NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1839 of 2026

(Arising out of the Order dated 16.07.2026 passed by the National Company Law Tribunal, New Delhi, dismissing IA-06/2023 in CP (IB) No. 2060(PB)/2019 and IA-05/2023 in CP (IB) No.2061(PB)/2019

IN THE MATTER OF:

Amarendra Financial Pvt. Ltd.
Registered office at:
14/5, Ground Floor Old Rajinder Nagar New Delhi-110060
Email: Afpl2008@gmail.com **…Appellant**

Versus

Cynosure Real Estates Private Limited
Registered office at:
2586, Ground Floor, Nai Basti, Naya Bazaar Delhi-110006
Email id: cynosurereal@gmail.com **…Respondent**

Present

For Appellants: Mr. Ravi Prakash & Ms. Bhumika Bhardwaj, Adv.

For Respondents: None

With

Comp. App. (AT) (Ins) No. 1840 of 2026

IN THE MATTER OF:

Dinkar Commercial Private Limited
Registered office at:
14/5, Ground Floor Old Rajinder Nagar New Delhi-110060
Email: dinkarcommercial(a)gmail.com **…Appellant**

Versus

CYNOSURE REAL ESTATES PRIVATE LIMITED
Registered office at:
2586, Ground Floor, Nai Basti, Naya Bazaar Delhi-110006
Email id: cynosurereal@gmail.com **…Respondent**

Present

For Appellants: Mr. Ravi Prakash & Ms. Bhumika Bhardwaj, Adv.

For Respondents: None

J U D G E M E N T

(04.11.2026)

NARESH SALECHA, MEMBER (TECHNICAL)

1. There are two appeals in the present case. We are taking both the appeals together. The appeals have been filed by the Appellants i.e., Amarendra Financial Pvt. Ltd. and Dinkar Commercial Private Limited, who are the Non-Banking Financial Companies under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('**Code**') against the Order dated 16.07.2026 **("Impugned Order")** passed by the National Company Law Tribunal, New Delhi **("Adjudicating Authority")** dismissing IA-06/2023 in CP (IB) No. 2060(PB)/2019 and IA-05/2023 in CP (IB) No.2061(PB)/2019

Cynosure Real Estates Private Limited, who is the Corporate Debtor, is the Respondent herein.

2. The Appellants submitted that they are Non-Banking Financial Companies (NBFCs) incorporated under the Companies Act and engaged in extending short-term liquidity loans. In April 2017, the Respondent approached the Appellants seeking urgent financial assistance, pursuant to which the following amounts were disbursed: -

- In the appeal arising from CP (IB) No. 2061(PB)/2019, DCPL disbursed Rs. 2.30 crore, comprising Rs. 2 crores on 03.04.2017 and Rs. 30 lakhs on 06.04.2017
- In the appeal arising from CP (IB) No. 2060(PB)/2019, AFPL disbursed Rs. 1.70 crore, comprising Rs. 1.50 crore on 05.04.2017 and Rs. 20 lakhs on 06.04.2017

The Appellants relied upon their respective bank statements evidencing the disbursements and submitted that the Respondent failed to service the debt or make any repayment, thereby compelling them to initiate proceedings under Section 7 of the code.

3. The Appellants contended that, in its common reply affidavit dated 09.10.2019 filed in the original Section 7 proceedings, the Respondent denied having availed any loan and asserted that no financial debt existed and that the Appellants were not financial creditors. According to the Appellants, this denial was materially inconsistent with the Respondent's own financial records, which recorded the relevant amounts under the head “Unsecured Loans.” The Appellants submitted that the Respondent's denial of the loan transaction, despite

the entries in its own records, constituted the foundation of the fraud and misrepresentation pleaded in the recall proceedings.

4. The Appellants submitted that the Original Dismissal Order dated 19.04.2022 dismissed the Section 7 petitions, inter alia, on the reasoning that mere disbursement of an amount did not constitute financial debt under Section 5(8) of the code. The Appellants thereafter filed IA-05/2023 and IA-06/2023 under Rule 11 of the NCLT Rules, 2016, seeking recall of the said order on the grounds of fraud and misrepresentation, in addition to their grievance regarding the application of law in the original proceedings.

5. The Appellants submitted that the Respondent's unaudited balance sheet for FY 2017–18 had already been placed on record during the original Section 7 proceedings by way of rejoinders dated 24.01.2022 in CP (IB) No. 2061(PB)/2019 and 18.01.2022 in CP (IB) No. 2060(PB)/2019, respectively. The Respondent did not dispute the authenticity of the said balance sheet or the correctness of the relevant entries. The balance sheet recorded Rs. 24,62,80,069 under “Unsecured Loans” in Short-Term Borrowings. The corresponding schedule contained a break-up of the unsecured loans, including the amounts attributed to the respective Appellants. The Appellants contended that this was an express acknowledgment in the Respondent's own financial records and directly contradicted its sworn denial that no loan had been taken.

6. The Appellants further submitted that the Respondent's Income Tax Return (ITR) for Assessment Year 2018–19 independently corroborated the entries in

the aforesaid balance sheet. The ITR reflected the corresponding amount of Rs. 24,62,80,069 under "Other Loans and Advances", as reproduced in the Memoranda of Appeal. The Appellants contended that the identical aggregate figures appearing in the balance sheet and the ITR, read with the detailed schedule identifying the loans, established that the amounts advanced by the Appellants had been acknowledged in the Respondent's own records. The Appellants relied upon these documents cumulatively and not merely upon the bank statements evidencing the transfers.

7. The Appellants submitted that the ITR for AY 2018–19 was discovered and placed on record during the Rule 11 proceedings by affidavits dated 22.02.2023. According to the Appellants, the ITR had not been available in the public domain and was within the Respondent's exclusive knowledge and custody. It had not been disclosed during the original Section 7 proceedings. The Appellants contended that the subsequent production of the ITR independently corroborated the balance sheet already on record and demonstrated the material inconsistency between the Respondent's own financial disclosures and its affidavit dated 09.10.2019.

8. The Appellants further contended that the Respondent had not filed audited balance sheets for FY 2017–18 or subsequent financial years with the Registrar of Companies, as reflected in its MCA master data, which recorded its status as "ACTIVE Non-Compliant." They submitted that this continuing statutory non-compliance prevented the Appellants from accessing the Respondent's audited

financial records through the public domain and must be considered alongside the subsequent discovery of the ITR. The Appellants accordingly alleged that the Respondent had withheld material information concerning the liabilities which it had itself recorded as unsecured loans.

9. The Appellants submitted that the Respondent's affidavit dated 09.10.2019 denying the existence of any loan or financial debt was irreconcilable with its unaudited balance sheet for FY 2017–18 and its ITR for AY 2018–19. They contended that the inconsistency was material because the Respondent's denial of the financial-creditor relationship formed a central part of its defence in the original proceedings, while the financial records expressly categorised the relevant advances as unsecured loans. According to the Appellants, the Respondent's failure to disclose the ITR during the original proceedings, coupled with its failure to file audited financial statements with the Registrar of Companies, must be considered alongside the sworn denial and the documentary acknowledgment of the loans. The Appellants therefore alleged that the Original Dismissal Order had been procured through misrepresentation of material facts, resulting in a gross failure of justice.

10. The Appellants relied upon the judgment of the Hon'ble Supreme Court in ***Greater Noida Industrial Development Authority v. Prabhjit Singh Soni & Anr.,*** *2024 INSC 102,* wherein the Hon’ble Supreme Court recognised the inherent power of the NCLT to recall its order under Rule 11 of the NCLT Rules, 2016, including where an order has been obtained by misrepresentation of facts

or by playing fraud upon the Tribunal, resulting in a gross failure of justice. The Appellants submitted that the Adjudicating Authority itself acknowledged this legal position in paragraphs 5 and 6 of the Impugned Order, observing that the NCLT possesses the inherent power of recall and that an order obtained by fraud ought to be recalled. They contended that, having accepted the applicable legal principle, the Adjudicating Authority nevertheless failed to examine whether the documentary evidence in the present case satisfied the recognised ground for recall.

11. The Appellants further relied upon ***Union Bank of India v. Dinkar T. Venkatasubramanian & Ors.***, *CA (AT) (Ins.) 729 of 2020*, decided by a five-member Bench of this Appellate Tribunal on 25.05.2023, which was affirmed by the Hon'ble Supreme Court in ***Union Bank of India v. Financial Creditors of M/s Amtek Auto Ltd. & Ors***., *Civil Appeal No. 4620 of 2023*, decided on 31.07.2023. They also relied upon ***S.P. Chengalvaraya Naidu (Dead) by L.Rs. v. Jagannath (Dead) by L.Rs. & Ors.***, *(1994) 1 SCC 1*, and ***A.V. Papayya Sastry & Ors. v. Government of A.P. & Ors.,*** *(2007) 4 SCC 221,* in support of the proposition that fraud vitiates judicial proceedings and that a party cannot be permitted to retain the benefit of an order obtained by suppressing material facts. The Appellants contended that these principles required the Adjudicating Authority to examine the alleged false statement and the documents contradicting it, rather than dismissing the recall applications without addressing the specific evidence.

12. The Appellants also relied upon ***United India Insurance Co. Ltd. v. Rajendra Singh & Ors.,*** *(2000) 3 SCC 581*, in support of their submission that a court or tribunal is not powerless to recall an order obtained through fraud or misrepresentation affecting the very basis of the claim. They contended that Rule 11 was invoked not to secure a rehearing merely because the Appellants were dissatisfied with the Original Dismissal Order, but to remedy the alleged procurement of that order through a materially false denial contradicted by the Respondent's own financial records.

13. The Appellants contended that the Impugned Order dated 16.07.2026 failed to deal with the substance of the fraud pleaded in IA-05/2023 and IA-06/2023. The Adjudicating Authority recorded that there was "nothing whatsoever" to suggest that the Original Dismissal Order had been obtained by fraud and observed that allegations of fraud were easy to make but difficult to substantiate. The Appellants submitted that these observations did not constitute a reasoned adjudication of their case, which was supported by the Respondent's unaudited balance sheet and ITR, rather than by bald assertions alone.

14. The Appellants submitted that the Adjudicating Authority failed to refer to or analyse either the unaudited balance sheet for FY 2017–18 or the ITR for AY 2018–19 while rejecting the allegation of fraud. They contended that the Impugned Order did not explain why the entries recording the loans as unsecured loans were insufficient to warrant examination of the Respondent's sworn denial. According to the Appellants, a finding that fraud had not been established could

not properly be returned without considering the very documents relied upon to establish it. The failure to engage with this material, they submitted, demonstrated non-application of mind and rendered the rejection of the recall applications unsustainable.

15. The Appellants further contended that the Adjudicating Authority incorrectly relied upon the Appellants' alleged inability to produce cogent evidence in the original Section 7 proceedings, without separately adjudicating whether the Respondent had procured the Original Dismissal Order through fraud or misrepresentation. They submitted that the original determination of the sufficiency of evidence and the subsequent examination of an allegation that the order itself had been procured by fraud were distinct matters. The Rule 11 proceedings required consideration of the alleged false statement, the contemporaneous financial records already placed on record and the ITR subsequently produced. By reverting to the Appellants' alleged failure to establish their case in the original proceedings, the Adjudicating Authority, according to the Appellants, left the central issue of fraud unexamined.

16. The Appellants submitted that the aforesaid failure was particularly material because the Adjudicating Authority had already accepted the legal proposition that an order obtained by fraud could be recalled. They contended that the Authority ought to have applied that principle to the specific facts and documents placed before it and recorded reasons for accepting or rejecting the allegation. The Appellants maintained that the Impugned Order, by declining to

engage with the documentary evidence while rejecting the allegation in general terms, failed to discharge the duty arising in the exercise of its recall jurisdiction and warranted appellate interference.

17. The Appellants challenged the observation in paragraph 5 of the Impugned Order that the bank statements showed purported transfers but were vague because they did not disclose the nature of the transfers as loans. They submitted that the bank statements could not properly be examined in isolation from the Respondent's own financial records. The unaudited balance sheet for FY 2017–18 specifically recorded the relevant amounts under "Unsecured Loans", while the ITR for AY 2018–19 independently corroborated the aggregate amount. According to the Appellants, these documents directly addressed the very question which the Adjudicating Authority considered unresolved from the bank statements.

18. The Appellants contended that the characterisation of the transfers as unsecured loans was not merely an assertion made by the Appellants for the purposes of litigation, but was reflected in the Respondent's own financial records, the authenticity and correctness of which, according to the Memoranda of Appeal, had not been disputed. They submitted that the finding of vagueness was reached without considering the cumulative evidentiary effect of the bank statements, the balance sheet and the ITR. Consequently, the Appellants maintained that the finding proceeded on an incomplete consideration of the

record and could not sustain the rejection of their case without an examination of the corroborative documents.

19. Without prejudice to their principal submission concerning fraud, the Appellants contended that the reasoning adopted in paragraph 5 of the Impugned Order was contrary to the applicable judicial precedents on the interpretation of "financial debt" under Section 5(8) of the code. They relied upon ***Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd.***, *Civil Appeal No. 2231 of 2021,* submitting that the definition of financial debt is expansive and does not expressly exclude even an interest-free loan. They further relied upon ***BDH Industries Ltd. v. Mars Remedies Private Limited***, *Company Appeal (AT) (Insolvency) No. 936 of 2020*, decided on 07.02.2022, wherein the NCLAT held that the Code does not prescribe the compulsory existence of an express agreement to establish a loan and its disbursement.

20. The Appellants also relied upon ***Nishit B. Patel v. Good Value Financial Services Pvt. Ltd***., *Company Appeal (AT) (Insolvency) No. 936 of 2020,* as cited in the Memoranda of Appeal, in support of their submission that the existence of financial debt is not necessarily dependent upon a formal written loan agreement. They contended that the absence of such an agreement could not, by itself, negate the existence of financial debt where the bank statements and the Respondent's own financial records were relied upon to establish the transaction. The Appellants further submitted that an RBI Master Circular or a regulatory Fair Practices Circular governing the conduct of NBFCs could not, without more, be

treated as modifying the statutory definition of financial debt under the code. They accordingly challenged the rejection of their case on the basis of the alleged absence of a written loan agreement, while maintaining that the documentary acknowledgment of the loans had not been properly considered.

21. The Appellants submitted that the Adjudicating Authority erred in observing that the burden of establishing the case rested upon the Appellants and could not be shifted entirely to the Respondent for production of the relevant documents. They contended that their case was not founded solely upon a demand that the Respondent produce evidence, but upon the bank statements and the Respondent's own financial records acknowledging unsecured loans. They further submitted that the Respondent's continuing failure to file statutory balance sheets with the Registrar of Companies, as reflected in its MCA master data, was relevant to the question of why the Appellants could not access the Respondent's financial records through the public domain.

22. The Appellants also contended that the Respondent's reply dated 09.10.2019 did not, according to their case, expressly deny receipt or utilisation of the amounts transferred, but instead denied the existence of a loan and financial debt. They submitted that the Adjudicating Authority failed to examine this distinction alongside the Respondent's entries recording the amounts as unsecured loans. According to the Appellants, the recall proceedings required the Authority to examine whether the Respondent's sworn denial was consistent with its own records and whether any misrepresentation had affected the Original

Dismissal Order. The Appellants maintained that the burden-of-proof reasoning adopted in the Impugned Order did not answer this separate question.

23. The Appellants submitted that the allegation of fraud was repeatedly supported by documentary material during the pendency of the Rule 11 proceedings. In addition to the affidavits dated 22.02.2023 placing the Respondent's ITR for AY 2018–19 on record, the Appellants relied upon an Additional Affidavit dated 13.08.2024, Written Submissions dated 03.06.2024 and 09.10.2025, and a Short Note dated 27.02.2026. The Memoranda of Appeal state that these documents were taken on record by the Adjudicating Authority and that screenshots of the DMS portal were produced to demonstrate their availability on the record.

24. The Appellants contended that, despite the aforesaid pleadings and documents being available, the Impugned Order did not address their specific case concerning the unaudited balance sheet, the subsequently discovered ITR, the Respondent's statutory non-compliance or the alleged false statement on affidavit. They submitted that the rejection of the recall applications without examining these materials deprived them of a reasoned determination of the principal ground raised under Rule 11. The Appellants accordingly maintained that the Impugned Order was liable to be set aside for failure to consider the material placed on record and for non-application of mind to the specific case pleaded.

25. Without prejudice to their other submissions, the Appellants contended that limitation ought not to defeat the exercise of recall jurisdiction where an order is alleged to have been procured by fraud and the material establishing the alleged fraud was discovered subsequently. They relied upon ***S.P. Chengalvaraya Naidu v. Jagannath***, ***A.V. Papayya Sastry v. Government of A.P***. and ***Angelo Brothers Ltd. v. Bennett, Coleman & Co. Ltd***., as cited in the Memoranda of Appeal, in support of their submission that an order procured by fraud may be recalled notwithstanding the passage of time. They further submitted that the ITR for AY 2018–19 was not available to them during the original Section 7 proceedings and was discovered only during the Rule 11 proceedings, while the Respondent's failure to file statutory balance sheets continued to impede access to its financial records. The Appellants maintained that the present appeals were filed within the period specified under Section 61(1) of the code and that the Impugned Order did not reject their applications on the ground of limitation.

26. Concluding their arguments, the Appellants requested this Appellate Tribunal to set aside the Impugned Orders and allow both appeals.

Findings

27. These two appeals are filed under Section 61 of the Code, challenging the common order dated 16.07.2026 of the Adjudicating Authority passed in I.A. No. 06/2023 in C.P. (IB) No. 2060 (PB)/2019 and I.A. No. 05/2023 in C.P. (IB) No. 2061 (PB)/2019, which were dismissed. Both applications were filed under Rule

11 of the NCLT Rules, 2016. They asked the Adjudicating Authority to recall its order dated 19.04.2022, by which it had dismissed the Section 7 petitions of the two Appellants against Cynosure Real Estates Pvt. Ltd. (the Corporate Debtor).

28. We note that the facts are almost the same and the questions are identical, hence both appeals are decided together. We have heard learned counsel for the Appellants on the question of admission. The Corporate Debtor has not appeared and no notice has been issued to it. For that reason, we confine ourselves to the question whether these appeals deserve admission. We make no finding on whether any debt is owed to the Appellants. Dismissal at this stage does not prejudice the Corporate Debtor.

29. It has been brought to our notice that Amarendra Financial Pvt. Ltd. paid the Corporate Debtor Rs. 1.50 crore on 05.04.2017 and Rs. 20 lakhs on 06.04.2017, a total of Rs. 1.70 crores. Similarly, Dinkar Commercial Pvt. Ltd. paid Rs. 2.00 crore on 03.04.2017 and Rs. 30 lakhs on 06.04.2017, a total of Rs. 2.30 crore. Both describe these as short-term unsecured loans. Both are NBFCs. The Corporate Debtor had been incorporated on 24.03.2017.

30. We have been advised that both the Appellants filed petitions under Section 7 of the Code on 22.08.2019. The Corporate Debtor filed its reply on 09.10.2019. The Appellants stated that the reply denied any loan and denied that the Appellants were financial creditors. It has been brought out to us that in January 2022, the Appellants placed on record an unaudited balance sheet of the Corporate Debtor for the year 2017-18. A note to that balance sheet lists

unsecured loans and shows Rs. 1,70,00,000 against Amarendra Financial Pvt. Ltd. and Rs. 2,30,00,000 against Dinkar Commercials Pvt. Ltd. The petitions were dismissed on 19.04.2022.

31. We note that the reasons for that dismissal are contained in para three of the impugned order. The Adjudicating Authority recorded that no loan agreement had been filed. The bank statement was not certified by the bank. The terms of repayment were not shown. No proof of service was given for the Appellants' letters dated 14.07.2017, 12.01.2018, 11.04.2018 and 30.04.2019. Not a single document from the Corporate Debtor acknowledging the debt had been produced. On this basis the Adjudicating Authority held that the amounts were not shown to be a financial debt under Section 5(8) of the Code.

32. We also take into consideration the fact that no appeal was filed against the order dated 19.04.2022. The Appellants have also declared that they have filed no other proceeding. They filed the recall applications on 29.12.2022. On 22.02.2023 they filed an affidavit placing on record the Corporate Debtor's income tax return for the assessment year 2018-19. Further affidavits and written submissions followed on 03.06.2024, 13.08.2024, 09.10.2025 and 27.02.2026. The recall applications were dismissed on 16.07.2026.

33. We note that the Adjudicating Authority accepted that it has inherent power to recall its orders and held that the power is used sparingly and not as a review, and that fraud is a ground on which it can be used. It then held that there was nothing to suggest fraud as the order of 19.04.2022 was passed after hearing the

Appellants, on their inability to produce cogent evidence. The onus was on them. Allegations of fraud were easy to make but difficult to prove, and bald assertions were not enough. It also observed that an NBFC must lend only on a formal written agreement, and referred to an RBI Master Circular on the Fair Practices Code dated 01.07.2015.

34. The Appellants' main complaint is that the impugned order does not mention the balance sheet or the income tax return, and that a finding of no fraud cannot stand without dealing with them. The appellants argued that the view on written agreements is contrary to the law and requested that the impugned order be set aside, the order of 19.04.2022 be recalled and the petitions be restored. In the alternative they ask for a remand.

35. Based on the broad facts noted above, we find that three questions arise. First, what is the scope of the recall power, and what can be examined in this appeal. Second, whether the order dated 19.04.2022 was obtained by fraud or misrepresentation on the Adjudicating Authority. Third, whether the way the Adjudicating Authority dealt with the plea calls for interference or remand.

Since all these issues are interconnected, interdependent, and interrelated, we shall treat them as a single issue and determine them in a conjoint manner in the subsequent discussions.

36. At first, we will deal with the scope of the recall powers of the Adjudicating authority or, for that matter, of this appellate tribunal against an order refusing

recall is an order of the Adjudicating Authority where an appeal lies against it under Section 61.

37. We are of the considered opinion that the law on the power of recall is now clear. A five-member bench of this Appellate Tribunal held in ***Union Bank of India v. Dinkar T. Venkatasubramanian & Ors.,*** Comp. App. (AT) (Ins.) No. 729 of 2020 (reported as 2023 SCC OnLine NCLAT 283) that the Tribunal has no power of review. It has an inherent power to recall its judgment, preserved by Rule 11 of its Rules. That power can be used where a procedural error has occurred, for example where a necessary party was not served. It can also be used on other grounds, one of which is fraud played on the Court in obtaining the judgment. The Hon'ble Supreme Court dismissed the appeal against that decision on 31.07.2023 in Civil Appeal No. 4620 of 2023 (***Union Bank of India v. Financial Creditors of Amtek Auto Ltd.***), saying that it agreed with the view of the five-member bench. Thus, it becomes clear that the outcome of this Appellate tribunal held by a five-member bench is now final.

38. We also know that in the case of ***Prabhjit Singh Soni (supra),*** the Hon'ble Supreme Court dealt with the same power in the hands of the Adjudicating Authority. It held that Rule 11 of the NCLT Rules, 2016 preserves the inherent power of the Tribunal, and that neither the Code nor the Regulations prohibit its use. It referred to Section 60(5)(c) of the Code. It then sets the limits. The power is to be exercised sparingly and not as a tool to re-hear the matter. Ordinarily an application for recall is maintainable on limited grounds. These include an order

passed without jurisdiction, an order passed without notice to a party who was affected, and an order obtained by misrepresentation of facts or by fraud on the Court or Tribunal resulting in gross failure of justice.

39. We need to appreciate that recall and review are different. A party who says the Tribunal made a mistake of fact or law, overlooked a document on the record, took a wrong view of the evidence, or has found new evidence later, is asking for a review or an appeal. The Adjudicating Authority has no power of review. It cannot use recall to do what it cannot do by review, even where the error is plain on the face of the record. The Adjudicating Authority said so in para 5 of its order, and it was right.

40. We are of the considered opinion that refusal of recall is a matter of judicial discretion, and this appellate tribunal cannot disturb the way it was exercised. Where the reasons given are incomplete, we can look at the record ourselves and decide whether the result is right. We do that here.

41. While dealing with such an application for recall, the adjudicating authority needs to be cautious, keeping in consideration the fact that a petition under Section 7 can lead to a moratorium and a change in the control of the company. Such petitions are meant to be decided quickly. A dismissal that is not appealed lets the company and its other creditors plan on that footing. If it could be reopened years later on a charge of fraud that does not hold, the speed and certainty that the Code promises would be lost. At the same time the power is real, and a proved fraud on the Tribunal must be undone whenever it is found.

The balance is struck by insisting on proof of the fraud. We apply that standard in the present case which sets the boundary of the present appeals. We are asked to decide whether recall was rightly refused. We are not asked to decide whether the order dated 19.04.2022 was right. That order was open to appeal under Section 61 of the code. The Appellants did not file one. A recall application cannot be used to get around the limitation for an appeal that was not filed. The prayer to restore the petitions follows only if recall was justified. The question is therefore narrow. Did the Appellants show that the order of 19.04.2022 was obtained by fraud or misrepresentation on the Adjudicating Authority?

42. We are of the considered opinion that the principle is settled on this issue. A judgment obtained by fraud on the court is a nullity, and a court or tribunal is not powerless to recall it as noted read civil cases by the Honourable Supreme Court where it has been stipulated that that no court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim. That case concerned awards obtained on a false account of how the injuries were caused, a fraud of a high degree that came to light afterwards. The Hon'ble Supreme Court recalled the words of Lord Denning that no judgment of a court can be allowed to stand if it has been obtained by fraud, for fraud unravels everything. ***Lazarus Estates Ltd. v. Beasley***, [1956] 1 QB 702. The decisions, and the nature of the wrong, show what a party must establish. There must be a false statement of fact, or a deliberate concealment of a material

fact that the party was bound to disclose. It must have been made knowingly or recklessly or making a representation known to be false, from which injury follows. The order must have been obtained because of it, so that went to the very basis of the decision. The other side, or the Court, must have had no fair chance to expose it at the time. And, in the words of ***Prabhjit Singh Soni*** **(supra),** there must be a gross failure of justice.

43. It is one settled principle of law that in such cases, the plea must also be specific. Where fraud is alleged, the party must set out full particulars, and the case is decided on the particulars. A general charge that the other side lied is not enough. Thus, the Tribunal which is being requested and asked to recall its own order on this ground must look at the specific material relied on and say why it does or does not show fraud.

44. In the above background, in order to judge whether the order of 19.04.2022 was obtained by any fraudulent act of the Corporate Debtor, we must first see what the Appellants had to prove in their Section 7 petitions. Prima facie, we are of the opinion that a financial creditor must show a financial debt owed to it and a default by the corporate debtor. A financial debt, under Section 5(8), is a debt disbursed against the consideration for the time value of money. Default, under Section 3(12), is non-payment of a debt that has become due and payable. The application in Form 1 must carry the particulars of the financial debt and the documents, records and evidence of default. The Adjudicating Authority has to

be satisfied, on the material that the financial creditor produces, that a default has occurred.

45. After examining the facts of the present case, in light of the discussion in preceding para elaborating certain basic facts which should be met to make a financial debt, we also find certain gaps (as noted in the order by the Adjudicating Authority in its order on 19 April 2022), which are material in the present case. Seen this way, the gaps noted on 19.04.2022 were gaps in proof of these very things. The want of a loan agreement and of the terms of payment went to the nature of the debt and the date on which it fell due. The uncertified bank statement went to the disbursal. The absence of proof of service of the letters went to demand and default. The absence of any acknowledgement by the Corporate Debtor went to the admission of liability. The balance sheet and the return, even taken at their highest, speak only to the last of these. We do not decide what the effect would have been had they been accepted. The point is a limited one. The order was passed on a failure of proof under several heads. The Corporate Debtor's reply was not the reason for it.

46. After hearing the pleadings set up before us by the Appellant, we find that the Appellants' case of fraud has three parts. One, the Corporate Debtor's reply dated 09.10.2019 was false, because its own books showed the loans. Two, the Corporate Debtor suppressed its income tax return for the assessment year 2018-19 throughout the Section 7 proceedings. Three, the Corporate Debtor never filed

audited balance sheets with the Registrar of Companies, which kept the Appellants from placing them on record. We take these in turn.

47. First, we take up the issue of reply. The Appellants describe it in two ways. In the facts and the grounds, the Appellants submitted that the Corporate Debtor denied that any loan was taken. In one of the grounds, the Appellant stated that the Corporate Debtor never denied receipt or utilization of the loan amounts and treated that as an implied admission. Both cannot be right. What the reply actually says matters, and it has to be read as it stands and not as the Appellants summarise it.

48. If the reply only denied that the Appellants were financial creditors, it took a stand on how the transaction should be characterised under Section 5(8) of the Code. That is a debt disbursed against the consideration for the time value of money. Whether a transfer of money meets that description was the very question the Adjudicating Authority had to decide. Money paid between companies may be a loan, an advance, a deposit or something else. A stand on that question, even a wrong one, is a legal position that the Tribunal is there to decide. It is not a false statement of fact.

49. If, on the other hand, the reply denied receipt of the money, it would be false on the Corporate Debtor's own books and on the bank statements the Appellants had filed. But that is not clearly the Appellants' case, and the reply must be read to see. Even then, the answer would not change, for the reasons.

50. The question whether the money was a loan was the matter in contest. Both sides placed their stands before the Tribunal. The Appellants had the chance to expose the weakness of the Corporate Debtor's stand, and they tried to do so with the balance sheet. When the Tribunal decided that question, it decided a contested point on the merits. That a party's stand on a contested point was weak does not make the decision on it a fraud on the Court. A knowingly false statement that the Tribunal accepted and acted on stands on a different footing, and the cases cited above would then apply.

51. As regard the issue of the balance sheet, we note that the Appellants themselves placed the unaudited balance sheet for 2017-18 on the record in January 2022. That was about three months before the order of 19.04.2022. So, the Adjudicating Authority had before it the Corporate Debtor's denial and the document said to contradict it. The Corporate Debtor was heard. The order records that the Authority heard both parties and perused the documents. We are of clear opinion that fraud on a court means that the court was deceived. A document put before the court by the very party who now alleges fraud was not kept from the court. If the Authority did not accept the balance sheet as proof, or did not mention it, the complaint is that it made an error. An error of that kind, even a manifest one, is a ground of appeal and not of recall.

52. The Appellants' own pleading point the same way. Ground II calls the Authority's disregard of the balance sheet "inadvertent". That word describes a mistake by the Tribunal. It does not describe a fraud by the Corporate Debtor.

The Appellants add that the mistake was "induced" by the Corporate Debtor's false averment. We do not see how. The Corporate Debtor did not hide the document. The Appellants filed it and argued on it.

53. The Appellants also argued that the Authority was swayed by the denial. The reasons for the order of 19.04.2022, as reproduced in the impugned order, do not show this. The Authority did not say that it accepted the Corporate Debtor's version. It found that the Appellants had not produced a loan agreement, a certified bank statement, the terms of the loan, proof of service of their letters, or any acknowledgement by the Corporate Debtor. Each of these is a gap in the Appellants' own proof. Under Section 7 it is for the financial creditor to place evidence of the debt and of the default before the Adjudicating Authority, which must be satisfied that a default has occurred. The order of 19.04.2022 was passed because that proof was found wanting. It was not obtained by the Corporate Debtor's reply.

54. The Appellants also argued that the Corporate Debtor never disputed the authenticity of the balance sheet. We find that Silence of that kind does not prove a document. In a Section 7 petition the Adjudicating Authority has to be satisfied with the material before it. It cannot treat the absence of a denial as proof of debt and default. Nor was the Corporate Debtor bound to say anything about a document that the Appellants produced late, at the rejoinder stage.

55. We also find that the Appellants relied rather too heavily on what the balance sheet proves. In this connection, we would like to refer to the ratio held

by the Honourable Supreme Court in case of the ***Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal***, *(2021) 6 SCC 366,* where the Honourable Supreme Court held that an entry in a balance sheet can amount to an acknowledgement of liability under Section 18 of the Limitation Act, 1963. It also held that whether it does depend on the facts of each case, including any caveats in the balance sheet or the auditor's report. That decision is about limitation. It does not hold that a balance sheet entry proves that money was disbursed against the time value of money, or fixes the date on which a debt became due and payable. The balance sheet here is unaudited. The Appellants have not explained and elaborated the details regarding who signed it, when it was approved, or how they came to have it. These are matters that had to be argued in an appeal against the order of 19.04.2022. we do not find merit in the contention of the appellant on this issue; the point was one for appeal and not for recall.

56. Now we look into points raised by the Appellant about the income tax return. This is the only new document. It was placed on record on 22.02.2023, after the order. The Appellants say the Corporate Debtor suppressed it. We do not find suppression as a respondent in a Section 7 petition has no duty to volunteer its tax returns to the applicant. The burden of proving debt and default lies on the financial creditor, who must furnish evidence of default with the application. If a financial creditor believes that the debtor holds a document that proves its case, it can ask the Adjudicating Authority to direct its production. The Adjudicating Authority has the power to do so. Nothing in the Appeal or pleadings show that

the Appellants asked for the return, or for any of the Corporate Debtor's books, at any time before 19.04.2022. A party cannot be said to have hidden a document that was never called for from it. Further, the return adds little. The excerpt in the memoranda shows one line, "Other loans and advances", of Rs. 24,62,80,069, forming part of "Total long-term borrowings". It names no lender. It matches only the grand total of the balance sheet note. In the balance sheet the same total is shown under "short term borrowings". So, the return repeats a total figure, and the two documents do not even classify it alike. The only document that names the Appellants is the balance sheet note, and that was already before the Tribunal. The Appellants say that two independent filings record their loans under the specific head "Unsecured Loans". The excerpt does not bear this out. Both documents were also prepared by the Corporate Debtor from its own books, so they are not independent of each other. The Appellants pleaded that the return was within the exclusive knowledge and custody of the Corporate Debtor, and also that they discovered it in February 2023. Both cannot be wholly true. The appeal does not indicate how or from whom the Appellants obtained it, or what stopped them from getting it earlier. The Appellants themselves submitted that the return had been filed before the Corporate Debtor's reply of 09.10.2019. They had a copy of the unaudited balance sheet by January 2022, and do not explain why the route by which they got it could not also have produced the return. If they could obtain the return in 2023, they could have sought it in the two years and eight months the petitions were pending. A document that could have been

brought out in the original proceedings with ordinary care cannot be called fraudulently kept back. At its highest the return is new evidence found after the order. Discovery of new evidence is a ground for review. The Adjudicating Authority has no power of review. New evidence can support recall only if its non-production was itself a fraud on the Tribunal, and for the reasons above it was not. If new evidence found later could reopen a dismissed petition, no order under the Code would be final. Recall would become review under another name. We are of the considered opinion that a recall must not become a tool to re-hear the matter.

57. The Appellants argue on the question of onus that the Authority placed the whole burden on them and ignored the Corporate Debtor's conduct. In the Section 7 petition the burden was on the Appellants, and the Tribunal was right to say so. In the recall applications the burden was on the Appellants again, this time to prove fraud. They had to show that the order was obtained by it. For the reasons given, they did not.

58. Several grounds in the appeals are really arguments on the merits of the original petitions. The submissions that a balance sheet entry is an acknowledgement under Section 18 of the Limitation Act, that a written agreement is not needed to prove a loan, and that the bank statements were enough, would have formed the content of an appeal against the order of 19.04.2022. They are not grounds for recall, and we do not examine them as such.

We have looked at them only to the extent that they bear on whether any fraud was practised.

59. The Appellants also argue that fraud can be raised at any time and that limitation is no bar. That is correct where fraud is established. It does not help where fraud is not made out. An unproven claim of fraud cannot be used to get around the limitation for an appeal against the original order. We do not hold the recall applications to be late. The point is that the Appellants chose recall over appeal, and recall has a narrower field. A party whose petition was heard, who filed its documents and who lost for want of proof has not suffered such a failure through any act of the other side. The remedy for a mistake by the Tribunal was an appeal. The position would be different if the Appellants had been kept out of the proceedings, or if a document that they could not otherwise reach had been withheld from them. That is not the case.

60. We are of the view that the question in a recall application is not whether a party's stand was creditable, but whether the order under challenge was obtained by a fraud on the Tribunal. On the material before us, it was not. The Appellants have not shown a false statement to the Tribunal on which the order rested, or a concealment of a document that the Corporate Debtor was bound to produce and that the Appellants could not otherwise get.

61. We are of the considered opinion that even the case of ***Prabhjit Singh Soni* (supra)** does not help the Appellants. That was a case of an approved resolution plan that did not deal, as the Code requires, with the claim of a statutory authority

that held a charge over the corporate debtor's land. The Hon'ble Supreme Court allowed recall in that setting. The present case is of a different kind. There is no resolution plan and no third party. The Appellants were the petitioners. They were heard, they filed their documents, and they failed for want of proof. Their remedy was an appeal.

62. The Appellants have not shown that the order dated 19.04.2022 was obtained by fraud or misrepresentation on the Adjudicating Authority. The documents they rely on either were already before the Authority or are, at most, new evidence found after the order. The order was passed on the Appellants' own failure of proof and not on the Corporate Debtor's reply. The Adjudicating Authority was right to refuse recall, though its reasons were thin. The appeals do not disclose a case for admission.

63. We state that the applicant, who wants to recall the order of the Adjudicating authority must plead the false statement or concealment with particulars. The applicant must show that it was made knowingly or recklessly to the Tribunal, that the order was obtained because of it, and that the applicant had no fair chance to meet it at the time. A document that was already on the record, or that the applicant could have called for in the original proceedings, cannot support a charge of fraud. A mistake in dealing with such a document is for appeal. New evidence found later is not a ground for recall. In the present case, we do not find any reason or cause that support the pleadings of the appellants.

These findings apply to both Comp. App. (AT) (Ins) No. 1839 of 2026 and Comp. App. (AT) (Ins) No. 1840 of 2026.

64. In view of above detailed examinations of facts and law, we find no merit in the appeals. The appeals fail and stand rejected. There would be no orders to cost and, IA if any, stand closed.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

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