NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1448 of 2022

[Arising out of the Impugned Order dated 19.10.2022 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Jaipur Bench in CP (IB) No. 68/7/JPR/2021]

IN THE MATTER OF:

Catalyst Refinery Services Private Limited
CIN: U23209RJ2006PTC022594
Through its Authorized Representative
Registered office: 292/293,
Goms Defence Colony, Vaishali Nagar,
Jaipur, Rajasthan – 302021 **...Appellant**

Versus

Ganpati Global Private Limited
CIN: U24233RJ1994PTC008485
Registered office: Flat No. B-9, Second Floor, Ganpati Enclave, Madrampura, Near Civil Lines Metro Station, Ajmer Road, Jaipur,
Rajasthan – 302006 **... Respondent**

Present:

For Appellant : Mr. Nivedita Sarda, Ms. Sagrika Joshi, Advocates

For Respondent : Mr. Rishabh Khandelwal, Advocate

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

[Per: Arun Baroka, Member (Technical)]

The present Appeal is filed by the M/s Catalyst Refinery Services Private Limited ('Appellant'/'Financial Creditor'), being aggrieved and dissatisfied by the Impugned Order dated 19.10.2022, which was received by the Appellant via Registered Post on 28.10.2022, wherein an Application preferred 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 numbered as CP (IB) No. 68/7/JPR/2021, seeking initiation of Corporate Insolvency Resolution Process ('CIRP'), against the Respondent/ Corporate Debtor was dismissed by the Hon'ble National Company Law Tribunal, Bench Jaipur. The application was filed before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a financial debt totaling to a sum of ₹2,73,51,364/- (Rupees Two Crore Seventy-Three Lakh Fifty-One Thousand and Three Hundred and Sixty-Four only) including interest payable on it @ 11% p.a. being ₹ 1,39,00,000/- as principal amount and ₹ 1,34,51,364/- being the interest due for payment thereon.

Submissions of the appellant/financial creditor/Catalyst Refinery Services Private Limited

2. The Appellant – Catalyst Refinery Services Private Ltd was incorporated on 02.06.2006 under the provisions of the Companies Act, 1956 bearing CIN U24200RJ2006PTC022594 and the registered office of the Appellant is situated at 292/293, Goms Defence Colony, Vaishali Nagar, Jaipur, Rajasthan – 302021. The Authorised share capital of the Appellant is INR. 3,00,00,000/- *(Rupees Three Crore Only)* and the Paid up share capital is INR. 86,00,000/- *(Rupees Eighty Six Lakhs Only).*

3. The Respondent – M/s Ganpati Global Private Limited, was incorporated on 15.06.1994, bearing CIN U24233RJ1994PTC008485, with the registered office of the Respondent situated at Flat No. B-9, Second Floor, Ganpati Enclave, Madram, Pura, Near Civil lines Metro Station, Ajmer road,

Jaipur, Rajasthan- 302006. That the Authorised share capital of the Appellant is INR.10,00,00,000/- *(Rupees Ten Crore Only)* and the Paid up share capital is INR. 7,80,70,000/- *(Rupees Seven Crore Eighty Lakhs and Seventy Thousand Only)* as reflected in the master data of the Respondent uploaded on MCA21.

4. A tripartite Memorandum of Understanding ('MOU') dated 27.08.2014 was executed among the Financial Creditor, the Corporate Debtor, and shareholders of the Corporate Debtor. As per the said MOU, the Shareholders of the Corporate Debtor had agreed to sell and transfer their entire shareholding in Corporate Debtor to the Appellant for a total consideration of ₹7,70,00,000/- *(Rupees Seven Crores and Seventy Lakhs Only).* The aforementioned total consideration would be used towards:

- Payment of Term Loan as on 31st August, 2014,
- Payment of Unsecured Loan as on 31st August, 2014,
- Payment of Other Current Liabilities
- Balance towards payment towards purchase of shares.

5. In pursuance to MOU, an amount ₹ 1,39,00,000/- *(Rupees One Crore and Thirty-Nine Lakhs Only)* was transferred by the Financial Creditor to the Corporate Debtor vide six cheques of 'The Hongkong and Shanghai Banking Corporation Ltd.' the details of which are set forth herein under:-

S. No	Date of issuance of Cheque Favoring the Respondent	Cheque No.	Amount (₹)
1	29.08.2014	097379	25,00,000/-
2	29.08.2014	097380	14,00,000/-
3	30.08.2014	097381	25,00,000/-

S. No	Date of issuance of Cheque Favoring the Respondent	Cheque No.	Amount (₹)
4	30.08.2014	097382	25,00,000/-
5	30.08.2014	097383	25,00,000/-
6	31.08.2014	097384	25,00,000/-
		TOTAL	**1,39,00,000**

6. Based on the MOU, the shareholders of the Corporate Debtor were required to repay the outstanding term loan, the unsecured loan and all other current liabilities outstanding in the Balance Sheet of the Corporate Debtor as of 31st August, 2014 and director(s) shall be responsible for all the conduct of the Corporate Debtor till aforesaid period and obtain No Objection Certificate ('NOC') from the lenders of term loans, unsecured loans, and other current liabilities. However, the shareholders and Corporate Debtor did not complete their part of the obligations and the deal led to a stalemate.

7. Thereafter, on oral agreement between the Financial Creditor and the Corporate Debtor was reached and it was agreed that the payment made to the Corporate Debtor as part payment under the Memorandum of Understanding towards the acquisition of shares may be continued as an unsecured loan with interest payable upon it @ 11% per annum, repayable on demand. No formal agreement was executed between the Financial Creditor and the Corporate Debtor.

8. The amount disbursed by the Financial Creditor is reflected as an unsecured loan in the audited balance sheet of the Corporate Debtor under the head "Unsecured Loan Received" for the Financial Year ending 2014-2015,

FY 2015-2016 and FY 2016-2017 duly signed and acknowledged by the Directors of the Corporate Debtor itself along with the Company seal. Subsequently, in the balance sheet for the year ending 2018, the outstanding amount has been specified by the Respondent under the head ***"unsecured loans & advances from others- from related parties and others"*** *at Pg. 138* of the Company Petition. The said details also mention the amount paid towards interest and the amount outstanding payable at the end of the year. Thus, the amount and the nature of the debt is duly acknowledged by the Corporate Debtors in its books of accounts.

9. Simultaneously, the Corporate Debtors also deducted Tax Deduction at Source ('TDS') of interest amount vide Tax Deduction and Collection Account Number ('TAN') JPRG07380C under Section 194A of the Income Tax Act, 1961. The details of amount of TDS being deducted and interest accrued till 31st March, 2018 is reproduced for ease of reference:-

S. No	Financial Year	Transaction Date	Date of Booking	Total Amount Paid/Credited (IN INR)	Total Tax Deducted (IN INR)	Total TDS Deposited (IN INR)
1.	2014-15	31.03.2015	20.05.2015	5,67,493/-	56,749/-	56,749/-
2.	2015-16	31.03.2016	16.05.2016	15,85,182/-	1,58,518/-	1,58,518/-
3.	2016-17	31.03.2017	19.05.2017	17,41,015/-	1,74,102/-	1,74,102/-
4.	2017-18	31.03.2018	11.05.2018	19,09,230/-	1,90,923/-	1,90,923/-
	Total			**58,02,920/-**	**5,80,292/-**	**5,80,292/-**

10. The Corporate Debtor as an admission of its liability as financial debt has duly provided Confirmation of outstanding unsecured loan vide letter dated 30.06.2015 and 15.06.2017 on the letter head of the Corporate Debtor acknowledging the amount of unsecured loan outstanding, interest credited

during the years, amount of TDS paid during the year and the amount outstanding for the period ended 31.03.2015 and 31.03.2017 respectively.

11. The loan was agreed to be paid on demand, even though oral demand was made, but was not paid by the Corporate Debtor, the Financial Creditor had to issue a Demand cum Legal Notice dated 27th February, 2019 for repayment of an outstanding amount of ₹ 2,10,01,361/- *(Rupee Two Crore Ten Lakh One Thousand Three Hundred and Sixty-One Only)* including interest at 11% per annum.

12. However, the Corporate Debtor did not make any reply to the said demand notice; however, it stopped showing amount outstanding to Financial Creditor separately in its books of accounts and make payment of TDS on the interest payable to the Financial Creditor.

13. Being aggrieved, because of lack of communication and any response for repayment from the Corporate Debtor, the Appellant filed a Company Petition, bearing No. 68/7/JPR/2021 before the Ld. NCLT Jaipur Bench for an amount of ₹ 2,73,51,364/- *(Rupees Two Crore Seventy-Three Lakh Fifty-One Thousand and Three Hundred and Sixty-Four only)* including interest @ 11% p.a. till 31.08.2021.

14. <u>The transactions between the parties clearly establish that there is a financial debt: T</u>he genesis of the case is from a MOU dated 27.08.2014 which was entered between the Financial Creditor, shareholders of the Corporate Debtor and Corporate Debtor, wherein as per the part of the transaction an

amount of ₹ 1,39,00,000/- *(Rupees One Crore Thirty-Nine Lakhs Only)* was paid to the Corporate Debtor through six cheques issued between 29.08.2014 till 31.08.2014, for repayment of outstanding debts of the shareholders in the books of Corporate Debtor. The Corporate Debtor failed to perform its obligations for release of bank loan till a certain date and thus, the MOU ended in a stalemate. Based on oral agreement it was agreed that the loan provided to the Company of ₹ 1, 39,00,000/- shall be continued to fall for repayment on demand with an applicable interest @ 11% p.a. In furtherance thereof, the Corporate Debtor provided the interest thereof and issued TDS certificates from time to time from year 2014-25 to 2018-19 and also issued Balance Confirmation letters dated 30.06.2015 and 15.06.2017 for outstanding unsecured loan balance on 31.03.2015 and 31.03.2017 thus, affirming and admitting the liability by way of financial debt. Although there is no written agreement to the loan made or the payment of interest thereon, but there are acknowledgements of the Respondent, not once but twice in writing and also each year from 2015 to 2018 in its balance sheet mentioning the amount of interest payable, the unsecured loan opening and closing balance, which reveal that the Appellant and the Respondent shared a relationship of Financial Creditor and Corporate Debtor. The loan was duly disbursed, acknowledged and defaulted on demand.

15. <u>The Respondent has itself accepted the component of interest in the said financial debt owed to the Petitioner:</u> The Respondent has deducted tax liability under Section 194A of the Income Tax Act, 1961 for FY 2015-16, 2016-17, 2017-18 and 2018-19, in the name of the Appellant. It is pertinent

to mention herein that Section 194A of the Income Tax Act, 1961 deals with interest other than interest on securities. This makes it abundantly clear that the Respondent has deducted tax against the interest on the amount provided by the Financial Creditor. The Ld. Adjudicating Authority has also acknowledged the deduction of interest on the amount provided by Financial Creditor and in **Para no. 16** of the Impugned Order has categorically stated that:-

> Although, the TDS was deducted and accounted for in his books of accounts by the Corporate Debtor, the Corporate Debtor never deposited the accrued interest on the loan amount in bank account of the Financial Creditor.

16. Further, in the case of **Mr. Pradeep Tayal, Director of Suspended Board M/s. Pytex Jewellers Pvt. Ltd. Vs. M/s. Essbert Fashion Pvt. Ltd. in Company Appeal (AT)(INS) – 950/2022,** the Hon'ble NCLAT held that *"the deduction of TDS and deposit by the Respondent/ Corporate Debtor does itself prove that there is any financial debt but deduction of TDS and deposit in FORM 16-A under section 194A of the Income Tax Act clearly proves that the deduction which was deposited was TDS relating to "Interest other than interest on securities."*

17. <u>Acknowledgement of "*Debt*" in writing by the Corporate Debtor/ Respondent:</u> In the instant case on hand, the Respondent in its reply before the Ld. Adjudicating Authority, in para nos. 17, 19 and 20 had admitted that the '*Financial Creditor*' had paid a sum of ₹1, 39,00,000/- *(Rupees One Crore Thirty Nine Lakhs Only)* to it. The factum of money being advanced to the

Corporate Debtor has not been disputed; nor it had disputed the fact that the loan was shown as a liability in the balance sheet. The Respondent has duly acknowledged its liability and acknowledged the debt as an unsecured loan in its balance sheet for FY 2014-2015 (at Page 71 of the Application), FY 2015-2016 (at Pg-96 of the Application) and FY 2016-2017 (at Pg- 112 of the Application) and also in the Notes on Accounts under the head 'Related Party transaction' mention the amount as loan and interest payable during the year under all the years from 2014-2017. Subsequently, in the balance sheet for the year ending 2018, the due amount has been specified by the Corporate Debtor under the head "**unsecured loans & advances from others- from related parties and others**" at Pg. 138 of the Application with segregation of loan outstanding and interest payable during the year. The Hon'ble Supreme Court in **Mahabir Cold Storage v. CIT 1991 AIR 1357, 1990 SCR Supl. (3) 469** held that since the registers of a company constitute prima facie evidences, the balance sheet does tantamount to be a valid acknowledgment of debt. Further, reliance is also placed in the matter of **Asset Reconstruction Company (India) Limited v. Bishal Jaiswal & Anr. Civil Appeal No.323 of 2021**.

18. **Default in respect of the 'financial debt' owed to the Appellant by the Respondent:** Since the loan was payable on demand to the Appellant hence, the Appellant on 27.02.2019 sent a Demand cum Legal notice for payment of outstanding amount of INR 2,10,01,361/- *(Rupees Two Crore Ten lakh One Thousand Three Hundred and Sixty One Only)* inclusive of interest @11% p.a. payable within 7 days. No payment or reply to the Demand cum

legal notice was received by the Corporate Debtor. Hence, the default is committed by the Corporate Debtor.

19. The Respondent has not disputed the facts relating to disbursal of loan, payment of interest, receipt of demand notice and default. It is evident that the Respondent has grossly defaulted in repayment of Appellant's dues despite admitted to the disbursement made by the Appellant. A conjoint reading of the Financial Creditor's Application and Rejoinder and the Corporate Debtor's Reply, makes it quite evident that the Respondent has committed default, which was of more than Rupees One Crore and thus the present Application is a fit case for initiating corporate insolvency resolution process of the Corporate Debtor/Respondent.

20. In the case of ***Pawan Kumar v. Utsav Securities Private Limited & Ors., Company Appeal (AT) (Ins) No. 251 of 2020***, the Hon'ble NCLAT has stated following to be essential conditions to be satisfied by a Financial Creditor under Section 7 read with Section 5 (7) and (8) of the Code:

a. There must be disbursal of loan amount.

b. Such disbursal should be made for a consideration for time value of money, and

c. When the debt (whole or any part or installment) become due and payable and is not paid by the Corporate Debtor means committed default.

21. In the present case the disbursement of loan amount is made on 28.08.2014 to 31.08.2014, the interest is being credited in the accounts of Corporate Debtor including payment of TDS thereon which confirms the time value of money and the debt is not paid in whole or in part even after the

demand notice dated 20.02.2019 by the Financial Creditor is committed default. The Corporate Debtor has cleverly tried to camouflage its doing and evidence based on non-submission of register of loan of Financial Creditor u/s 186 and lack of written agreement which is not a pre requisite under IBC, 2016 for initiating CIRP against the Corporate Debtor.

22. The Hon'ble Supreme Court in ***Swiss Ribbons (P) Ltd vs. Union of India, WP (C) 99 of 2018***, the constitutional validity of the IBC was upheld, the position was very clear that unlike Section 9 of the Code, there was no scope of raising a dispute as far as Section 7 Petition was concerned. As soon as the "*debt*" and "*default*" is proved, the Adjudicating Authority is bound to admit the Petition.

23. The Hon'ble Supreme Court of India in **M/s Innoventive Industries Limited Vs. ICICI Bank reported in (2018) 1 SCC 407**, in its judgment held that once there is a default, the application should be admitted.

24. The Learned Adjudicating Authority wherein the Ld. Tribunal committed an error apparent on the face of record by marking the presence of the Counsel of the Appellant *("Petitioner" therein)* as the Counsel of the Respondent *("Corporate Debtor" therein)* in the Impugned Order, the extract of the same is mentioned herein under for ready reference:

For Petitioner (s):	***Rishabh Khandelwal, Adv.***
For Respondent (s):	***Nivedita R. Sarda, Adv.***
	Gunjan Pathak, Adv.

25. Ld. Adjudicating Authority has committed an error in identifying the Written Submissions filed by the Financial Creditor vide Dairy No. 2749/2022 dated 14.09.2022 as the Written submissions filed by the Corporate Debtor in para 11 of the said Impugned Order.

26. It is therefore prayed to pass an Order for setting aside the Impugned Order dated 19.10.2022 passed by the Learned Adjudicating Authority, Jaipur Bench IN (IB) No. 68/7/JPR/2021 and to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor due to default of payment of Financial Debt u/s 7 of the IBC, 2016 or pass any other Order as this Hon'ble Tribunal deems fit in the interest of justice.

Submissions of the Respondent.

27. Amount disbursed by the appellant was not towards any financial debt but was towards share purchase consideration by the appellant: The MOU dated 27.08.2014, is a plain and simple share transfer agreement. The transaction was for transfer of shares, held by the shareholders of the Respondent and the Appellant herein, who was the purchaser / buyer of the shares, subject to the terms & conditions of the MOU dated 27.08.2014. The Appellant has not made the other parties of the MOU as a party in the present case. Few relevant clauses are quoted here as under:-

> "3(d) The Transferors have agreed to sell the Sale Shares to the Transferee and the Transferee has agreed to purchase the Sale Shares as the price and subject to and upon the terms and conditions herein contained.
>
> 2. **CONSIDERATION**

The transferors hereby agrees to sell and transfer to the Transferee and/or their nominee/s and the Transferee hereby agree to purchase and acquire from the Transferors all the Sale Shares held by the Transferors in "GGPL" free from all encumbrances, charges, items, liens and claims, and on the terms and conditions recorded herein.

The Transferee agrees to purchases the shares of a price work out on the basis of Net worth of the company & in addition of it, agrees to discharge the following obligation.

(a) Payment of Term Loan as on 31st August 2014

(b) Payment of Unsecured Loan as on 31st August 2014.

(c) Payment of other current liabilities.

(d) The consideration for said has been workout at ₹ 770.00 lakh and includes the following.

a) Payment of Term Loan as on 31st August 2014

b) Payment of Unsecured Loan as on 31st August 2014.

c) Payment of Other Current Liabilities

d) Balance towards payment towards purchases of shares.

The draft Balance Sheet of GGPL as of 31st March 2014 was provided by party of the Third Party ('VM')"

28. From the above said clauses of the MOU, it is evident that the transferee, i.e. the Appellant herein, was to pay the total consideration of ₹770.00 lakhs, towards the consideration for the sale of shares by the Transferor of the Shares, i.e. the shareholders, in favour of the Appellant. As per the consideration Clause, the money was to be disbursed to the Respondent Company, so that the Respondent Company could utilize the said money for clearance of its own outstanding liabilities to Third Parties. The money was received by the Respondent Company, as a consideration for sale

of shares, which was mutually agreed between the shareholders, the Respondent & the appellant through the MOU dated 27.08.2014. On account of which the money disbursed was as such only a part consideration of the total amount of ₹ 770.00 Lakhs, which was payable to the shareholders, against consideration for the sale of shares. The payment made to the Respondent Company was towards discharge of the value of the shares. It is submitted that the disbursement by the Appellant, was pursuant to MOU dated 27.08.2014, which was towards consideration for the sale of shares of the Respondent Company. The total consideration to be paid by the Appellant Company was ₹ 7.70 Lacs, which was payable to the Shareholders against consideration for the sale of shares. The payment made to the Respondent Company was towards discharge of the price of the shares. The Appellant has not placed single document on record to show that the disbursement originally was towards an unsecured loan. No Financial Debt, can be said to have been created between the Appellant and the Respondent, as admittedly the disbursement of money was towards acquiring shares and transfer of business of the Respondent to the Appellant. It was not towards any loan transaction. Merely, because later on / subsequently for accounting purpose, the disbursement amount was treated as an unsecured loan by the Respondent that does not mean or signify that the relationship of financial creditor and corporate debtor was created between the Appellant and the Respondent. It has been consistently held by the Hon'ble Tribunals that merely showing of unsecured loan in the Balance Sheet does not mean or signify that a financial debt, exists as contemplated under the IBC Code,

2016. So the amount with the respondent company was not towards any debt which the respondent company owes to the appellant company. merely because, the money parked in the Respondent Company by the Appellant for the sale of shares held by the shareholders of the Respondent company, was subsequently in its Balance Sheet for accounting purpose, treated as an Unsecured Loan that does not mean or signify that the amount disbursed was a financial debt and relationship of financial creditor and corporate debtor was created between the Appellant and the Respondent. No such contract has been placed on record by the Appellant. It was not debt due towards the Appellant.

29. In these regard reliance is placed on following case laws of NCLAT as per which merely showing as loan will not ipso facto create a relation of financial creditor and debtor and the amount so disbursed as Financial Debt:

a. **Sanjay Kewalramani VS. Sunil Parmanand Kewalramani, Para 12.**

b. **Pawan Kumar Vs. Utsav Securities, Para 12 to 19, 21, 22, 25, 28, 29, 32 & 33.**

c. **Prayag Polytech vs. Gem Batteries, para 6 & 7.**

d. ***Prayag Polytech VS. IWORLD Digital Solution Private,* para 7.**

30. The Appellant, had failed to pay the agreed consideration amount of ₹770 Lacs, as per the MOU dated 27.08.2014. So, it is actually the Appellant who had failed to fulfill its obligation under the MOU.

31. No default exists: The Learned NCLT, has rightly held that the date of defaulting Part-IV is stated as 20.02.2019, whereas, the date of Demand

Notice, is dated 27.02.2019. The Appellant has failed to prove existence of any Financial Contract, specifying what is the actual amount disbursable, tenure of the debt, interest payable and date of repayment. It is submitted that the term default, has been defined u/s 3 (12) as under:

> "default" means non-payment of debt which whole or any part or installment of the amount of debt has become due and payable and is not [1][paid] by the debtor or the corporate debtor, as the case may be;
>
> No *default*, as per Section-3 (12) can be alleged against the Respondent because, the Appellant has not indicated any specific date when the amount became due and payable to the Appellant. Hence, the application filed u/s 7 of the IBC Code, 2016 was pre-mature, not maintainable in the eyes of law, as no default can be alleged against the Respondent."

Mere giving of a notice under Section 8 of the IBC Code does not mean or show that the amount became due and payable in absence of any financial contract. No where it has been agreed that the amount was repayable on demand, nowhere it has been shown to be agreed between the parties so as to constitute default under the IBC Code.

32. In this regard, reference is made to the judgment passed by the Hon'ble NCLAT in **Sanjay Kewal Ramani V/s Sunil Parmanand Kewal Ramani & Ors.**, in which it has been held as under:-

> "There is nothing on the record to suggest that 2nd and 3rd Respondents had given the loan in favour of the Corporate Debtor, which can be termed to be disbursement of an amount for consideration for the time value of money as required under Section 5 (8). Merely grant of loan and admission of taking loan will ipso facto not treat the 2nd and 3rd Respondents as

Financial Creditors, till they show that it complies with the substantive definition or any one or other clause of Section 5 (8)."

33. No oral agreement for creation of financial debt: It is submitted that No Oral Agreement of any kind was reached between the Appellant and the Respondent. The Appellant has not provided any date of any oral agreement, nor has provided with whom the Appellant, had entered into such oral agreement. It is well settled position of law that companies which are artificial persons, cannot enter into any oral contract under the provisions of the Companies Act. No financial contract exists between the Appellant and the Respondent as stated in Form -1 filed before Ld. NCLT. Oral contract can be enforced and verified only by leading evidence before a civil court and cannot be done before NCLT as held by this Hon'ble NCLAT in the case **Prayag Polytech VS Bon Lon Petrochem LLP. In Jagdambey International Vs Visa Powertech (Para-4)**, Hon'ble NCLAT has held that mere oral transaction without any documentary evidence and mere reliance on balance sheet is not sufficient for creation of a Financial Debt. The Appellant has not indicated as to when the oral Contract was executed and by whom the said alleged oral contract was entered. No details have been given regarding the board resolutions of the respective companies authorizing execution for the alleged financial transaction/contract. It is submitted that the Section 21 of the Companies Act, 2013 (called hereinafter as "Act of 2013") provides as under:

"21. Authentication of documents, proceedings and Contracts – Save as otherwise provided in the Act-(a) A document or proceeding requiring authentication by a company; or (b) contracts made by or on behalf of a

> company, may be signed by any key managerial personnel or an office of the company duty authorized by the board in this behalf ".

From the aforesaid provision it is abundantly clear that any proceedings and contract executed by a company needs an authentication as above. In the present matter the Appellant has not produced any document in the nature of a financial contract as defined under the Rules of 2016. Further in view of the aforesaid provisions of Act of 2013 and IBC Code, is not maintainable on the basis of an Oral Financial Contract, though the execution of the same is vehemently denied. The Appellant itself was not treating the amount parked in the Respondent Company, as an Unsecured Loan, the Appellant had not even disclosed the said Transaction in its Annual Financial Statement, as on 31st March 2015. The Appellant has in its Balance Sheet as on 31st March 2015 has declared as under: -

> "There is no loans, secured or unsecured, granted by the company to the companies, firms or other parties, covered in the register maintained under Section 189 of the Companies Act, 2013."

34. As per the Application filed before this Ld. NCLT, it has been stated that the oral agreement took place for unsecured loan in the month of September-October, 2014, but the false statement is evident from the fact that in the Balance Sheet, prepared as on 31st March, 2015 of the Appellant itself, nowhere, it has been shown as an unsecured loan, granted to the Respondent. On the contrary, it was declared that no unsecured loan has been given by the Appellant Company.

35. Mere deduction of TDS is not proof of existence of financial debt: It is submitted that mere deduction of TDS under the provisions of the Income-Tax Act, 1961 is not a proof that the amount is a Financial Debt towards the Appellant under the IBC Code, 2016. The Ld. NCLT, in its impugned Order dated 19.10.2022, has rightly held that mere deduction of TDS, does not amounts to Financial Debt. That Appellant, has failed to discharge his burden to show prove the existence of a financial debt. Merely pointing out that TDS was deducted or Balance Confirmation was given would not discharge the burden of the Appellant under Section 7 of the IBC Code, 2016 and the same does not conclude that there was financial debt. No rate of interest was ever agreed. No Interest was in fact ever paid to the Appellant Company actually as the unsecured loan was a book entry made which is now being misused by the Appellant. Further, the fact that the Appellant had never pursued the Respondent for recovery its alleged due interest or the principle for a period of about 8 to 9 years, itself shows that the allegation that the Financial Debt existence between the parties, is nothing but a false afterthought, concocted by the Appellant. It has been consistently held by the Hon'ble NCLAT that mere deduction of TDS does not mean or signify that Financial Debt existed. Reliance is placed on

- **Sanjay Kewalramani VS. Sunil Parmanand Kewalramani PARA 12,13**
- **Pawan Kumar Vs. Utsav Securities---PARA- 12 to 19, 21 ,22,25,28,29,32, & 33.**
- **Prayag Polytech vs. Gem Batteries PARA 6 & 7 --- "Merely pointing out that TDS was deducted would not be sufficient to conclude that there was financial Debt.**

- **Prayag Polytech VS. IWORLD Digital Solution Private PARA 7.**

36. The Learned NCLT had rightly held that the transferred amount of ₹1.39 Lacs to the Bank Account of the Corporate Debtor was for the purpose of acquiring shares and transfer of business of the Corporate Debtor. No documentary proof indicating the said disbursal can be considered as loan transaction has been produced on record. The Corporate Debtor never deposited any interest on the loan amount in the bank account of the Appellant. That as per Section 5 (8), financial debt means a debt, which is disbursed against the consideration for time value of money, having the commercial effect of a borrowing. In the present case, the Respondent Ganpati Global never entered into a financial contract with the Appellant for Borrowing Money. The amount parked in the bank account of the Respondent, is not a debt, which the respondent legitimately owes to the Appellant, for which the present Section-7 petition has been filed against the Respondent. The transaction is essentially for the purpose of acquiring shares of the Respondent Company in which the Respondent cannot be said to have created a financial debt towards the Appellant. The amount parked in the Respondent Company was essentially a discharge of liability under the MOU dated 27.08.2014, out of the total consideration, towards the shareholders of the Respondent Company, and not as a Financial debt disbursed to the Respondent Company. Nowhere in the MOU dated 27.08.2014 any obligation exists, to repay or refund the money to the Appellant by the Respondent. So,

there is no Debtor-Creditor relationship, which is necessary for creation of financial debt under the IBC Code.

37. =No financial contract exists: That the Respondent has failed to show the existence of a *Financial Contract* between the parties, which is an essential condition to initiate proceedings under Section 7 of IBC Code. Financial Contract has been defined under Rule 3(1)(d) of IBC (Application of Adjudicatory Authority) Rules, 2016 (called hereinafter as "Rules of 2016") as under:

> "Financial Contract means a contract between A corporate debtor and a financial creditor setting out the terms of the financial debt, including the tenure of the debt, interest payable and date of repayment".

In the absence of a financial contract, the Application under Section 7 of IBC Code was not maintainable.

38. Section-186 (9) of the Companies Act, 2013, provides for maintenance of register of loans, containing such particulars and under Rule-12 of the Companies Meeting of Board & its Power Rules, 2014 in Form No. MBP-2, prescribes the manner of maintenance. The entries in the said Register are required to be duly authenticated. In the present case, the Appellant had never produced Form No. MBP-2 for granting loan duly passed by all the Directors of the Appellant and had also not produced any register, containing the essential terms of the alleged loan. No proof of any Financial Debt, exists, nor any default is established by the Appellant.

39. In this regard the case laws are as under in which it was held that in absence of a valid board resolution passed under the companies Act 2013 for granting of unsecured loan by a company, no application under Section 7 is maintainable:

- **Sai Eswara Swamy Vs. Siti Vision Digital Media PARA 7**
- **Ukg Steel VS Erotic Buildcon PARA 13.**

Analysis and evaluation.

40. We have heard learned counsel for both sides and have perused the record, including the written submissions and the judgments cited.

41. The Appellant contends that it had paid ₹ 1,39,00,000/- to the Respondent between 29.08.2014 and 31.08.2014 under the MOU dated 27.08.2014. In brief, its case is that:- (a) The share purchase deal could not be completed. The Appellant and the Respondent then agreed orally that the amount would continue as an unsecured loan, with interest at 11% per annum, repayable on demand. (b) The Respondent showed that the amount was as an unsecured loan in its balance sheets, credited interest on it, deducted tax at source under Section 194A of the Income Tax Act, 1961, and gave balance confirmation letters dated 30.06.2015 and 15.06.2017. These acts, according to the Appellant, prove the debt and its time value. (c) The Respondent admitted receipt of the money in its reply, did not answer the demand notice dated 27.02.2019 and did not repay. Default is therefore proved. (d) Once debt and default are shown, the Application must be admitted. For this, the Appellant relies on **Pawan Kumar v. Utsav Securities Pvt. Ltd. & Anr.** (Company Appeal (AT) (Insolvency) No. 251 of 2020, decided

on 03.08.2021), **Pradeep Tayal v. Essbert Fashion Pvt. Ltd.** (Company Appeal (AT) (Insolvency) No. 950 of 2022, decided on 12.01.2023), **Mahabir Cold Storage v. CIT**, 1991 Supp (1) SCC 402: AIR 1991 SC 1357, **Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal & Anr.**, (2021) 6 SCC 366, **Swiss Ribbons (P) Ltd. v. Union of India**, (2019) 4 SCC 17 and **Innoventive Industries Ltd. v. ICICI Bank**, (2018) 1 SCC 407. (e) The Adjudicating Authority wrongly recorded the Appellant's counsel as counsel for the Respondent, and wrongly described the Appellant's written submissions as those of the Corporate Debtor.

42. In its written submissions filed on 07.10.2026, the Appellant has further contended that (i) money received by a company from a prospective shareholder can be either share application money or an unsecured loan, and cannot be an advance towards the price of shares payable to the shareholders; (ii) the Respondent's own case, recorded in para 4(e) of the Impugned Order, was that the money was "Share Application Money converted into unsecured Loan", and the Respondent cannot now deny the relationship of creditor and debtor; (iii) a written agreement is not necessary, and interest is not an essential ingredient of a financial debt; (iv) alleged non-compliance with Section 186 of the Companies Act, 2013 cannot defeat an otherwise established debt, and the Special Resolution dated 25.08.2014 and the Board Resolution dated 26.08.2014 were placed on record; and (v) the documents relied on formed part of the record of an information utility. For these submissions the Appellant relies on **Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd.**, (2023) 3 SCC 753, **Ravi Auto Ltd. v. Surana Mercantiles**

Pvt. Ltd. (Company Appeal (AT) (Insolvency) No. 1059 of 2022), **Agarwal Polysacks Ltd. v. K.K. Agro Foods and Storage Ltd.**, 2023 SCC OnLine NCLAT 624, **Satish Balan v. Neeta Navin Nagda & Anr.** (Company Appeal (AT) (Insolvency) No. 718 of 2023, decided on 04.07.2023), **Pancham Studios Pvt. Ltd. v. Konark Aquatics & Exports Pvt. Ltd.**, 2025 SCC OnLine NCLAT 1148, which was affirmed by the Hon'ble Supreme Court in Civil Appeal No. 12991 of 2025, **MRF Ltd. v. Manohar Parrikar & Ors.**, (2010) 11 SCC 374, **Elegna Co-operative Housing and Commercial Society Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.**, 2026 SCC OnLine SC 82, **Omkara Assets Reconstruction Pvt. Ltd. v. Amit Chaturvedi & Ors.** (Civil Appeal No. 11417 of 2025, decided on 24.02.2026) and **A. Navinchandra Steels (P) Ltd. v. SREI Equipment Finance Ltd.**, (2021) 4 SCC 435.

43. The Respondent opposes the Appeal. Its case, in brief, is that (a) The MOU is a share transfer agreement. The money was part of the price for the shares and was meant to clear the Respondent's own liabilities. It was not a loan. Showing it as an unsecured loan in the books for accounting purposes does not make it a financial debt. (b) There is no financial contract as defined in Rule 3(1)(d) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. No oral agreement was reached. The Appellant has given no date, no names and no board resolution for it, and has not produced the register under Section 186(9) of the Companies Act, 2013. Its own balance sheet as on 31.03.2015 did not show any loan to the Respondent. (c) No rate of interest was agreed and no interest was actually paid. Deduction of TDS and balance confirmations do not prove a financial debt. (d) No default under

Section 3(12) of the Code is made out, because the Appellant has not shown when the amount became due. Part IV of the Application gives the date of default as 20.02.2019, but the demand notice is dated 27.02.2019. (e) It is the Appellant that failed to pay the agreed consideration of ₹ 770 lakhs under the MOU. (f) The Respondent relies on **Sanjay Kewalramani v. Sunil Parmanand Kewalramani & Ors.** (National Company Law Appellate Tribunal, decided on 12.07.2018), **Pawan Kumar** (supra), **Prayag Polytech Pvt. Ltd. v. Gem Batteries Pvt. Ltd.** (Company Appeal (AT) (Insolvency) No. 713 of 2019, decided on 24.09.2019), **Prayag Polytech Pvt. Ltd. v. IWorld Digital Solution Pvt. Ltd.** (Company Appeal (AT) (Insolvency) No. 625 of 2019), **Prayag Polytech Pvt. Ltd. v. Bon Lon Petrochem LLP** (Company Appeal (AT) (Insolvency) No. 705 of 2019), **Jagdambey International v. Visa Powertech Pvt. Ltd.** (Company Appeal (AT) (Insolvency) No. 468 of 2019, decided on 02.12.2019), **M. Sai Eswara Swamy v. Siti Vision Digital Media Pvt. Ltd.** (Company Appeal (AT) (Insolvency) No. 706 of 2021, decided on 09.09.2021) and **UKG Steel Pvt. Ltd. v. Erotic Buildcon Pvt. Ltd.** ((IB)-1058(PB)/2020, order dated 31.05.2021 of the National Company Law Tribunal, Principal Bench).

Points for determination.

44. The following points arise for our consideration:

(i) Whether the sum of ₹ 1,39,00,000/- paid by the Appellant to the Respondent is a "financial debt" under Section 5(8) of the Code, so that the Appellant is a "financial creditor" under Section 5(7) of the Code in respect of it.

(ii) Whether the errors pointed out by the Appellant in the Impugned Order justify interference.

A. Scope of Section 7 of the Code

45. Section 7 allows a financial creditor to apply for initiation of CIRP when a default has occurred. Two things must therefore be shown. The first is that a financial debt is owed to the applicant. The second is that there is a default in payment of that debt. The Appellant relies on **Swiss Ribbons** (supra) and **Innoventive Industries** (supra), and in its written submissions also on **Elegna** (supra), **Omkara** (supra) and **A. Navinchandra Steels** (supra), for the proposition that once debt and default are proved, the application is to be admitted and no dispute can be raised to defeat it. The proposition is not in doubt. That rule, however, applies only after a financial debt is established. The burden of proving it is on the Appellant. The first question is thus whether the amount claimed is a financial debt.

46. Section 5(8) of the Code opens as follows:

> "financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—

Section 5(7) says that a "financial creditor" means any person to whom a financial debt is owed. The key words in Section 5(8) are "disbursed against the consideration for the time value of money". The Appellant itself accepts this test. It relies on **Pawan Kumar** (supra), where this Appellate Tribunal has held the following to be essential conditions to be satisfied by a Financial Creditor under Section 7 read with Section 5 (7) and (8) of the Code:

a. There must be disbursal of loan amount.
b. Such disbursal should be made for a consideration for time value of money, and
c. When the debt (whole or any part or installment) become due and payable and is not paid by the Corporate Debtor means committed default.

B. The nature of the original payment

47. The following facts are not in dispute. A tripartite MOU was signed on 27.08.2014 by the Appellant, the Respondent and the shareholders of the Respondent. The shareholders agreed to sell their entire shareholding to the Appellant. The Appellant paid ₹ 1,39,00,000/- to the Respondent by six cheques dated 29.08.2014 to 31.08.2014. The Respondent admits receipt of the money. The share deal was not completed, and the Appellant itself describes the position as a stalemate.

48. The clauses of the MOU, as placed before us by the Respondent, show what the money was meant for:

> 2. CONSIDERATION
>
> The transferors hereby agrees to sell and transfer to the Transferee and/or their nominee/s and the Transferee hereby agree to purchase and acquire from the Transferors all the Sale Shares held by the Transferors in "GGPL" free from all encumbrances, charges, items, liens and claims, and on the terms and conditions recorded herein.
>
> The Transferee agrees to purchases the shares of a price work out on the basis of Net worth of the company & in addition of it, agrees to discharge the following obligation.
>
> (a) Payment of Term Loan as on 31st August 2014
>
> (b) Payment of Unsecured Loan as on 31st August 2014.

(c) Payment of other current liabilities.

The consideration for said has been workout at ₹ 770.00 lakh and includes the following.

a) Payment of Term Loan as on 31st August 2014

b) Payment of Unsecured Loan as on 31st August 2014.

c) Payment of Other Current Liabilities

d) Balance towards payment towards purchases of shares.

49. These clauses deal with the price of the shares and the way it was to be applied. Part of it was to clear the liabilities of the Respondent, and the balance was to go towards the shares. The MOU does not say that the Respondent will repay any sum to the Appellant. It does not provide for interest or for any other return for the use of money over time. The Appellant's own pleading is to the same effect. It says that the payment was made "as part payment under the Memorandum of Understanding towards the acquisition of shares". When the cheques were issued, then, the money was not "disbursed against the consideration for the time value of money". It was paid as a part of the price in a share purchase.

50. The Appellant contends that money received by a company from an intending purchaser of shares can only be share application money or an unsecured loan, and cannot be a part of the price payable to the shareholders. We are unable to accept this. The MOU was a tripartite arrangement to which the Respondent was itself a party. The parties agreed that the price of ₹ 770 lakhs would include the discharge of the Respondent's term loan, unsecured loans and other current liabilities, and that only the balance would go towards the shares. Payment to the Respondent was thus the mode agreed by all three

parties for applying a part of the price. Even on the Appellant's own description, share application money is paid for the allotment of shares and not as a loan. On neither description was the money disbursed against the consideration for the time value of money.

C. The alleged oral agreement

51. The Appellant says that the nature of the payment changed after the deal failed. Its case is that an oral agreement was reached and the payment "may be continued as an unsecured loan with interest payable at 11% per annum repayable on demand". The Appellant admits that "No formal agreement was executed between the Financial Creditor and the Corporate Debtor". The Respondent denies any such oral agreement.

52. The Appellant has not stated when the oral agreement was made. It has not said who spoke for each company, and it has not shown any board resolution or other authority for it. The Special Resolution dated 25.08.2014 and the Board Resolution dated 26.08.2014, on which the Appellant relies in its written submissions, are dated before the MOU itself. They cannot evidence an oral agreement said to have been reached after the share transaction failed. No document signed or accepted by both parties, which sets out the rate of interest, the tenure or the date of repayment, has been shown to us. The Respondent relies on **Jagdambey International v. Visa Powertech** (supra) (Para 4) and **Prayag Polytech v. Bon Lon Petrochem LLP** (supra) to submit that a mere oral transaction, without documentary evidence and with only a balance sheet to support it, cannot create a financial debt.

53. We do not prescribe for that an oral agreement can never support a claim of financial debt. We hold that on the record the Appellant has not shown that such an agreement was made and what its terms were. A Section 7 application is decided on documents and admitted facts in a summary manner. A disputed oral agreement, whose existence and terms depend on the word of one side against the other, cannot be tried in such a proceeding.

54. The authorities relied on by the Appellant do not assist it. In **Ravi Auto (supra)** the disbursement was admitted and the Corporate Debtor did not deny paying interest on that. In **Agarwal Polysacks (supra)** the Adjudicating Authority had itself found that the disbursement carried interest and was repayable on demand. In **Satish Balan (supra)**, where the plea was that the money was equity, the Corporate Debtor had paid interest for two years, issued confirmations stating the interest payable, and could produce nothing in support of its plea. In **Pradeep Tayal (supra)** the Corporate Debtor had admitted the loan in reply to the demand notice. In **Pancham Studios (supra)**, the plea of the Corporate Debtor that the amount represented its managing director's share in a family property was not supported by any document recording that the amount was paid for that purpose, and the amount had been shown continuously in its balance sheets as an unsecured loan. In each case the transaction was shown to be a loan from the outset. None involved a written agreement, executed by the creditor itself, showing that the money was paid for a different purpose. Here the MOU does exactly that.

55. The Respondent has also pointed out that the Appellant's own balance sheet as on 31st March 2015 stated as follows:

> "There is no loans, secured or unsecured, granted by the company to the companies, firms or other parties, covered in the register maintained under Section 189 of the Companies Act, 2013."

That statement is limited to loans covered by the register under Section 189, so we do not give it much weight. Our decision does not rest on it.

D. Balance sheets, balance confirmations and TDS

56. The main material relied on by the Appellant is the conduct of the Respondent. The Respondent showed the amount as "Unsecured Loan Received" in its balance sheets, gave balance confirmation letters on 30.06.2015 and 15.06.2017, credited interest, and deducted TDS under Section 194A of the Income Tax Act, 1961. The Respondent does not deny these entries. The Impugned Order also notes that TDS was deducted.

57. The question under Section 5(8) is what the money was disbursed for. It is not how the debtor chose to record it later. An entry made by one party in its own books cannot change the nature of a payment made earlier for a different purpose. The Appellant relies on **Mahabir Cold Storage (supra)** and on **Asset Reconstruction Company (India) Ltd. (supra)** for the view that a balance sheet can amount to an acknowledgment of debt for the purposes of Section 18 of the Limitation Act, 1963. That is the settled position. That an acknowledgment shows only, that some money is owed. But that itself does not show that the money is a "financial debt" as defined in Section 5(8). The Respondent is right in saying that merely showing an amount as an

unsecured loan does not by itself create the relationship of Financial Creditor and Corporate Debtor.

58. The Appellant points out that, as recorded in para 4(e) of the Impugned Order, the Respondent's own case was that the money was "Share Application Money converted into unsecured Loan", and contends that the Respondent cannot accept the money, admit the conversion and still deny the relationship of creditor and debtor. Read as a whole, the Respondent's stand is that the amount was shown as an unsecured loan in its books for accounting purposes. A change in the head under which an amount is shown records how it is classified. It does not by itself establish that the parties agreed that the money would be retained against a return for its use. That agreement is what the Appellant must prove, and, as held above, it has not done so.

59. On TDS, both sides have placed NCLAT decisions before us. The Appellant relies on **Pradeep Tayal** (supra), in which it is said that:

> "the deduction of TDS and deposit by the Respondent/ Corporate Debtor does not itself prove that there is any financial debt but deduction of TDS and deposit in FORM 16-A under section 194A of the Income Tax Act clearly proves that the deduction which was deposited was TDS relating to "Interest other than interest on securities."

The Respondent relies on **Prayag Polytech v. Gem Batteries** (supra) (Para 6), where it was observed:

> "Merely pointing out that TDS was deducted would not be sufficient to conclude that there was financial Debt. "

The two observations are not in conflict. At the highest, TDS under Section 194A shows that the debtor treated a payment or credit as interest. It does not prove that the principal was lent for a return, or that the parties agreed on interest. That has to be shown by other material.

60. There is more here. The Appellant itself relies on Para 16 of the Impugned Order, which says:

> "Although, the TDS was deducted and accounted for in his books of accounts by the Corporate Debtor, the Corporate Debtor never deposited the accrued interest on the loan amount in bank account of the Financial Creditor."

So, by the Appellant's own case, apart from the tax deducted at source, no part of the interest was ever paid to it. What exists is a set of entries in the Respondent's books. No conduct of the parties, such as actual payment of interest, supports the claim that the money was lent for a return. Entries of this kind cannot create a financial debt that did not arise when the money was paid. While we are aware, as held in **Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd.**, (2023) 3 SCC 753, relied on by the Appellant, that the payment or stipulation of interest is not an essential element of a financial debt, in the present case the very nature of the transaction is in question, since the MOU shows that the money was paid as part of the price of shares and not as a loan. The absence of any actual payment of interest is relevant only as a circumstance confirming that nature.

61. The Appellant also submits that these documents formed part of the record of an information utility. Such a record evidences the information submitted, and may serve as proof of default under Section 7(3)(a) of the Code. It does not decide the character of a disbursement which the corporate debtor disputes. Nothing has been shown to indicate that the Respondent authenticated the record so as to accept that the amount was a financial debt.

E. Time value of money

62. The Respondent has relied on **Sanjay Kewalramani** (supra), where the NCLAT held as under:

> "There is nothing on the record to suggest that 2nd and 3rd Respondents had given the loan in favour of the Corporate Debtor, which can be termed to be disbursement of an amount for consideration for the time value of money as required under Section 5 (8). Merely grant of loan and admission of taking loan will ipso facto not treat the 2nd and 3rd Respondents as Financial Creditors, till they show that it complies with the substantive definition or any one or other clause of Section 5 (8)."

The same reasoning applies here. The MOU has no clause on the time value of money. The alleged oral agreement is not proved. The balance sheets, confirmations and TDS entries do not fill that gap. Nothing on record shows that the Appellant parted with ₹ 1,39,00,000/- in order to earn a return on it. The money went to the Respondent as a part of the price in a share deal, which then failed.

63. Each side blames the other for the failure of the deal. The Appellant says that the shareholders and the Respondent did not complete their obligations. The Respondent says that the Appellant did not pay the full

consideration of ₹ 770 lakhs. Whether the Appellant can recover the money, and with what interest, depends on the terms of the MOU, on what the parties did afterwards, and on evidence. These matters need a full trial. They cannot be decided under Section 7 of the Code.

64. We find that the sum of ₹ 1,39,00,000/- is not a financial debt within Section 5(8) of the Code. The Appellant is therefore not a financial creditor in respect of it under Section 5(7). We agree with the Adjudicating Authority that the Section 7 application is not maintainable. Point (i) is answered against the Appellant.

F. Other objections of the Respondent

65. The Respondent has also argued that there is no financial contract under Rule 3(1)(d) of the 2016 Rules, no board resolution or register of loans under Section 21 and Section 186(9) of the Companies Act, 2013, and no default under Section 3(12) of the Code. The Appellant has argued that a written agreement is not a pre-requisite under the Code. In its written submissions, the Appellant has also relied on **Pancham Studios** (supra), the doctrine of indoor management as explained in **MRF Ltd.** (supra) and Section 238 of the Code, and on the Special Resolution dated 25.08.2014 and the Board Resolution dated 26.08.2014, to contend that non-compliance with Section 186 cannot defeat a debt. It has further addressed the variation in the rate of interest from year to year and the time taken to issue the demand notice. We have not decided these questions, because the Appeal fails at the first step. Our decision does not rest on Section 186, on the absence of any register or resolution, on the rate of interest or on delay, and we express no

view on these contentions or on the reasoning of the Adjudicating Authority on them. We note only that the Appellant's own papers give the date of the demand notice both as 20.02.2019 and as 27.02.2019. Since there is no financial debt, we do not need to settle which date is correct or whether a default as defined in Section 3(12) took place.

G. The errors alleged in the Impugned Order

66. The Appellant points out that the Impugned Order wrongly records its counsel as counsel for the Respondent. It also says that its written submissions filed on 14.09.2022 were wrongly described as those of the Corporate Debtor. These are mistakes of description. We have examined the pleadings, documents and written submissions of both sides afresh, and our decision rests on that examination. No prejudice to the Appellant has been shown. These mistakes do not justify setting aside an order which is correct on merits. If the Appellant wants them corrected, it may apply to the Adjudicating Authority. Point (ii) is answered accordingly.

H. Conduct of the Respondent

67. We cannot end without noting the conduct of the Respondent. It received ₹ 1,39,00,000/- and kept it for years. In its own books it showed the amount as an unsecured loan, credited interest on it and deducted tax at source. Yet, as recorded in the Impugned Order, it never paid the interest to the Appellant. According to the Appellant, after the legal notice the Respondent also stopped showing the amount separately in its books. The Respondent thus credited interest and deducted tax at source on it year after year on a liability which it now says never existed, while the interest itself was never paid to the Appellant. Whether this treatment is consistent with the

Income-tax Act, 1961, as applicable to the relevant years, is a matter for the income-tax authorities to examine.

68. We make no finding on these matters, as they are not before us for decision. The Appellant is free to raise them before the appropriate authorities and fora. Since the matter concerns the administration of tax, we consider it appropriate that it be brought to the notice of the income-tax authorities. Accordingly, in exercise of the inherent powers of this Tribunal under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016, the Registry shall forward a copy of this judgment to the Principal Commissioner of Income Tax having jurisdiction over the Respondent, for such action, if any, as may be considered appropriate in accordance with law. Nothing in this judgment shall be construed as an expression of opinion on any liability of the Respondent under the income-tax law.

Conclusion.

69. Our conclusions are as follows:

(a) The Appellant paid ₹ 1,39,00,000/- to the Respondent under the MOU dated 27.08.2014, as a part of the price in a share purchase. The MOU does not provide for repayment or for any return on the money.

(b) The Appellant has not proved the alleged oral agreement that converted the payment into a loan with interest at 11% per annum, repayable on demand.

(c) The Respondent's balance sheets, balance confirmations and TDS entries do not, by themselves, prove that the money was disbursed against the consideration for the time value of money. By the Appellant's own case, apart from the tax deducted at source, no interest was actually paid to it, which is one more circumstance showing the true nature of the payment.

(d) The amount is therefore not a "financial debt" under Section 5(8) of the Code, and the Appellant is not a "financial creditor" in respect of it. The Section 7 application was rightly dismissed.

(e) The errors in the Impugned Order alleged by the Appellant are clerical and have caused no prejudice.

(f) The money paid by the Appellant remains with the Respondent. The Appellant may have a civil remedy for it, but that remedy cannot be worked out under the Code.

Order.

70. For the reasons given above, we find no infirmity in the Impugned Order dated 19.10.2022 passed by the Adjudicating Authority (National Company Law Tribunal, Jaipur Bench) in CP (IB) No. 68/7/JPR/2021. Accordingly, Company Appeal (AT) (Ins) No. 1448 of 2022, is dismissed. The Appellant is at liberty to approach the appropriate legal fora for seeking relief for the amount paid to the Respondent and for any interest permissible in law. All rights and contentions of both sides are left open. We express no view on the merits of such a claim or on limitation. The Appellant may claim any benefit

that the law allows for the time spent in these proceedings. The Appellant may also raise, before the appropriate authorities and fora, the matters noted in paragraph 66 and 67 regarding the treatment of the amount in the Respondent's books. The Registry shall forward a copy of this judgment to the Principal Commissioner of Income Tax having jurisdiction over the Respondent, as directed in paragraph 67. There shall be no order as to costs. Pending Interlocutory Applications, if any, are closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

New Delhi.
October 16, 2026.
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