IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 13836 of 2026

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M/S TAKSHASHILA RESICOM PRIVATE LIMITED & ORS.

Versus

M/S SHETH FINCAP SERVICES PRIVATE LIMITED & ORS.

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Appearance:
ARJUN R SHETH(7589) for the Petitioner(s) No. 1,2,3,4,5
MR RITURAJ M MEENA(3224) for the Respondent(s) No. 2
Mr. A.S. Vakil, Senior Advocate with MR. VEDANT DAVE(17230) for the Respondent(s) No. 1
MR.VISHAL J DAVE(6515) for the Respondent(s) No. 1
NIPUN SINGHVI(9653) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MS. JUSTICE NISHA M. THAKORE**

Date : 23/10/2026

ORAL ORDER

1. The present petition is filed under Article 226 read with Article 227 of the Constitution of India by the petitioner company and its directors being joined in their personal capacity, challenging the order dated 8th September 2026 passed by the National Company Law Tribunal (NCLT), Ahmedabad Bench, in Company Petition (IB) Nos. 188 of 2026, 190 of 2026 and 192 of 2026, whereby the Tribunal has reserved the matter for orders. Since, subsequently pending this petition, by order dated 25.09.2026, the Tribunal has admitted the petitions which has culminated into initiation of CIRP and order of appointment of Interim Resolution Professional under the Insolvency and Bankruptcy Code, 2016, the petitioner has orally advance argument challenging legality, validity and propriety of such proceedings.

2. In order to appreciate the controversy raised in the petition,

it would be appropriate to consider the relevant facts as can be gathered from the record.

2.1. It is pleaded that a loan agreement was entered on 15th March, 2024, between M/s. Takshashila Resicom Private Limited, M/s.Takshashila Developers Private Limited and M/s.Takshashila Corporation LLP (petitioners no.1, 2, and 3) with M/s. Sheth Fincap Services Private Limited (respondent no.1), whereby, a loan amount of Rs.11 crores was disbursed by the respondent no.1 in favour of petitioner no.3. On 22nd March 2024, the aforesaid loan amount was deposited by respondent no.1 in the bank account of petitioner No.3 company. In this regard, a deed of mortgage was also registered in favour of respondent no.1 by petitioner nos.1 to 3 offering 38 units for the purpose of securing the aforesaid loan amount. Such deed of mortgage was executed on 26th March 2024 by petitioner nos.1 to 3 in favour of respondent no.1.

2.2. Again, a supplementary loan agreement dated 21st March, 2025 was also entered between parties, whereby, loan amount of Rs. 5.23 crores was renewed. As against the aforesaid renewed loan amount, a further deed offering security of 30 units was entered on 22nd March 2025.

2.3. On 10th April, 2025 an application being Company Petition No.188 of 2025 was preferred under Section 95 of the

Insolvency and Bankruptcy Code, 2016 against Kamlesh Keshavbhai Gondaliya by M/s. IDBI Trusteeship Service Limited, for the purpose of initiation of personal insolvency resolution process before the learned National Company Law Tribunal, Ahmedabad. On the same date, another Company Petition (IB) No.189 of 2025 was preferred against Parthi Kamlesh Gondaliya by said company seeking initiation of personal insolvency resolution process.

2.4. Pending the aforesaid proceedings, the petitioner nos.1 to 3 had approached respondent no.1 praying for renewal of loan amount to the extent of Rs.5.23 crores vide a letter dated 14th May 2025 for a further period of six months from 16th May 2025 to 11th November 2025. On the other hand, a criminal complaint came to be lodged against petitioners which culminated into an FIR bearing I-CR No.0229 of 2025 with Azad Maidan Police Station under Section 316(2), 316(5), and 3(5) of Bharatiya Nyaya Sanhita, 2023. Such FIR was registered on 18th September, 2025 in respect of the supplementary loan agreement dated 21st March, 2025. On 14th October, 2025, a notice was issued by respondent no.1 to petitioners as regards recovery of outstanding amount of Rs.6,15,50,525/- to be realized as on 30th September, 2025.

2.5 On 15th October, 2025, the petitioner nos.4 and 5 approached the learned Court of Sessions for Greater Bombay

seeking anticipatory bail in respect of the FIR registered with Azad Maidan Police Station, which was registered as Anticipatory Bail Application No.2070 of 2025. The said anticipatory bail application was however rejected by the learned Court of Sessions by order dated 13th February 2026. Being aggrieved, the petitioner no.4 on 16th March 2026 approached the High Court of Judicature at Bombay seeking anticipatory bail bearing application no.714 of 2026. Similarly, petitioner no.5 also moved the Hon'ble High Court of Judicature at Bombay on 27th March 2026 by submitting anticipatory bail application bearing no.822 of 2026.

2.6. On the other hand, the National Company Law Tribunal, Ahmedabad proceeded to initiate the personal insolvency resolution process against petitioner no.4 by passing an order dated 16th March 2026 in Company Petition (IB) No.188 of 2025. On the same day, appropriate orders were also passed in Company Petition (IB) No.189 of 2025 against petitioner no.5. On 18th April, 2026, respondent no.1 lodged its claim before Resolution Professional appointed in insolvency process filed against petitioner nos.4 and 5 in relation to personal insolvency resolution process for the same debt.

2.6. The petitioners have also preferred a writ petition before the High Court of Bombay seeking the quashing of the FIR, which was registered as Writ Petition No.3238 of 2026 on 23rd

April, 2026. In Company Petition (IB) No.192 of 2026 preferred by M/s. Sheth Fincap Service Private Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 and other allied matters against M/s. Takshashila Recicom Private Limited and others, the matters were registered as Company Petition Nos. 188 of 2026, 190 of 2026, and 192 of 2026 on 19th May 2026. The petitioners have deposited a sum of Rs.50 lakhs to M/s. Sheth Fincap Service Limited on 25th May 2026. On 1st September 2026, an affidavit was tendered by Mr.Kamlesh Keshavlal Gondaliya and Mr.Parthil Keshavlal Gondaliya in anticipatory bail proceedings, in which they undertook to pay an amount of Rs.4,48,00,000/- to respondent No. 1 on or before 30th September 2026. The Hon'ble High Court of Bombay by taking cognizance of the aforesaid affidavits filed by the present petitioners Nos. 4 and 5, by an order dated 3rd September, 2026, granted time until 30th September, 2026 to deposit such amount.

2.7 On the other hand, the National Company Law Tribunal, Ahmedabad, despite being apprised of the aforesaid order dated 3rd September, 2026, granting time to make payment in accordance with the affidavits filed till 30th September 2026, without waiting for the outcome of such undertaking, proceeded to pass the impugned order dated 8th September, 2026 in Company Petition Nos. 188 of 2026, 190 of 2026, and 192 of 2026 and further admitting the company petitions.

Consequently leading to initiation of CIRP and appointment of interim Resolution Professional. Hence, the present petition has been filed at the instance of the aggrieved parties- the companies and its directors in individual capacity, challenging the aforesaid impugned order of admission as well as praying for appropriate directions against the respondents challenging the original proceedings itself.

3. Learned Senior Advocate Mr. Apurva Vakil has appeared with Mr.Vedant Dave, learned advocate for the respondent no.1 and has place on record the additional affidavit dated 22.10.2026. The same was taken on record. At the outset, learned Senior Advocate has raised a preliminary objection with regard to the maintainability of such petition under Article 226 of the Constitution of India. The attention of this court was invited to the affidavit-in-reply filed by respondent no.1 through his authorized officer. It was submitted that the genesis of the filing of this petition, as can be gathered from the prayers sought for, is the impugned order passed by the Tribunal admitting their application under Section 7 of the IBC Code, thereby appointing a Resolution Professional to proceed with the insolvency process. It was submitted that once the resolution professional is appointed and the company is subject to CIRP, neither the company or its directors can prefer any proceedings on its own and it is the resolution professional who is authorised to pursue any proceedings

before any Court of law.

3.1 Secondly, referring to the first affidavit in reply dated 21.10.2026 filed by the respondent no.1, it was submitted that considering the nature of the relief sought for, an efficacious remedy of appeal is available to the petitioner inasmuch as the appeal would lie before the National Company Law Appellate Tribunal (in short, 'NCLAT') in view of the provisions of the IBC Code. He has further submitted that in fact the Company Appeal (INS) No.1902 of 2026 has already been preferred by the petitioners before the National Company Law Appellate Tribunal, Principal Bench, New Delhi. In this regard, the learned Senior Advocate has referred to the order dated 14th October 2026 passed by the Appellate Tribunal, which is produced on record at page 809. He has further submitted that Section 61 of the Code provides for a right of appeal to any person aggrieved by the order of the adjudicating authority under Part II of the Code.

3.2 Raising the issue of maintainability, the learned Senior Advocate has placed reliance upon the order dated 5th August, 2026 passed by the Hon'ble Supreme Court in the case of **Davis Kotala Varki and Others versus Samson T. George and Others** rendered in Special Leave Petition No.18523 of 2026. Referring to the facts recorded and the issue that arose for consideration, the Court held that an

order passed in proceedings under the IBC Code must be challenged within the framework of the Code and not through a writ petition. The Court has referred to its earlier decisions in the case of **Committee of Creditors of KSK Mahanadi Power Limited versus Uttar Pradesh Power Corporation Limited and Others** reported in **2024 SCC Online SC 4013** as well as in the case of **Mohammed Enterprises (Tanzania) Limited versus Faruk Ali Khan & Ors** reported in **2025 SCC OnLine SC 23**.

3.3 Referring to the decision of the Hon'ble Supreme Court in the case of **Mohammed Enterprises (Supra)**, the learned advocate submitted that the Hon'ble Supreme Court has consistently ruled that the Insolvency and Bankruptcy Code is a complete Code in itself, having sufficient checks and balances, remedial avenues, and appeals. The High Court should therefore adhere to protocols and procedures to maintain legal discipline and preserve the balance between the need for order and the quest for justice. The supervisory and judicial review powers vested in the High Courts represent critical constitutional safeguards. However, before exercising such powers, it demands rigorous scrutiny and judicious application.

3.4 Having raised the aforesaid preliminary objection, the learned advocate has further submitted that in fact the writ

petition is required to be dismissed at the threshold solely on the ground of suppression of material facts. It was submitted that against the order passed by the NCLT appointing a Resolution Professional, the Resolution Professional having been appointed, the petitioners have no *locus standi* to pursue the present proceedings. It was submitted that having approached in appeal before the National Company Law Appellate Tribunal, the petitioners have not disclosed such facts in the present proceedings.

3.5 Referring to the affidavit in reply dated 22.10.2026, the learned Senior Advocate had further submitted that upon appreciation of the chronology of events, it is evident that despite sufficient opportunity being granted to the petitioners, till date the petitioners have failed to deposit the principal amount though being directed. In this regard, the attention of the Court was invited to the order passed by the High Court of Bombay in anticipatory bail proceedings, whereby the petitioners on his own had undertaken to deposit a substantial amount of Rs.4,28,00,000/-. However, on the next date of hearing, an extension of time was sought to do the needful and according to him, till date the petitioners have failed to adhere to such an undertaking. It was further submitted that in fact the order dated 14th October, 2026 passed by the NCLAT is perused, the Court recorded the submission of the appellant, who had shown his willingness to deposit a demand

draft of Rs. 4 crores with the Registry, and a prayer was sought before the NCLAT against the Resolution Professional not to proceed with the insolvency process. The Appellate Tribunal, having heard the learned counsel for the respective parties and having perused the record, found that the appellant's proposition had not been accepted by the financial creditor for the grounds recorded and had refused to issue any interim directions. The notice was issued upon the respondents in the appeal as well as in the stay application, and the matter was subsequently directed to be kept for hearing on 20th November 2026. It was submitted that the petitioner has not disclosed the fact that the petitioner no.4 – Kamlesh Keshavbhai Gondalia had lodged a complaint before Reserve Bank of India about excessive interest charged and also about penal interest on his loan given by Respondent no.1, which has been closed by the RBI vide letter dated 20.07.2026. It was pointed out that subsequently consent terms dated 13.10.2026 have been exchanged between parties which includes separate components towards penal interest at the rate of 27% per annum. He has therefore, submitted that the argument of lack of inherent jurisdiction is misconceived. He has further submitted that even considering the relief which was sought before the National Company Law Tribunal, the principal amount borrowed being Rs.4,23,00,000/- which is beyond the threshold limit of Rs.1 crore, even if the argument of the petitioner with regard to

penal charges is to be excluded deserves merits, then also the National Company Law Tribunal had jurisdiction to examine the application under Section 7. He has therefore submitted that there is no merit in the petition and the petition is solely required to be dismissed on the issue of maintainability.

4. *Per contra*, Learned advocate Mr. Arjun Sheth, appearing for the petitioners, has vehemently challenged the impugned order of admission passed by the learned National Company Law Tribunal by submitting that the Tribunal miserably failed to appreciate the purpose, object, essence, and legislative intent underlying the enactment of the Insolvency and Bankruptcy Code (IBC) of 2016. He has submitted that the approach of the Tribunal under the IBC should be resolution-oriented, however by passing the impugned order, the Tribunal without appreciating the facts in their true perspective, has proceeded to appoint a Resolution Professional. He has submitted that the Tribunal failed to appreciate the object of the Code, which otherwise is intended to ensure that the corporate debtor continues as a going concern, to maximization of the value of its assets and to balance the interests of the stakeholders. In such circumstances, the adjudicating authority under Section 7 of the IBC could not be permitted to invoke or exercise its power merely as a substitute for ordinary debt recovery proceedings. He has therefore submitted that Respondent No. 1 could not

be permitted to employ insolvency jurisdiction as a coercive mechanism for the recovery of the alleged outstanding amount. Inviting the attention of this Court to the unreasonable escalation in the amount claimed by preferring recovery proceedings before the Tribunal, the learned advocate pointed out that the amount outstanding as quantified by the respondent in the FIR dated 18th September, 2025 was admittedly Rs.5,23,00,000/-, whereas in the subsequent proceedings initiated under Section 7 of the IBC Code, Respondent No. 1 claimed a total amount of Rs.7,40,33,665/-. He has therefore, submitted that the alleged liability of Rs.2,17,33,665/- within a term period of hardly 8 months suggests that, apart from seeking recovery of outstanding debt, Respondent No. 1 has also sought recovery of interest levied, penal charges, and cheque bounce charges, which in fact results in 50% per annum on the principal amount, representing a highly disproportionate escalation as against the debt amount. Inviting my attention to the provisions of Section 7 of the Code, the learned advocate submitted that in fact the Tribunal has no jurisdiction under the Code to adjudicate on the component of penal charges and the interest as levied by Respondent No. 1 in the aforesaid proceedings.

5. In this regard, learned advocate had invited attention of the court to the application filed by M/s Sheth Fincap Service

Private Limited before the National Company Law Tribunal seeking initiation of corporate insolvency resolution process under Section 7 of the IBC Code read with Rule 4 of the Insolvency and Bankruptcy Application to Adjudicating Authority Rules, 2016. Referring to the amount claimed to be defaulted, it was pointed out that the total default amount is referred as Rs.7,40,33,665/-, which includes a principal amount of Rs.5,23,00,000/- plus interest of Rs.80,03,440/- charged till 30th of April 2026 plus penal charges of Rs.1,37,28,750/- as well as cheque bounce charges of Rs.1,475/- being the outstanding amount as on 30th of April 2026. Referring to the aforesaid particulars, the learned advocate had submitted that if the provisions of Section 7 of the IBC Code are examined, it clearly confers the jurisdiction upon the adjudicating authority to initiate the corporate insolvency resolution process by a financial creditor only in respect of a financial debt. He has further invited attention to the definition of the term "financial debt" as defined under Section 5(8) of the IBC Code. Referring to Clause I, the learned advocate has submitted that the financial debt does not include the component of penal charges to be treated as a financial debt. The reliance was placed on Delhi High Court decision in the case of **Pankaj Aggarwal vs. Union of India,** reported in **2020 SCC Online Delhi 1976** and in the case of **Budhpur Buildcon Private Limited vs. Mr. Abhay Narayan Manudhane** reported in **2022 SCC Online NCLAT**

3854. He has submitted that the adjudicating authority committed a grave error in entertaining such an application preferred by the financial creditor. He has therefore submitted that in fact the adjudicating authority, in view of the aforesaid provisions, does not have jurisdiction to examine the claim of penal charges, and therefore the original proceedings itself were not tenable in the eyes of law before the Tribunal. The attention of the Court was invited to the decision of the Hon'ble Supreme Court in the case of **Surya Dev Rai vs. Ram Chander Rai and Others** reported in **(2003) 6 SCC 675**. It was submitted that the question arose before the Supreme Court was whether an aggrieved person is completely deprived of the remedy of the judicial review, if he has lost at the hands of original Court and the Appellate Court, though a case of gross failure of justice have been occasioned. The Hon'ble Supreme Court after considering the effect erstwhile clause (b) of the proviso being deleted from Section 115 of the Code of Civil Procedure and a new proviso being inserted, observed that the constitutional jurisdiction of High Court to issue writ of certiorari nor the powers of superintendence under Article 227 is whittled away-untrammeled by such amendment in Section 115 of the Code of Civil Proceure.

6. Learned advocate Mr. Seth has once again referred to the prayers sought in the present petition. At this stage, the

attention of this Court was invited to the Additional affidavit dated 27.09.2026 placed on record from page no.555 onwards. He has emphasized the fact that the petition is not confined to the challenge being made against the order of admission dated 8th September, 2026 passed by the National Company Law Tribunal reserving the matter for orders and subsequently pronounced order of admission (leading to initiation of CIRP) and appointing the interim Resolution Professional to proceed with the insolvency process but the supervisory jurisdiction of this Court has been invoked so as to examine the legality, validity, and propriety of the original proceedings undertaken by respondent no.1 by invoking Section 7 of the Insolvency and Bankruptcy Code, 2016. He has further urged this Court that the *bonafides* of the petitioners may be tested. As per the instructions of the petitioners, the learned advocate for the petitioners has shown his willingness to deposit an amount of Rs.1 crore before the Registry of this Court until the next date of hearing and has sought appropriate directions with regard to the payment of the remaining amount within a stipulated time-frame. He has therefore urged this Court to issue notice upon the respondents, as by the impugned order the petitioners have been unnecessarily subjected to the insolvency process.

7. Heard the learned advocates for the respective parties and appreciated their arguments in light of the legal principles

established through various decisions as relied upon during the course of hearing. The short question which arises for consideration of this Court is as to whether the writ petition preferred by the petitioner companies and its *erstwhile* directors requires consideration despite having availed remedy of the statutory appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016?

8. I have carefully considered the arguments of learned advocates appearing for the respective parties. Having noted the status of the petitioners' companies, undoubtedly, the petitioners are directly and legally affected by the orders passed by the National Company Law Tribunal directing appointment of the interim Resolution Professionals (‘IRP’, in short), as well as passing order of admission of the application preferred by the respondent creditor under Section 7 of the IBC Code. It is settled legal position that once the corporate insolvency resolution process starts and an interim Resolution Professional is appointed, the management and representation of the corporate debtor vest exclusively in the IRP. In fact, the Hon’ble Supreme Court in the case of ***Nitendra Kumar Tomar Vs. Eunox SPA***, neutral citation: ***2026 INSC 356***, has held that an appeal filed directly in the name of the corporate debtor by a suspended director after CIRP commencement is void and incompetent from inception. In such circumstances, noticing the fact that the petition is

filed not only by the companies facing insolvency but by its erstwhile directors in their individual capacity, the petition is held maintainable.

9. So far as the case of the petitioners are concerned and the preliminary objection raised by the respondent no.1, it is an undisputed fact that the petitioners have approached before the National Company Law Appellate Tribunal under Section 61 of the Insolvency and Bankruptcy Code. Such appeal is pending consideration as can be gathered from the order dated 14th October, 2026 produced on record at page 809. Having noted the aforesaid undisputed facts, the subliminal question which arises in the peculiar facts of the case is as to whether the availability of statutory remedy of appeal would operate as an absolute bar to the maintainability of the writ petition preferred under Article 226 of the Constitution of India.

10. I have carefully considered the arguments of learned Senior Advocate appearing for the respondent no.1, more particularly the decisions of Hon'ble Supreme Court as referred to and relied upon in case of ***Davis Kotala Varki (supra)***, *C**ommittee of Creditors of KSK Mahanadi Power Company Limited (supra)***, and in the case of ***Mohammed Enterprises (Tanzania) Limited (supra)***. On careful reading of the aforesaid decisions, the Hon'ble

Supreme Court has held that at the conclusion of CIRP proceedings, the High Court should not interfere with the proceedings initiated under the Insolvency and Bankruptcy Code, 2016 as it would amount to breach of discipline of law. The Court has reiterated that the High Court should note that Insolvency and Bankruptcy Code is a complete code in itself, having sufficient checks and balances, remedial avenues, and appeals. The adherence of protocols and procedures maintains legal discipline and preserves the balance between need for order and quest for justice. The Hon'ble Supreme Court has therefore opined that supervisory and judicial review powers conferred with the High Courts represents critical constitutional safeguards, and the exercise of it demands rigorous scrutiny and judicious application.

11. Having noted the aforesaid guiding principles laid down by the Hon'ble Supreme Court, if one looks at the provisions of appeal, more particularly Section 61 of the Insolvency and Bankruptcy Code, it clearly confers the remedy of appeal to the aggrieved person, which includes the challenge to the order passed under Section 7 of the IBC Code at the instance of the financial creditor. There is no dispute with regard to the fact that in the appeal preferred by the present petitioners, similar grounds which have been raised in the present petition have also been raised in the appeal. The issue of jurisdiction of the National Company Law Tribunal to adjudicate with

regard to the financial debt which also includes a component of penal charges as highlighted by the petitioner, has also been raised in the appeal pending consideration before the National Company Law Appellate Tribunal. It is also required to be noted that once the resolution professional is appointed by the National Company Law Tribunal, the resolution professional can also examine and reject the claim raised towards penal charges in case if they do not meet the legal criteria of the term "financial debt" as provided under Section 2(8) of the Insolvency and Bankruptcy Code, 2016. As rightly pointed out by the learned advocate for the petitioner, the Hon'ble Supreme Court in the case of ***Swiss Ribbons Vs. Union of India,*** reported in ***(2019) 4 SCC 17,*** has established that the RP only has administrative powers to verify and collate claims. The RP does not possess quasi-judicial or adjudicatory authority. However, if the penal charges are unverified, unsubstantiated by the underlying loan agreement or the necessary calculations with regard to such a claim are missing, the RP can certainly refuse to admit such a specific portion of the claim.

12. According to Section 3(11) of the IBC, “debt” is defined as a liability or obligation in respect of a claim which is due from any person. As per the definition of the term “financial debt” as provided under Section 5(8) of the IBC Code, the debt must be disbursed against the “ time value of money”. It

is required to be noted that the question with regard to the contractual penal interest or penal charges applied due to default on a financial loan are generally accepted as part of the financial debt only if explicitly stipulated in the financial contract/loan agreement as a consequence of default. It is true that inclusion of interest and penalty components alters the quantum of the claim but does not inherently divest the NCLT of its jurisdiction. The NCLT operates in a summary jurisdiction under Section 7 and is only required to satisfy that a default of at least Rs.1 crore has occurred. The exact reconciliation, verification and adjudication of interest and penalties can be examined by the Resolution Professional during CIRP and therefore, the NCLT's jurisdiction shall not be taken away. However, the broader issue with regard to the core object of appreciating proceeding to bring resolution instead of recovery being subject matter under consideration in appeal, this Court find it appropriate to not to interfere at this stage. Thus, there is no complete lack of jurisdiction of NCLT to examine the application under section 7 of the Code, in the facts of the case. In such circumstances, without examining the aforesaid aspect in detail, having noted that the petitioner has already approached in appeal before the NCLAT and a similar contention being raised as can be gathered from the appeal memo produced on record by the respondent, this Court is not inclined to much dwell into the aforesaid issue and has confined it to the issue of jurisdiction.

13. It is well settled law that existence of an alternative statutory remedy does not oust the jurisdiction of the High Court or render a writ petition not maintainable. Thus, the Courts have time and again ruled that the availability of statutory remedy of appeal does not operate as an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution of India. However, the discretion is also vested with the High Courts to normally decline to entertain it as a matter of judicial policy, discipline, and self-imposed restraint. The few exceptional circumstances recognized through various precedents, the petitioner was expected to make out his case falling within such recognized exceptions, viz. breach of fundamental rights, violation of principles of natural justice, lack of jurisdiction, challenge to vires or constitutionality, and patent illegality or arbitrariness. At this stage, it would be appropriate to refer to the recent decision of Hon'ble Supreme Court in the case of ***Rikhap Chand Jain*** **Vs.** ***Union of India and others*****, neutral citation** ***2025 INSC 1337***. The appellant before the Hon'ble Supreme Court was aggrieved by the order passed by the High Court dismissing the writ petition on the ground of omission of the appellant to pursue the alternative remedy of appeal provided under the Customs Act, 1962. The Hon'ble Supreme Court had considered the provisions of the Customs Act and thereafter has referred to the constitutional bench decision in

the case of ***Thansingh Nathmal Vs. A. Mazid, Superintendent of Taxes***, reported in ***AIR 1964 SC 1419***, and observed that writ jurisdiction should not normally be exercised on a petition under Article 226, for that would allow the machinery set up by the concerned statute to be bypassed.

14. Bearing in mind the aforesaid settled principles, in the opinion of this Court, the grounds raised for consideration of this Court in the writ petition since are already subject matter of appeal which is pending consideration before the appellate authority, i.e. NCLAT, in absence of any exceptional circumstances being pointed out by learned advocate for the petitioner, this Court is not inclined to exercise its writ jurisdiction having noted the fact that the petitioner has already approached in appeal before the NCLAT.

15. In view of the above, the present petition is dismissed solely on the ground of issue of maintainability. With these observations, the petition stands ***disposed*** of.

sd/-
(NISHA M. THAKORE,J)

RATHOD KAUSHIKSINH

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: KAUSHIKSINH JILUSINH RATHOD(HC00957), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 04/11/2026 14:19:07