IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH, COURT-I

KOLKATA

C.P. (IB) No. 257/KB/2025

An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016, and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

PINK CITY FINCAP PRIVATE LIMITED

...Financial Creditor

Versus

ARTHMATE TECH PRIVATE LIMITED

...Corporate Debtor

And

I.A. (IB) No. 414/KB/2026

IN

IN C.P. (IB) No. 257/KB/2025

An Application under Section 65 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016;

IN THE MATTER OF:

ARTHMATE TECH PRIVATE LIMITED

...Corporate Debtor/Applicant

Versus

PINK CITY FINCAP PRIVATE LIMITED

...Financial Creditor/Respondent

Pronouncement: 10.09.2026

CORAM:

Smt. Bidisha Banerjee, Hon'ble Member (Judicial)

Ms. Rekha Kantilal Shah, Hon'ble Member (Technical)

APPEARANCE:

For the Corporate Debtor:

Mr. Soorjya Ganguli, Adv.

Ms. Kiran Sharma, Adv.

Mr. Rabindranath Mitra, Adv.

ORDER

Per: Smt. Bidisha Banerjee, Member (Judicial):

1. This Court congregated through hybrid mode.

2. Heard the Learned Counsels for both parties.

3. The present Petition being **C.P. (IB) No. 257/KB/2025** has been filed by Pink City Fincap Private Limited (hereinafter referred to as the Financial Creditor) 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, seeking initiation of the Corporate Insolvency Resolution Process against Arthmate tech Private Limited (hereinafter referred to as the Corporate Debtor).

4. The **I.A. (IB) No. 414/KB/2026** has been filed by the Corporate Debtor and seeks the following reliefs:

a. *Dismissal of the Company Petition being C.P. (IB) No. 257/KB/2025 with maximum penalty of Rs. 1,00,00,000/- (Rupees Once Crore) or such penalty as this Hon'ble Tribunal deems fit and proper;*
b. *Pending hearing and final disposal of the present interlocutory application, C.P. (IB) No. 257/KB/2025 to be kept in abeyance;*
c. *Such further orders or directions be passed as this Hon'ble Tribunal may deem fit and proper.*

5. Facts:

5.1 The Financial Creditor is a Non Banking Financial Service provider Company and the Corporate Debtor also offers similar Non Banking Financial Services. The Corporate Debtor showed its interest to work with the Financial Creditor. The terms were reduced in writing vide Master Service Agreement dated 21.08.2023.[1]

5.2 The Corporate Debtor issued 120 Optionally Convertible Debentures in the name of the Financial Creditor. Each debenture was valued at Rs. 1,00,000/- (Rupees One Lakh Only)[2].

5.3 The Financial Creditor issued a Notice dated 16.11.2024 to the Corporate Debtor for redemption of the Optionally Convertible Debentures.[3]

5.4 The Financial Creditor claims that the principal amount of Rs. 1.2 Crores along with Rs. 7 Lakhs Interest is due and payable on part

[1] Annexure-6 of Company Petition.
[2] Annexure-7 of Company Petition.
[3] Annexure-8 of Company Petition.

of the Corporate Debtor. Hence, the present Application has been filed.

6. Submissions of Behalf of the Financial Creditor:

6.1 It is submitted that the Financial Creditor is an Non Banking Financial Service provider company. Corporate Debtor also offers similar Non Banking Financial Services and showed its interest to work with the Financial Creditor. The terms in writing were reduced in a master Service Agreement[4] dated 21.08.2023 followed by another supplementary agreement enumerating the terms of business with rights and liabilities of each party.

6.2 It is further submitted that the Corporate Debtor issued Optionally Convertible Debentures in the name of the Financial Creditor. As per the Board Resolution passed by the Board of Directors on 26.12.2023, the Corporate Debtor issued 20 optionally convertible debentures, each valued at Rs. 1,00,000. Therefore, entire value of debentures comes to Rs. 20,00,000.

6.3 It is submitted that on 22.03.2024, the Corporate Debtor again issued Optionally Convertible Debentures, each valued at Rs. 1,00,000[5].

6.4 It is submitted that the Corporate Debtor violated the terms of the agreement dated 21.08.2023 for which the Financial Creditor duly served a legal notice dated 14.10.2024.

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[4] Annexure-6 of the Company Petition.
[5] Annexure-7 of the Company Petition.

6.5 It is submitted that in the agreement dated 21.08.2023, there was an option of early redemption of debentures and the Financial Creditor, through the legal notice, has invoked the said clause of the agreement as the Corporate Debtor did not follow the terms of the agreement.

6.6 It is submitted that as per the provisions of the Companies Act, 2013, the Financial Creditor duly entitled to receive Optionally Convertible Debentures in its favour along with interest. The right to redeem Optionally Convertible Debentures is a statutory right and as per the terms of the Optionally Convertible Debenture dated 22.03.2024. The Financial Creditor followed due process of law and is therefore, entitled to receive the Optionally Convertible Debentures.

6.7 It is submitted that as there is no Debenture Trustee appointed by the Corporate Debtor company, the Financial Creditor was forced to issue the notice to the Corporate Debtor company.

6.8 It is submitted that the Corporate Debtor failed to provide details of the Debenture Redemption Reserve (DRR) which is mandatory as per Section 71(4) of the Companies Act, 2013 and thus, the Financial Creditor is protected by Law to redeem the Optionally Convertible Debentures.

6.9 It is submitted that the Corporate Debtor has not paid interest on the optionally convertible debentures as per the terms of the agreement dated 22.03.2024.

6.10 It is submitted that the Financial Creditor also issued a Notice dated 16.11.2024 to the Corporate Debtor for redemption of the

Optionally Convertible Debentures which is annexed as Annexure-8.

6.11 It is submitted that Form D was generated against the Corporate Debtor on 11.02.2025 which is annexed as Annexure-9.

7. Reply on Behalf of the Corporate Debtor

7.1 It is contended that there is no 'financial debt' within the meaning of IBC, 2016. As per Clause 5.1 of the of the terms of subscription of the Debentures, the subscribed debentures shall mature at the end of 24 months from their issuance. The Debentures in question were issued by the Corporate Debtor on 22.03.2024. Thus, as per the said terms, the Debentures shall mature on 21.03.2026, i.e., after lapse of 24 months from the issuance date. Thus, the 120 Debentures amounting to an aggregate of Rs. 1,20,00,000/- (One Crore, Twenty Lakhs Only) have not matured or become repayable to the Petitioner. The Respondent therefore has no obligation to make any payment to the Petitioner and hence, there can be no default.

7.2 It is further contended that the terms under which the Debentures were issued do not permit the allottee, i.e., the Petitioner to redeem the Debentures prior to the date of maturity. As per Clause 6 of the terms of Subscription of Debentures, the right of early redemption has been vested solely and exclusively in the Corporate Debtor. Thus, the Petitioner's claim for the maturity amounts payable prior to the date of maturity is erroneous.

7.3 It is contended that the present Section 7 Application has been filed by the Petitioner on 19.05.2025 on the basis of Debentures whose maturity date is 21.03.2026. Since no debt exists, the Section 7 Application fails to meet the pecuniary threshold mandated under Section 4 of the IBC, 2016.

7.4 It is contended that the Petitioner's claim for interest is baseless and unfounded. Under clause 2.2 of the terms of Subscription of Debentures, the interest or Coupon rate shall be payable on monthly basis after reconciliation and adjustments. Further, Clause 4.1.1 states that the Respondent shall pay Coupon Rate to the Petitioner after undertaking adjustments that are identified by the Company, pursuant to the commercial arrangements undertaken between the Company and the Subscriber. In Clause 4.1.2 it is stated that the computation of adjustments made by the Respondent shall be final and binding on the Petitioner. However, no such reconciliation/adjustment have been completed, thus, the obligation to pay any interest does not arise.

7.5 It is contended that the amount of interest claimed by the Petitioner is Rs. 7,00,000/- (Rupees Seven lakhs Only). Even assuming but not admitting that the Petitioner has a claim on account of interest, an Application under Section 7 of IBC, 2016 cannot be filed in the basis of interest as claimed in the Application.

7.6 It is contended that there is no basis or justification as to why 22.04.2024 is the date of default. In any event, the first ever liability to pay arises only in 2026 and thus, the date of default cannot be in 2024.

7.7 It is contended that the Petitioner has filed the Section 7 Application claiming violation by the Respondent of terms of the Service Agreement dated 21.08.2023. The said Service Agreement has no nexus with the issuance/allotment of Debentures . The two contracts are to be construed independently and without reference to one another. The jurisdiction of this Tribunal cannot be used for seeking specific performance of any contract.

7.8 It is contended that as per Clause 11 of the Services Agreement, the exclusive jurisdiction in respect of disputes and differences arising out of the Services Agreement lies with the Courts in New Delhi.

8. The Learned counsels for the parties have been heard, the materials placed on record have been perused and the rival contentions have been noted.

9. Analysis and Findings:

9.1 The primary issue for consideration before this Tribunal is whether there exists a financial debt and default under Section 5(8) and Section 3(12) of the IBC, 2016 and whether the present petition is maintainable in law.

9.2 Before proceeding to examine the case on merits, it is pertinent to note that no one has appeared on behalf of the Financial Creditor, the same has been recorded in the order dated 06.08.2026. Accordingly, the matter was directed to proceed ex parte on its own merits. At this juncture, it would be appropriate to quote the Rule 49 and Rule 110 of the National Company Law Tribunal Rules, 2016, which are reproduced in verbatim as below: -

> **Rule 49: Ex-parte Hearing and disposal**. – (1) *Where on the date fixed for hearing the petition or application or on any other*

*date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the petition or the application is called for hearing**, the Tribunal may adjourn the hearing or hear and decide the petition or the application ex-parte.***

xxx xxx xxx

Rule 110: Default of appearance of respondent and consequences. — *Where the respondent, despite effective service of summons or notice on him does not appear before the date fixed for hearing, the Tribunal may proceed to hear the appeal or application or petition ex-parte and pass final order on merits:*

Provided that it is open to the Tribunal to seek the assistance of any counsel as it deems fit in case the matter involves intricate and substantial questions of law having wide ramifications.

9.3 It is the case of the Financial Creditor that the Corporate Debtor had issued 20 Optionally Convertible Debentures on on 26.12.2023 and 120 Optionally Convertible Debentures on 22.03.2024, each valued at Rs. 1 Lakh. However, the Financial Creditor has failed to place any material on record substantiating its assertion that 20 Optionally Convertible Debentures were issued on 26.12.2023.

9.4 The Financial Creditor has alleged that the Corporate Debtor has breached the terms and services of the Service Agreement and the terms governing the Optionally Convertible Debentures. Owing to the alleged breach, the Financial Creditor exercised its rights to seek early redemption of the Optionally Convertible Debentures through the notice dated 16.11.2024. Thus, the Financial Creditor claims that the principal amount of Rs. 1.2 Crores along with additional interest amounting to of Rs. 7 Lakhs is due and payable.

9.5 On the other hand, the Corporate Debtor contends that the Optionally Convertible Debentures were issued on 22.03.2024 and would mature only upon completion of 24 months from the date of issuance. Additionally, the right of early redemption is vested exclusively with the Corporate Debtor as per the terms of the Subscription Debentures. Thus, there is no default within the meaning of Section 3(12) of the IBC, 2016.

9.6 It is an admitted position that the Financial Creditor issued 120 Optionally Convertible Debentures (OCDs) in favour of the Corporate Debtor. However, the dispute pertains to whether any debt is due and payable on part of the Corporate Debtor.

9.7 As per Clause 5.1 of the terms of the subscription of debentures, the subscribed debentures shall mature upon completion of 24 months from the date of their issuance unless they are redeemed prior to the maturity date. Thus going by Clause 5.1, the OCDs would be ripe for redemption in March 2026, where as they have been sought to be redeemed prematurely vide notices dated 14.12.2024 and 16.11.2024. The said clause is reproduced herein below:

5. **REDEMPTION ON MATURITY**

5.1. All Subscription Debentures shall mature at the end of 24 (Twenty Four) months from their issuance ("**Maturity Date**"), except where they are redeemed prior to the Maturity Date in accordance with **Para 6** of these terms

5.2. Within a period of 15 (Fifteen) days from the Maturity Date, the Company shall provide a notice to the Subscriber identifying the amounts payable, (*if any*) by the Company to the Subscriber ("**Redemption Amount**"), after undertaking the adjustments that are identified by the Company, pursuant to the commercial arrangements undertaken between the Company and the Subscriber.

5.3. The computation of the Redemption Amount by the Company shall be final and binding on the Subscriber and the Redemption Amount (if any) shall be paid within 30 (Thirty) days from the Maturity Date.

5.4. Apart from the Redemption Amount (if any) in accordance with Para 5.3 of these terms, no other amount whatsoever shall be payable by the Company to the Subscriber towards the redemption of Subscription Debentures.

9.8 Further, a bare perusal of clause 6 of the terms of the subscription debentures demonstrates that the right of early redemption of the Optionally Convertible Debenture vested exclusively in the Corporate Debtor and not in the Financial Creditor. The said clause is reproduced herein below:

6. **EARLY REDEMPTION**

6.1 **Redemption on account of Monthly Reconciliation**

6.1.1 In the event after undertaking the adjustments under **Para 4.1.1** above, the amounts owed by the Subscriber to the Company are greater than the Coupon Rate payable, then the Company shall have the right but not the obligation to adjust the said excess, by the way of redeeming one or more of the Subscription Debentures that have been issued by the Company to the Subscriber and setting-off such debt that is owed by the Company to the Subscriber towards the said Subscription Debentures.

6.1.2 At the end of each quarter, if the Company is desirous of exercising its right under Para 6.1.1 above, then within 7 (Seven) days from the end of the quarter, the Company shall issue a notice ("Early Redemption Notice I") to the Subscriber to effectuate such redemption.

6.1.3 The Company also agrees that in the event after computation under Para 6.1.2 of these terms, the Early Redemption-I Subscription Debentures is not a whole number and is in fractions, then if they are less than .5, then the Early Redemption-I Subscription Debentures shall be the previous whole number and if they are in fractions and equal to or more than .5, then the Early Redemption-I Subscription Debentures shall be the next whole number.

6.2 **Voluntary Redemption**

6.2.1 At any time prior to the Maturity Date, the Company is desirous of redeeming the then outstanding Subscription Debentures, then the Company shall by the way of an issuance of a notice to the Subscriber have a right to redeem all the outstanding Subscription Debentures.

6.2.2 The redemption will be done after undertaking the adjustments that are identified by the Company, pursuant to the commercial arrangements undertaken between the Company and the Subscriber and the repayment of the then outstanding redemption amounts.

9.9 Since the right of early redemption of Optionally Convertible Debentures vests exclusively in the Corporate Debtor, the Financial Creditor had no right to seek premature redemption. The terms of the subscription debentures does not confer any such right upon the Financial Creditor.

9.10 Consequently, the mere issuance of legal notices by the Financial Creditor dated 14.10.2024 and 16.11.2024, purportedly seeking early redemption, could not have resulted in the premature redemption of the Optionally Convertible Debentures. Neither the terms of the Subscription Debentures nor the Master Service Agreement contains any provision which entitles the Financial Creditor to demand such premature redemption.

9.11 Thus, in the absence of any contractual provision empowering the Financial Creditor to demand premature redemption and having noted that the repayment obligation could not have crystallised before 21.03.2026, i.e., two years from the date of issuance of Debentures in favour of the Financial Creditor, we hold that the attempt towards early/premature redemption of OCDs was bad in law. Consequently, as on the date of filing of the present Application, there is no default within the meaning of Section 3(12) of the IBC, 2016.

9.12 It is also pertinent to note that the Financial Creditor has claimed Interest of Rs. 7 Lakhs on the Principal Amount. However, Clause 2.2 and Clause 4 of the Terms of the Subscription Debentures provides that the Interest or Coupon Rate is subject to reconciliation and commercial adjustments. The aforesaid clauses are reproduced herein below:

2. COUPON RATE

2.1. Each Subscription Debenture shall entitle the Subscriber to receive an interest of 8% (Eight Percent) per annum ("**Coupon Rate**").

2.2. The Coupon Rate shall be payable by the Company to the Subscriber on a monthly basis, after the reconciliation and adjustments as provided under **Para 4** below.

2.3. The Coupon Rate that shall be payable by the Company to the Subscriber, shall be payable on a cumulative basis.

4. MONTHLY RECONCILLIATION

4.1 **Monthly Reconciliation**

4.1.1 Within a period of 24 (Twenty Four) days from the end of each calendar month, the Company shall pay to the Subscriber the relevant Coupon Rate, after undertaking the adjustments that are identified by the Company, pursuant to the commercial arrangements undertaken between the Company and the Subscriber.

4.1.2 The computation of the adjustments that are undertaken by the Company in accordance with **Para 4.1.1 above**, shall be final and binding on the Subscriber.

9.13 There is no evidence on record to establish that the reconciliation and commercial adjustments as envisaged under the Terms of the Subscription Debentures have been undertaken. Further, even if the interest is payable on part of the Corporate Debtor, the interest claimed falls significantly below the minimum threshold prescribed under Section 4 of IBC, 2016.

9.14 At this juncture, this Tribunal deems it apposite to rely upon ***Mosco International Commodities Pvt. Ltd. v. SBEC Sugar Ltd.***,

(2026) ibclaw.in 224 NCLAT, wherein the Hon'ble NCLAT has categorically held that:

> *"53. Furthermore, we note that the mandatory threshold limit of Rs. 1 Crore as defined under Section 4(1) of IBC necessary for maintaining a petition before the NCLT under Section 7, 9 and 11 of IBC is to be ascertained on the date of filing of the said petition i.e. the 'initiation date' as is defined under Section 5 (11) of IBC…"*

9.15 Since the Optionally Convertible Debentures issued by the Corporate Debtor in favour of the Financial Creditor were to mature in 2026 and the present Application has been filed in 2025, no repayment obligation has arisen on part of the Corporate Debtor as on the date of filing of the Application. In the absence of any obligation to repay, no debt had become due and payable. Consequently, the minimum threshold prescribed under Section 4 of the IBC, 2016 has not been met.

9.16 The Financial Creditor submits that the Corporate Debtor has failed to appoint Debenture Trustee, execute a Debenture Trust Deed and maintain a Debenture Redemption Reserve and comply with Section 71 of the Companies Act, 2013. However, the jurisdiction of this Tribunal under Section 7 of IBC, 2016 is confined to determining the existence of a financial debt and the occurrence of default. Issues pertaining to alleged non-compliance under Section 71 of the Companies Act, 2013 especially when the Optionally Convertible Debentures have neither matured nor been redeemed, fall beyond the scope of the present proceedings.

9.17 The Corporate Debtor has sought imposition of penalty under Section 65 of the IBC, 2016 alleging that the present proceedings have been initiated with a malicious intent.

9.18 In this regard, it is apposite to rely upon ***J & K Integrated Textiles Park Ltd. v. Silklon Processors Pvt. Ltd. and Ors., (2026) ibclaw.in 692 NCLAT,*** wherein the Hon'ble NCLAT has held that:

> *"27. Proceeding under Section 65 being penal is nature they required strict pleading and prove for coming to the conclusion that Section 7 application has been fraudulently initiated with malicious intent."*

9.19 In the present case, the Corporate Debtor has contended that the Financial Creditor acted with malicious intent on the ground that no financial debt or default existed, and that the business between the parties had come to a standstill, thereby providing a motive for the Financial Creditor to invoke the insolvency mechanism as a tool for recovery. However, the allegations levelled by the Corporate Debtor are largely founded on suspicion and there is no clear material on record to support the existence of malicious intent on part of the Financial Creditor.

9.20 The absence of default within the meaning of Section 3(12) of IBC, 2016 does not by itself signal a malicious intent on part of the Corporate Debtor. Thus, in the absence of any concrete evidence establishing that the present proceedings were initiated with malicious intent, we are of the considered view that the Corporate Debtor has failed to make out a case for invoking Section 65 of the IBC, 2016.

10. In view of the foregoing discussions, the **I.A. (IB) No. 414/KB/2026** and the **C.P. (IB) No. 257/KB/2025** both are **dismissed**.

11. Urgent certified copy of this order, if applied for with the Registry, be supplied to the parties, subject to compliance with all requisite formalities.

Ms. Rekha Kantilal Shah **Member (Technical)**	**Smt. Bidisha Banerjee** **Member (Judicial)**

The Order signed on **10th** day of **September** 2026.

Anubhuti S. (LRA)