CA(AT)(Ins)No. 992 of 2023***. Hence the Appellant has a right to file the present appeal in the background of Section 61(1) of the IBC which permits any person, aggrieved by an order of the Adjudicating Authority, to file an appeal.

9. It was further submitted that no bonafide effort was made to preserve the Corporate Debtor as a going concern which is evident from the fact that the Corporate Debtor did not genuinely explore the alternative avenues of available rescue funding. It was submitted that even prior to CIRP when the Corporate Debtor had run into certain financial difficulties following which the Appellant had proposed a loan facility in March, 2023 to the Corporate Debtor, the same was rejected and the Corporate Debtor had instead preferred a competing financing proposal from Trifecta and that it was Trifecta which later preferred the Section 7 application. The preference given to Trifecta's financing proposal coupled with the exclusion of the Appellant from all material developments of the Corporate Debtor leading to alleged default and initiation of CIRP evidences a deliberate design to marginalise the Appellant and to proceed with a pre-conceived insolvency process. Even after admission of CIRP, the Appellant had addressed a letter on 03.07.2026 offering to acquire or take assignment of the alleged debt without any haircut but got no positive response. Instead of availing a friendly loan to discharge the entire debt, Form G was engineered within five days of CIRP initiation. This insistence on continuation of CIRP despite an available settlement route shows misuse of IBC.

10. Per contra, it was contended by Shri Krishnendu Dutta, Ld. Sr. Counsel for Respondent No. 1 that the purported grievance of the Appellant has arisen solely from its interest as a shareholder of the Corporate Debtor which did not constitute any direct or independent injury to the Appellant. Hence the Appellant cannot be regarded as an aggrieved person under Section 61 of the IBC thus rendering the appeal non-maintainable.

11. It was also asserted that the withdrawal/termination of CIRP could not have been sought by the Appellant merely on the basis of a subsequent proposal or settlement given by them as in terms of the amended Section 12A of the IBC, no withdrawal of CIRP under Section 12A is possible before the constitution of the CoC and after the first invitation for submission of a resolution plan by the RP. The statutory restrictions and procedural safeguards introduced by the amended Section 12A require to be strictly complied with. In the present case, where the CoC has already been constituted and Form-G has already been published, the prayer of the Appellant to bring the CIRP to an end basis their settlement proposal is contrary to the statutory construct of Section 12A and is legally impermissible.

12. It was vehemently argued that when no objections were raised before the Adjudicating Authority either by way of pleading or oral submissions that CIRP was fraudulently or maliciously initiated, the Appellant cannot introduce this new plea under Section 65 for the first time in an appeal under Section 61 of IBC. The allegation of fraudulent or malicious initiation of CIRP which had neither been pleaded before the Adjudicating Authority nor adjudicated upon by the Adjudicating Authority, cannot constitute a valid ground for interference with the impugned order in the facts of the present case wherein debt and default has been proven.

13. We have heard the Ld. Counsel for the parties and perused the records carefully.

14. The short point for our consideration is whether the Section 7 application was fraudulently initiated and whether it has been overlooked by the Adjudicating Authority in the impugned order.

15. To arrive at our analysis and findings, we may first run our eyes through the impugned order. The relevant excerpts of the order are as reproduced below:

> *"21. The Applicant in order to establish the existence of financial debt, its disbursement, and the occurrence and continuance of default has placed on record the Securities Subscription Agreement dated 03.03.2023, Debenture Trust Deed dated 03.03.2023, Debenture Trustee Appointment Agreement dated 03.03.2023 and Deed of Hypothecation dated 03.03.2023, the Addendum Cum Amendment Deed dated 14.09.2023, copies of debenture certificates issued by the Corporate Debtor, bank statements evidencing disbursement of funds, statement of account/ledger reflecting the outstanding principal and interest, Warning Letter dated 02.01.2026, Event of Default Notice dated 22.01.2026, Final Demand Notice dated 09.02.2026, email communications and correspondence wherein the Corporate Debtor has acknowledged its liability and sought time for repayment, minutes of meetings recording admission of financial distress and Record of Default filed with the Information Utility (NeSL).*
>
> *22. The Respondent has not denied the fact that the execution of the documents and disbursal of the amount.*
>
> *23. Moreover, the Applicant had issued a warning letter dated 02.01.2026 calling upon the Corporate Debtor to regularize the default within five days.*
>
> *24. Thereafter, the default notice dated 22.01.2026 was issued by the Debenture Trustee to which the Respondent/Corporate Debtor vide e-mail dated 23.01.2026 replied.......*
>
> *25. It is thus very clear that the Respondent/Corporate Debtor has acknowledged its liability and requested for 9 to 12 months' time for repayment of the outstanding dues.*
>
> *27. Further, the Applicant has filed the information of default with the Information Utility i.e. NeSL on 23.01.2026 for part amount under default i.e. INR 1,89,13,351 on behalf of one of the debenture holders pursuant to which the NeSL has issued a record of default and the Record of Default has been placed on record by the Applicant."*
>
> *(Emphasis supplied)*

16. When we look at the impugned order, it is clear that the Adjudicating Authority has satisfied itself on the basis of material on record that there was a debt on the part of the Corporate Debtor qua Respondent No. 1 and that the Corporate Debtor had committed a default in the discharge of this debt liability which is also reflected in the NeSL records. The legal position is now well settled by the judgement of the Hon'ble Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407*** that once the Adjudicating Authority is satisfied that a financial debt exists and a default has occurred, it must admit the application unless it is incomplete. Any enquiry under Section 7(5)(a) of IBC is required to be confined strictly to the determination of debt and default. Similarly, in ***Swiss Ribbons P. Ltd. v. Union of India (2019) 4 SCC 17***, the Hon'ble Apex Court had reiterated that the CIRP trigger point is default. These binding principles have been consistently followed and therefore admission under Section 7 becomes mandatory once debt and default is established but for a narrow exception confined to its peculiar facts, of which no such articulation was done before the Adjudicating Authority.

17. This now brings us to the contention of the Appellant that the impugned order has simply recorded debt and incidence of default without going into the questions of lack of bonafide in the invocation of the insolvency. It is the case of the Appellant that Corporate Debtor's persistent denial of inspection; non-disclosure of insolvency risk; rejection of pre-CIRP funding proposal made by the Appellant; non-engagement of the Appellant inspite of their no-haircut post CIRP acquisition settlement proposal; invocation of moratorium as a shield against the enforcement of arbitral awards and court decrees cumulatively show that there was a deliberate and pre-conceived design on the part of the Corporate Debtor to initiate insolvency in the present facts of the case thereby warranting interference under Section 65 of the IBC.

18. At this stage we may glance through the statutory provision of Section 65 of the IBC which reads as follows:

> *"Section 65: Fraudulent or malicious initiation of proceedings.*
>
> *65. (1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*
>
> *(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.*
>
> *(3) If any person initiates the pre-packaged insolvency resolution process—*
>
> > *(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or*
> >
> > *(b) with the intent to defraud any person,*
>
> *the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees."*

From a reading of the above provision, it is clear that Section 65 provides that if any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for resolution of insolvency or liquidation, the Adjudicating Authority may impose upon such person a penalty in order to prevent such person from taking undue benefit of provisions of IBC to detriment of the rights of legitimate creditors as well as to protect the Corporate Debtor from being dragged into CIRP with mala-fide. This statutory provision also empowers the Adjudicating Authority to interdict the abuse of CIRP process at any stage, if the Adjudicating Authority is satisfied from the surrounding facts and circumstances on record, of fraud and/or malicious intent on the part of any party seeking admission of CIRP of the Corporate Debtor.

19. At this juncture, it will also be constructive to take note of the contentions raised and submissions made by the Corporate Debtor raised before the Adjudicating Authority, as recorded at paras 15 and 16 of the impugned order, to find out whether the Corporate Debtor had resisted the admission of the Section 7 application. The relevant paragraphs are as reproduced below:

> *"15. The Corporate Debtor submitted that since discussions and negotiations were being held between the Applicant/Financial Creditor and the Corporate Debtor for repayment of the dues, it cannot be said that the amount of default has crystalized and therefore there is no default within the meaning of Section 3(12) read with Section 7 of the Code.*
>
> *16. The Respondent further submitted that the Applicant is attempting to use the Code as a recovery mechanism. The Respondent/Corporate Debtor further submitted that mere description of the Applicant as "Debenture Trustee" does not automatically clothe it with locus under Section 5(7) of the Code unless it is demonstrated that the underlying beneficiaries/debenture holders are Financial Creditors to whom financial debt is actually owed and that the Applicant is duly authorized under the debenture documentation to initiate Section 7 proceedings under the Code."*

When we look at the above submissions made by the Corporate Debtor before the Adjudicating Authority, we find that the Corporate Debtor had clearly contested the debt and default and resisted the initiation of CIRP. In such circumstances, when there was clearly no cogent evidence before the Corporate Debtor to demonstrate that the Corporate Debtor had willfully pushed itself into insolvency, the allegation cannot be accepted unless substantiated.

20. In understanding the contours of Section 65 of the IBC, we are also guided by the judicial precedent laid down by the Hon'ble Supreme Court in the case of ***Beacon Trusteeship Limited Vs. Earthcon Infracon Pvt. Ltd. & Anr. in Civil Appeal no. 7641 of 2019*** where under para 7, it held as follows:

> *"7. Considering the provision of Section 65 of the IBC, it is necessary for the Adjudicating Authority in case such an allegation is raised to go into the same. In case, such an objection is raised or application is filed before the Adjudicating Authority, obviously, it has to be dealt with in accordance with law. The plea of collusion could not have been raised for the first time in the appeal before the NCLAT or before this Court in this appeal. Thus, we relegate the appellant to the remedy before the Adjudicating Authority."*

This judgement clearly lays down that in the first instance it is the Adjudicating Authority which is obliged to investigate the nature of the alleged fraudulent transaction in accordance with law and exercise caution while considering the attendant facts and circumstances of the case.

21. To answer the question as to whether the CIRP was initiated in the present case in a fraudulent/malicious manner which attracted Section 65 of the IBC, we must bear in mind that it is well settled that the degree of proof and evidence required to prove any proceeding to initiate CIRP as fraudulent should be beyond reasonable doubt and of an unimpeachable nature. The threshold for determining fraudulent or malicious proceeding under Section 65 is rigorous and requires proof of deliberate intent of causing wrongful loss to creditors. Specific material facts are therefore required to be pleaded if a proceeding is sought to be brought under Section 65.

22. Since Section 65 is designed to deter misuse and protect the integrity of the insolvency framework, it is incumbent upon the Adjudicating Authority to examine the conduct of the Corporate Debtor in the surrounding circumstances for satisfying itself that the threshold element of fraudulent intent was met. However, in the present facts of the case, the records basis which the Appellant has claimed fraudulent proceedings and sought to invoke Section 65 were not made available to the Adjudicating Authority. We are also inclined to agree with the Respondent No.1 that any grievance of fraudulent or malicious initiation of CIRP was required to have been raised by the Appellant before the Adjudicating Authority and adjudicated in accordance with law. An issue which was required to have been considered by the Adjudicating Authority in the first place cannot be raised by the Appellant at the appellate stage.

23. In the absence of any cogent material having been placed before the Adjudicating Authority to demonstrate any dishonest design on the part of the suspended management to defraud creditors or to carry on business with an intent to deceive, we are not persuaded to hold that the Adjudicating Authority had knowingly omitted material facts basis which Section 65 of IBC could have been invoked.

24. We are also of the considered view that for reasons of judicial propriety, it may not be fair on the part of the Appellate Tribunal to arrive at any conclusion on the fraudulent initiation of CIRP proceedings when no foundational material was placed before the Adjudicating Authority. As proceedings under Section 65 of the IBC requires strict construction, there is an imperative need for the Appellant to place its contentions with supporting material and evidentiary basis forming the foundation of their allegation of fraudulent initiation of CIRP before the Adjudicating Authority.

25. In result, we do not find any good reasons to interfere with the impugned order as it stands. However, we are allowing liberty to the Appellant to place a proper Section 65 application before the Adjudicating Authority which may consider all contentions raised therein alongwith other aspects including the locus of the Appellant to file such an application to adjudicate whether the proceedings have been initiated in a fraudulent manner. We dispose of the appeal in accordance with the aforesaid direction. Parties shall bear their own costs.

[Justice Yogesh Khanna]
Officiating Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date : 22.09.2026
Sheetal