NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1568 of 2026

(Arising out of the Order dated 09.09.2026 passed by the Ld. National Company Law Tribunal, Ahmedabad Bench, Court – II in C.P. (IB) No. 346 (Ahm) Of 2025]

IN THE MATTER OF:

Mr. Santu Karar,
one of the members of the suspended Board of
Directors of M/s Oscorp Industries Private Limited,
Balitikuri, Surkimill,
Howrah - 711113,
West Bengal
E-mail: skarar20@gmail.com

…Appellant

Versus

1. **Stemztech Industries Private Limited**,
having its registered office at Unit No. 108,
13st Floor, Tower B, Emaar
Digital Greens, Sector 61,
Gurgaon, Haryana - 122102;
E-mail: jyotig@stemzglobal.com

…Respondent No.1

2. **Mr. Raj Singhania**,
Interim Resolution Professional of Oscorp Industries Private Limited,
Office at Central Plaza, 5th Floor, Room No. 5A,
41 B.B. Ganguly Street,
Kolkata - 700012, West Bengal;
E-mail: rajsinghania_ca@yahoo.co.in

…Respondent No.2

Present

For Appellant:	Mr. Krishnendu Datta Sr. Adv. with Mr. Rajesh Sen, Ms. Shibani Bhattacharjee, Mr. Animesh Paul & Mr. Harsh Gurbani, Advocates.
For Respondent:	Mr. Kumarjit Banerjee, Ms. Sanchari Chakraborty, Mr. Devanshu Lahing & Mr. Aadil Naushad, Advocates for R-1

J U D G E M E N T

(26.11.2026)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellant i.e., Mr. Santu Karar, one of the members of the suspended Board of Directors of M/s Oscorp Industries Private Limited,under Section 61 of the Insolvency and Bankruptcy Code, 2016 **('Code')** against the Order dated 10.08.2026 **("Impugned Order")** passed by the Hon'ble National Company Law Tribunal, Kolkata Bench, Court- II **("Adjudicating Authority"**) in C.P. (IB) No. 126 (KB) OF 2025.

Stemztech Industries Private Limited, is the Respondent No.1 herein.

Mr. Raj Singhania, Interim Resolution Professional of Oscorp Industries Private Limited, having registration no. IBBI/IPA-00l/IP-P00188/2017-18/10367 is the Respondent No.2 herein.

2. The Appellant submitted that the commercial relationship between the parties originated from negotiations concerning joint funding and execution of Railway projects at Bilaspur. The correspondence exchanged prior to execution

of the Memorandum of Understanding (MOU) dealt with project cash flows, expenses, procurement, allocation of responsibilities and successive drafts of the MOU. No proposal for an independent loan outside the contemplated commercial arrangement was ever discussed between the parties.

3. The Appellant stated that on 20.12.2022, the parties executed the MOU, which contemplated funding of tender costs and Earnest Money Deposits (EMD), supply of materials and machinery, generation of target revenue and joint bidding as a consortium. Under Clause A of the MOU, Respondent No. 1 was entrusted with responsibilities relating to financing, approval of expenses, routing of project receipts, supervision, maintenance of project accounts and procurement. Clause A(11) specifically provided for equal sharing of the net profit or loss arising from each financed project, with final settlement to take place after receipt of the last payment from the concerned tendering authority. The Appellant further stated that the Bilaspur Railway projects are still ongoing and the final payments from the Railways have not yet been received. The MOU was for a period of three years and also preserved the antecedent project obligations even upon its termination.

4. The Appellant contended that the minutes of the meeting dated 20.12.2022, circulated on 21.12.2022, which remain undisputed, recorded the details of the Bilaspur projects, projected cash flows, operational arrangements and four security cheques furnished pursuant to Clause A(2) of the MOU. Therefore, the security cheques were furnished much before the execution of

the first Loan Agreement and could not subsequently be represented as security issued exclusively under the Loan Agreements.

5. The Appellant submitted that, at the insistence of Respondent No. 1, an Addendum dated 30.01.2023 was executed following its email dated 17.01.2023, wherein Respondent No. 1 expressed difficulty in advancing interest-free funds and accounting for the proposed project investment. The Addendum was expressly executed "in addition to" the MOU. Although it described the proposed funding of Rs. 2 crore as a loan carrying interest at 10% per annum for a period of three months, it specifically restricted the utilisation of the funds towards operational expenses of the two identified Bilaspur projects. The Addendum also preserved Respondent No. 1's entitlement to 50% of the project profits and provided that the interest paid would be adjusted against such profit entitlement. Thus, the Appellant contended that the loan, interest and repayment provisions were merely components of the continuing project-funding and accounting arrangement and could not be isolated from the MOU.

6. The Appellant stated that, thereafter, at the insistence of Respondent No. 1, Loan Agreements dated 11.02.2023 and 10.03.2023 were executed. Under the first Loan Agreement, an amount of Rs. 1.50 crore was contemplated, whereas under the second Loan Agreement, Rs. 1 crore was contemplated, out of which only Rs. 75 lakh was actually disbursed. Accordingly, the total amount infused by Respondent No. 1 towards the Bilaspur projects was Rs.

2.25 crore, which constituted the entirety of its financial contribution to the said projects.

7. The Appellant contended that the correspondence exchanged between the parties, including during the period between the two Loan Agreements, clearly demonstrated the project-specific nature of the funding. The communications concerned project teams, procurement of wagon components, implementation activities and inspection of materials at the Bilaspur site. Even after execution of both Loan Agreements, the parties continued extensive correspondence regarding site visits, project progress, expenditure, cash-flow requirements, further funding, escrow arrangements, Railway receipts and notices received from the Railways. Such correspondence continued even beyond the alleged dates of default, thereby establishing that the MOU and the integrated project arrangement continued to govern the relationship between the parties.

8. The Appellant further submitted that on 10.05.2023, the Corporate Debtor forwarded its ledger to Respondent No. 1, wherein the amount of Rs. 2.25 crore was expressly described as "STEMZ investment". The receipt and contents of the said ledger were never disputed. Further, on 30.06.2023, even after execution of both Loan Agreements, Respondent No. 1 itself forwarded a draft Second Addendum to the MOU. These contemporaneous documents clearly establish that the parties continued to recognise the MOU as an

operative arrangement and that the Loan Agreements had not superseded or extinguished the underlying project arrangement.

9. The Appellant stated that on 08.04.2024, Respondent No. 1 sought confirmation of the principal amount of Rs. 2.25 crore along with accrued interest. However, through emails dated 09.04.2024 and 18.04.2024, the Corporate Debtor declined to confirm the interest claim, reiterated that the arrangement was governed by the integrated MOU and Addendum, and requested the balance project funding. Thus, the claim relating to interest had already been disputed by the Corporate Debtor even before issuance of the Demand Notice.

10. The Appellant submitted that Respondent No. 1 issued a Demand Notice dated 30.05.2024, invoking the MOU, Addendum and both Loan Agreements and alleging breaches relating to the projects. The Corporate Debtor disputed the demand through its replies dated 14.06.2024 and 17.07.2024. Thereafter, Respondent No. 1 separately purported to terminate the MOU only on 27.11.2024, almost two years after its execution and long after the execution of the Loan Agreements. This subsequent termination itself demonstrates that the MOU continued to subsist even after the Loan Agreements had been executed.

11. The Appellant contended that on 12.04.2025, Respondent No. 1 filed an Application under Section 7 of the Code, claiming an amount of Rs. 2,74,91,035/- and alleging defaults dated 13.08.2023 and 20.09.2023. Significantly, the Section 7 Application itself pleaded that the Loan

Agreements had been executed pursuant to the Addendum and the MOU. Respondent No. 1 did not plead that the MOU or Addendum had been superseded or extinguished. Further, Respondent No. 1 failed to disclose the material contemporaneous correspondence exchanged between the parties, which was directly relevant to determining the true nature of the transaction.

12. The Appellant stated that the Impugned Order itself records the recitals of the MOU relating to joint bidding and project financing, the division of responsibilities between the parties and the equal sharing of profits and losses and also records the project-specific purpose of the Addendum and the provision for adjustment of interest against the Financial Creditor's share in project profits. Further, Impugned order reproduces the relevant reasoning in Realpro Realty Solutions Pvt. Ltd. However, despite recording these material facts and principles, the Adjudicating Authority failed to apply the same to the facts of the present case.

13. The Appellant submitted that the fundamental requirement for admission of an Application under Section 7 of the Code is the existence of a financial debt within the meaning of Section 5(8), followed by proof that such debt had become due and payable and that a default had occurred. However, the Adjudicating Authority proceeded by referring to Section 5(7), which defines a Financial Creditor, without properly examining whether the admitted disbursement was made against consideration for the time value of money. The Appellant contended that the nomenclature of a document as a Loan

Agreement, the existence of a stipulated repayment date or an interest clause cannot, by themselves, establish a financial debt without examining the real substance and commercial character of the transaction.

14. The Appellant submitted that Clause 19 of the Loan Agreements has been incorrectly interpreted by the Adjudicating Authority. The said clause operates only with respect to the subject matter of the respective Loan Agreement and refers to the supersession of previous communications concerning such subject matter. It does not expressly identify or terminate the MOU or the Addendum. Therefore, Clause 19 could not be interpreted to extinguish the wider three-year MOU or the non-conflicting provisions relating to project execution, reciprocal obligations, supervision, maintenance of accounts and equal sharing of profits and losses.

15. The Appellant contended that of the Impugned Order expressly proceeds on the assumption that the MOU and Addendum were not superseded. Having accepted this position, the Adjudicating Authority was required to interpret all the contractual instruments harmoniously and consider the reciprocal rights and obligations of the parties. It could not selectively rely upon the repayment provisions of the Loan Agreements while ignoring the continuing project obligations, profit-sharing arrangement and accounting mechanism forming part of the MOU and Addendum.

16. The Appellant submitted that the Addendum dated 30.01.2023 was executed at the insistence of Respondent No. 1 and expressly stated to be in

addition to the MOU. It identified the two Bilaspur projects for which the funds were to be utilised, preserved Respondent No. 1's entitlement to 50% of the project profits and provided for adjustment of interest against such entitlement. Consequently, Respondent No. 1 could not claim both the stipulated interest and its undiminished 50% share in the project profits. The interest provision was, therefore, an inter-account adjustment forming part of the overall project return and not an independent commercial return detached from the project arrangement. The Adjudicating Authority failed to examine the legal effect of this adjustment mechanism upon the nature, quantification and due date of the alleged debt.

17. The Appellant further contended that the total amount actually infused by Respondent No. 1 was only Rs. 2.25 crore and that Clause 6 of each Loan Agreement restricted the utilisation of the funds towards the identified project purposes. However, the Impugned Order erroneously proceeded on the basis that the entire contractual amount of Rs. 1 crore under the second Loan Agreement had been disbursed, despite the admitted fact that only Rs. 75 lakh was actually released. Thus, the Adjudicating Authority failed to correctly appreciate the actual amount disbursed by Respondent No. 1.

18. The Appellant contended that the contemporaneous minutes of the meeting dated 20.12.2022, circulated on 21.12.2022, clearly established that the four security cheques had been furnished under Clause A(2) of the MOU. These cheques were issued almost two months before the first Loan Agreement

dated 11.02.2023. Therefore, the description of the said cheques in the Section 7 Application as security furnished under the subsequent Loan Agreements was factually incorrect. The Adjudicating Authority failed to consider this material discrepancy.

19. The Appellant further submitted that the contemporaneous financial records also supported its case regarding the project-investment character of the transaction. The ledger forwarded on 10.05.2023 described the amount of Rs. 2.25 crore as "STEMZ investment", whereas the audited financial statements classified the amount as an advance from project partners under the MOU. Further, the Corporate Debtor had expressly declined to confirm the accrued interest claimed by Respondent No. 1 in April 2024. Although accounting entries may not be conclusive by themselves, these records corroborated the consistent stand of the Appellant and were required to be considered along with the contractual documents and subsequent conduct of the parties.

20. The Appellant submitted that the Impugned Order incorrectly characterised the subsequent emails as acknowledgments of liability without examining their contents in their entirety. The communications, when read as a whole, merely reflected proposals for refund of the amounts invested under the MOU upon receipt of Railway payments and requests to await the realisation of such payments. These communications reinforced the project-linked nature of the arrangement and could not be construed as unequivocal

admissions of an independent financial debt, compounded daily interest or the specific dates of default pleaded by Respondent No. 1.

21. The Appellant contended that the existence of a financial debt and default had to be established as on the date of filing of the Section 7 Application. Subsequent settlement discussions or proposals for refund of invested amounts could, at best, constitute relevant evidence regarding the parties' dealings, but could not create missing jurisdictional requirements or retrospectively alter the original nature of the transaction. Accordingly, subsequent communications could not cure the failure of Respondent No. 1 to establish the existence of an independent financial debt under Section 5(8) of the Code.

22. The Appellant further submitted that of the Impugned Order merely records a conclusion that default had occurred without determining the amount legally due or identifying the operative date of maturity and default. The Adjudicating Authority failed to examine the contractual mechanism for adjustment of interest against project profits, the refusal of the Corporate Debtor to confirm the interest claim and the settlement mechanism linked with project accounts and Railway receipts. Since the Bilaspur Railway projects are still active and the final payments from the Railways have not been received, the project-accounting and settlement mechanism under Clause A (11) has not yet reached its contractual conclusion.

23. In view of the aforesaid facts and circumstances, the Appellant contended that the Impugned Order is contrary to the contractual documents, contemporaneous correspondence, financial records and settled principles of law governing the determination of financial debt under Section 5(8) of the Code. The Adjudicating Authority failed to appreciate the integrated nature of the transaction, overlooked material evidence, incorrectly interpreted the contractual provisions and failed to return reasoned findings regarding the existence, quantification and default of the alleged financial debt. Accordingly, the Appellant submitted that the Impugned Order is legally unsustainable, unreasonable and perverse and is liable to be set aside.

Findings

24. We note that this appeal is filed under Section 61 of the Code by Mr. Santu Karar, a director of Oscorp Industries Private Limited i.e. the Corporate Debtor. He challenges the order dated 10.08.2026 passed by the Adjudicating Authority by which the Adjudicating Authority admitted the application of Stemztech Industries Private Limited ie the Financial Creditor under Section 7 of the Code, declared a moratorium under Section 14 and appointed Mr. Raj Singhania as Interim Resolution Professional.

25. We heard counsel on 28.10.2026 and reserved judgment. The written submissions filed after the hearing have been factored into. This Appellate Tribunal passed an interim order on 27.08.2026. The Appellant then furnished

a fixed deposit of Rs. 2,25,00,000. The interim order continues to operate since then.

26. It has been brought to our notice that the Corporate Debtor does work for the Railways. We note that by a Memorandum of Understanding dated 20.12.2022, the two companies agreed to work together on tenders floated by the Railway authorities. We also note that the recitals, state that both parties wanted to raise the target revenue from the tenders by at least 20% year on year, that the Financial Creditor would give financial assistance on the terms set out in the MoU, and that the parties would bid jointly as a consortium for some tenders.

27. We have taken into consideration that the Clause A (11) of the MoU provides that the "Net Profit/Loss for each Financed Project shall be shared equally i.e. 50-50". Under Clause B (2), for a joint bid, the cold rolled formed work was to be executed by the Financial Creditor unless it chose otherwise, and the Financial Creditor may or may not finance the Corporate Debtor's scope of work. The Adjudicating Authority itself found, that the Financial Creditor was responsible for financing and funding the projects and the Corporate Debtor for executing the work.

28. It has been brought to our notice that on 30.01.2023 the parties signed an Addendum to the MoU. It was made for two existing Bilaspur tenders (CA No. MECH/BSP/2019/005/Renewal 450 BCN and CA No. MECH/BSP/2020/005/50 BOXN). The Financial Creditor was to give a loan

of Rs. 2 crores at 10% per annum, for three months, for the operational expenses of those two tenders as per the cash flow agreed between the parties. It was also agreed that the Financial Creditor would raise an invoice for "Project Management/Business Consultation Fees" equal to 50% of the profit of each tender within seven days of its completion, as per Clause 11 of the MoU. The invoice was to be adjusted against payments received from the Railways by the Corporate Debtor and passed on to the Financial Creditor under Clause 4 of the MoU. Clause 4 of the Addendum adds that the fee shall be determined after adjustment of Interest paid on loan from overall Profits of the said project/tender and shall also be paid as per Clause 11 of the Original MOU.

29. It has been brought to our attention that two Loan Agreements followed. The first, dated 11.02.2023, was for Rs. 1.50 crore. The second, dated 10.03.2023, was for Rs. 1 crore on similar terms. Each carried interest at 10% per annum compounded daily, a term of six months from the drawdown date, and repayment within seven days of maturity by demand draft. Clause 19 of the first Loan Agreement stipulates that it shall constitute the entire agreement between the parties and shall supersede and override all previous communications, either oral or written, between the parties with respect to subject matter of loan agreement and any contrary agreement or understanding shall not be binding upon any party.

30. It is undisputed fact that the amount actually paid by the Financial Creditor was Rs. 2,25,00,000, in tranches between February and March 2023 which is Rs. 25 lakhs less than the combined face value of the two Loan Agreements. We observe that the record before us shows that the parties went on dealing with each other on the projects after the Loan Agreements were signed. On 02.05.2023 and 03.05.2023 the Financial Creditor asked for a head-wise expense requirement report for May 2023 and a progress report. In mid-June 2023 the Corporate Debtor wrote that it was paying for the work from its own pocket and asked for funds, as the Railways were threatening to terminate the tender if work did not resume from 26.06.2023. It has also been claimed that on 30.06.2023, the Financial Creditor sent a draft second addendum to the MoU, which was never signed. A meeting on 19.07.2023 decided that an escrow account would be opened for further investment and Railway receipts. On 20.10.2023, the Financial Creditor wrote that opening the escrow account would take time and that work should resume out of the Railway payments.

31. It is noted that on 08.04.2024, the Financial Creditor asked the Corporate Debtor to confirm the transactions and to sign a balance confirmation. On 18.04.2024 the Corporate Debtor refused to confirm interest and said that project funds remained unpaid. A demand was made on 30.05.2024 and was denied. The Corporate Debtor's letter of 17.07.2024 said that under the MoU the Financial Creditor had agreed to invest about Rs. 4.8 crore as per the detailed cash flow, that profit and loss were to be shared 50:50 on the ongoing

work contracts, and that the Loan Agreements were only formal, to show transfer of funds in the books.

32. We note that the Financial Creditor filed the Section 7 application in 2025 and after it was filed, the Corporate Debtor wrote on 23.08.2025 and 11.09.2025. The Adjudicating Authority has taken these emails as an acknowledgement of liability and as an agreement to refund the amount paid by the Financial Creditor, and as a request to wait for payment from the Railways. Some further documents are relied on before us. The ledger shared by the Corporate Debtor on 10.05.2023 shows the Rs. 2.25 crore as "STEMZ investment". The audited balance sheet shows Rs. 225 lakhs as at 31.03.2024 under the head "Advance from Project Partners (As per MOU)". The minutes of the meeting held on 20.12.2022, shared the next day, record that four security cheques were handed over under Clause A (2) of the MoU, long before the first Loan Agreement. It has been pleaded that the Financial Creditor itself terminated the MoU by email on 27.11.2024, and the Corporate Debtor disputed that termination on 05.12.2024.

33. It is the settled legal position that the Section 7 application can be filed only by a financial creditor, that is, a person to whom a financial debt is owed. The Adjudicating Authority must be satisfied that a default has occurred, that the application is complete and that no disciplinary proceeding is pending against the proposed resolution professional. The Adjudicating Authority admits the application if so satisfied (Section 7(5)(a)). The default must be of

at least Rs. 1 crore (Section 4). It presupposes that the applicant has a financial debt in the first place.

34. We need to appreciate that the Financial debt means "a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money" and includes the items in clauses (a) to (i) of Section 5(8). The Hon'ble Supreme Court has held that two things must be present: disbursal of money to the borrower, and disbursal against consideration for the time value of money as laid down in the case of *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*, (2019) 8 SCC 416, and *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Ltd.*, (2020) 8 SCC 401. We may also note that Clause (f) stipulates that any amount raised under any other transaction, having the commercial effect of a borrowing, is to be treated as financial debt. The Honourable Supreme Court has also held that an advance can be a financial debt even if it carries no interest, if it has the commercial effect of a borrowing as stipulated in the case of *Orator Marketing (P) Ltd. v. Samtex Desinz (P) Ltd.*, (2023) 3 SCC 753.

35. Now we look into the aspect as to how is a transaction to be classified when it is recorded in writing. The Honourable Supreme Court answered in *Global Credit Capital Ltd. v. Sach Marketing (P) Ltd.*, (2024) 9 SCC 482 (2024 INSC 340). At paragraph 27.3 it was held: "While deciding the issue of whether a debt is a financial debt or an operational debt arising out of a transaction covered by an agreement or arrangement in writing, it is necessary to ascertain

what is the real nature of the transaction reflected in the writing." It may therefore be inferred that the name the parties give to a document is therefore not the end of the matter, although this will be of very important and significant bearing in understanding the transaction per se. In other words, it may be argued that an agreement that calls itself a loan may not be one whereas, on the other hand, an agreement that does not use the word may be. Therefore, what is important is that we must read the agreements as a whole, in its entirety and, where several documents belong to one transaction, these also need to be read together.

36. We may state that in plain terms, time value of money is the price paid for having money now instead of later. A lender is paid for waiting, and its claim is fixed. It is entitled to its principal and its return whether the borrower's business does well or badly. A person who puts money into a venture is paid for something else. It takes the risk of the business, and what it gets back rises or falls with the result. We need to appreciate that the Code treats the first kind of person as a financial creditor. It does not treat the second in the same way, whatever the document is called. A mixed arrangement has to be placed on one side of this line by looking at what the funder was actually promised.

37. We may refer to the decision of the Hon'ble Supreme Court in the case of *Global Credit* (supra) which itself shows how the test works. There the amounts were security deposits under business agreements. They were returnable, they carried a contractual duty to pay interest which the accounts

reflected, and the payments had no relation to the services to be rendered. The Honourable Supreme Court found a financial debt. The method was the same as the one we follow here i.e. find the real nature of the transaction. The answer may be different because the facts may be different.

38. It is a settled position of law that if a financial debt and a default are shown and the application is complete, admission of the application and the CIRP follows, in the ordinary course. Solvency of the Corporate Debtor is no answer. The Corporate Debtor pleaded before the Adjudicating Authority that it is solvent. We need not allow this appeal because the Corporate Debtor is solvent. Our enquiry is to find out whether the Financial Creditor had a financial debt at all.

39. We may also note that the Section 7(3) requires the applicant to furnish the record or evidence of default, and Section 7(4) requires the Adjudicating Authority to ascertain the default on the basis of the evidence furnished by the applicant. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 requires the applicant to file Form 1 with the documents it relies on. The applicant has to show both a financial debt and a default. It may be argued that the enquiry at this stage is summary, and the Adjudicating Authority does not try a civil suit. However, we need to appreciate that a summary enquiry is not a shallow one. When the Corporate Debtor places documents before the Adjudicating Authority which show that the claim arises from a wider arrangement, the Adjudicating Authority has to take into

consideration these documents before it records its satisfaction. A claim that turns on the reading of documents is decided on the documents.

40. This Appellate Tribunal has applied the real nature test to money put into joint projects. In ***Ansal Housing Ltd. v. Samyak Projects Pvt. Ltd.*****,** Comp. App. (AT) (Ins.) No. 542 of 2023, the agreement carried 24% interest compounded monthly, a demand promissory note and post-dated cheques. It was still held to be investment for profit, because it was linked to joint venture agreements with reciprocal rights, common participation and shared profit and loss.

41. Similarly, in the case of ***Realpro Realty Solutions Pvt. Ltd. v. Sanskar Projects and Housing Ltd.*****,** *Comp. App. (AT) (Ins.) No. 374 of 2023,* it was held by this Appellate Tribunal that, the agreement was called a "profit sharing loan". It was held not to be a financial debt because the parties had pooled resources in an agreed ratio and shared profits, losses and costs, when the agreement was read in a composite and holistic manner.

42. In ***Airwill JKM Infrastructure Pvt. Ltd. v. Cadillac Infotech Pvt. Ltd.*****,** *Comp. App. (AT) (Ins.) Nos. 1187 and 1188 of 2025*, a part of the amount was refundable under the MoU, yet this Appellate Tribunal found that the money was paid for joint development of plots and applied paragraph 27.3 of *Global Credit*.

43. In ***Meck Pharmaceuticals and Chemicals Pvt. Ltd. v. Accurate Infrabuild Pvt. Ltd.*****,** *Comp. App. (AT) (Ins.) No. 544 of 2024*, an advance tied to a share in project profits was held not to be a financial debt. In ***Ansal***

Housing*, *Realpro* and *Airwill JKM (Supra) the creditor was left free to seek its remedy elsewhere.

44. We find nothing in these decisions that departs from ***Global Credit (supra)*.** They apply it. They are also tied to their facts. They do not say that every project advance with a profit share is investment. The test is substance, and the answer depends on the documents and on how the parties behaved. We bear this in mind in what follows. We also see no conflict among these decisions.

45. It is observed that the Adjudicating Authority began on the right footing. It framed the matter as whether the MoU, the Addendum and the Loan Agreements amounted to a joint venture or to a loan granted to complete the projects. It recorded the features of the arrangement and noted at that a clear division of responsibility and sharing of profit are signs of reciprocal rights and obligations. It reproduced the reasoning of ***Realpro (supra)*.** The question was thus identified by the Adjudicating Authority. However, it seems that the question was not answered as the order turns to Clause 19 of the Loan Agreement. It then assumes, without deciding, that the MoU and Addendum were not superseded, and notes the interest adjustment in the Addendum. It next relies on the emails of 23.08.2025 and 11.09.2025 and then stated that the Financial Creditor clearly comes within the definition of Financial Creditor and that it advanced Rs. 1.50 crore and Rs. 1 crore at 10% compounded daily. We are of the view that having found the features of a joint venture in paragraphs

34 to 40, the order does not say why the arrangement was nevertheless a loan. We are of view that at the admission stage, the Adjudicating Authority is supposed to look into a few aspects before allowing the Section 7 application or otherwise. Where the reply to a Section 7 application places on record an MoU or joint venture papers connected with the loan papers, the Adjudicating Authority should identify the documents that make up the transaction. It should say which clauses govern the use of the money, the return and the final settlement and how it reconciles those clauses with the loan terms. A short, reasoned finding on these points is enough. The task is not heavy, but it cannot be skipped, and an order that skips it is exposed to being set aside.

46. We have no hesitation to record that there is no dispute about the first limb of Section 5(8). The Financial Creditor paid Rs. 2.25 crore to the Corporate Debtor, and the Corporate Debtor accepts receipt. The dispute is on the second limb, that is, whether the money was paid against consideration for the time value of money. We have gone through the MoU, the Addendum and the Loan Agreements together. They were signed by the same two parties within about three months. They deal with the same two Bilaspur tenders. They refer to one another. The Section 7 application itself, as the Impugned order records that the Addendum was made under the MoU and that the Loan Agreements were then signed under the Addendum. It also records that the loan term would change if the Addendum was modified. The Adjudicating Authority itself proceeded, on the footing that the MoU and the Addendum

were not superseded. These documents form one transaction, and its real nature has to be found from all of them. The record also shows that further funding by the Financial Creditor was itself in issue. The Corporate Debtor's letter of 17.07.2024 says that about Rs. 4.8 crore was to be funded as per the cash flow, and the Financial Creditor paid Rs. 2.25 crore. The correspondence of mid-2023 shows work slowing for want of funds. We do not decide who was at fault, and only note that the obligations that run both ways, on funding and on execution, mark a joint arrangement and not a loan.

47. We will look into the aspects as to what the money was given for and who controlled it. It was not given for the Corporate Debtor to use as it pleased. As the Impugned order records that the loan was agreed to be granted "for operational expenses of two tenders as per cash flow agreed between the parties". Under the MoU the Financial Creditor was to finance and fund the projects, and the Corporate Debtor was to carry out the work. It has been brought to our notice that after the money was paid, the Financial Creditor asked for head-wise expense requirement reports and progress reports, and the parties discussed an escrow account for further investment and Railway receipts. The Loan Agreements are said to restrict use of funds to the project purposes, and the MoU to give the Financial Creditor a say in expenses and procurement and in the routing of Railway receipts. We observe that this is how a joint project was run. It is not how an ordinary loan to a borrower is run.

48. We would also examine the aspects of risk and return to understand the real nature of the transaction. Clause A (11) of the MoU says net profit or loss of each financed project is to be shared equally. The Financial Creditor was therefore to bear half of any loss. Prima facie, we are of the considered opinion that a lender does not share the borrower's loss and therefore a party that carries half the loss of a venture cannot say that its money was kept apart from the venture. The Addendum then gives the Financial Creditor 50% of the profit of each tender as a fee, and Clause 4 of the Addendum brings the interest on the loan into the calculation. The word fee does not matter, for the same reason that the word loan does not. The sum is fixed at 50% of the project profit and is tied to Clause 11 of the MoU, the profit and loss clause. In substance, we find that it is a profit share. The clause can be read in two ways. Interest may be a cost deducted before profit is worked out, or it may be a set-off against the Financial Creditor's own profit share. On either reading the interest was written into the project's profit arrangement and refers back to Clause 11 of the MoU. It was not drawn as a free-standing return on money lent.

49. We have also seen the Loan Agreements and we find these have the marks of a loan: a name, a fixed term, interest compounded daily, and repayment by demand draft within seven days of maturity. These marks count, and if the Loan Agreements stood alone, they would point towards a financial debt. But they did not stand alone. The Adjudicating Authority assumed that the MoU and the Addendum remained in force. If so, the equal sharing of loss

in Clause A (11) remained in force too. We are of the opinion that two cannot sit together on the Financial Creditor's case. We find that a promise to repay the principal on a fixed date, whatever happens to the project, does not fit with a promise to bear half of the project's loss. The only reading that gives effect to every document is the one the Corporate Debtor puts forward: the Loan Agreements were the way in which project money was moved and booked, and the project terms continued to govern what the parties would finally owe each other.

50. We find that the correspondence from May 2023 to October 2023 indicates that the Financial Creditor asked for project reports, sent a draft second addendum to the MoU on 30.06.2023, took part in the discussion on an escrow account in July 2023, and said on 20.10.2023 that work should resume out of Railway payments. We are of the view that none of this is how a lender behaves after its loan has fallen due on 13.08.2023. The first demand for interest came on 30.05.2024, and the Corporate Debtor had already declined to confirm interest in April 2024. The Financial Creditor, according to the record, terminated the MoU only on 27.11.2024, more than a year after the dates of default it now pleads and some twenty months after the second Loan Agreement. That is hard to explain if the Loan Agreements had replaced the MoU in early 2023.

51. From the record it seems that the interest clause was not the real bargain. The Adjudicating Authority records, an email of 17.01.2023 saying that an

interest-free loan could not be advanced as per the statutes, that it was therefore difficult to show the investment in the books, and that the payments would carry no interest and be adjusted in the books within six months. We have noted that the Impugned order attributes this email to the Corporate Debtor and that its text may be that of the advancing party. On either view the email shows that interest and the loan form were added for legal and accounting comfort, and that neither side then treated interest as the price of money. The Corporate Debtor's letter of 17.07.2024 also indicates that the Loan Agreements were only formal. We are conscious that mere absence of interest would not itself have defeated a financial debt under ***Orator Marketing (supra)*** *ratio*. The reverse is also true. A stated interest rate does not make a financial debt if the money was in truth committed to a joint project. What matters is the commercial effect, and here the interest was a book entry attached to a project arrangement.

52. It has also been brought to our notice that the ledger and the audited balance sheet describe the amount as "STEMZ investment" and "Advance from Project Partners (As per MOU)". Entries in books do not create or destroy a debt, and we give them no more weight than that. It may be said that an advance shown as a liability in the balance sheet is something the company has to return, and so is a debt. Every advance received is a liability in the books. That does not make it a financial debt under the Code. The head here is

"Advance from Project Partners (As per MOU)", which ties the item to the MoU and to the project.

53. We note that Part V of the Section 7 application describes the four security cheques as given for repayment under the Loan Agreements. The minutes of 20.12.2022 reveal that they were handed over under Clause A (2) of the MoU at the start. The Financial Creditor also did not place the project correspondence with its application. The Adjudicating Authority had the full record before it, including the correspondence filed by the Corporate Debtor, and it was supposed to go through the same.

54. We recall that Section 5(8)(f) asks whether the amount was raised under a transaction having the commercial effect of a borrowing. A borrowing gives the borrower money for its own use, to be repaid with a return for the time it was held. We find that in the present case, the money went into a project in which the Financial Creditor itself held half the economic interest, under terms that left the final settlement to the project accounts. The Corporate Debtor did not get the money against a price for time. It got project funding from a partner in the project.

55. We have kept in mind the other side of the matter. A funder who takes a profit share may still be a lender. A convertible or participating loan is an example. If the principal is repayable whatever the project earns, the funder remains a financial creditor even if it also shares profit. What separates the two cases is whether the principal is exposed to the fate of the venture. Here it is,

through Clause A (11). That is why these case falls on the investment side of the line.

56. It may be arguedthat even if the MoU was a joint venture, the Loan Agreements are separate contracts of loan which the Financial Creditor can enforce on their own. We cannot accept this. A party cannot take one part of a connected set of agreements and leave the rest. The Loan Agreements were made under the Addendum and the MoU, as the Financial Creditor's own application records. In ***Airwill JKM (supra)*****,** the argument that the MoU had two separate legs, one for land and one for development, did not succeed, and this Appellate Tribunal read the MoU as a whole. The same approach applies when one transaction is spread over several documents.

57. We are also conscious that this finding must not become an easy defence for borrowers. A borrower cannot turn a loan into a joint venture by saying so in a reply to a Section 7 application. We find three features that take this case out of that risk. The profit and loss clause is in the MoU of 20.12.2022, signed before any loan paper, so it is not an afterthought. The Financial Creditor's own application records that the loans were made under the Addendum and the MoU. And the Corporate Debtor took the same position in its letters of April 2024 and July 2024, long before the application was filed in 2025. A defence of this kind deserves a hard look, and when it is only a label raised for the first time in the reply it should fail. Here it is found in the contemporaneous documents. We therefore hold that the Rs. 2.25 crore paid by the Financial

Creditor was project funding within a joint arrangement and not a debt disbursed against consideration for the time value of money. The Financial Creditor has not shown a financial debt within Section 5(8), and it is not a financial creditor within Section 5(7). The Adjudicating Authority could not have been satisfied under Section 7(5)(a), and the application was not maintainable.

58. We note that the Addendum was made as an addition to the MoU, and the Financial Creditor kept acting under the MoU for many months afterwards and ended it by a separate notice in November 2024. The Adjudicating Authority itself assumed that the MoU stood. A clause cannot be read to wipe out a three-year arrangement without saying so. There is another reason as well. Whether a debt is a financial debt is decided by the statute and not by what the parties write in their contract. *Global Credit (supra)* requires the real nature of the transaction to be found. An entire agreement clause is part of the writing and does not take its place. Neither the word "loan" nor Clause 19 can make a financial debt out of project funding.

59. We observe that the emails of 23.08.2025 and 11.09.2025 also do not alter the position. They came after the application was filed. As the Adjudicating Authority records them, the Corporate Debtor said it would refund the amount paid by the Financial Creditor and asked for time until the Railways paid. They say nothing about interest, nothing about the dates of default and nothing that treats the money as a loan taken for a price. A

willingness to give back project money when a project is stalled, out of the project's own receipts, is what partners do when they settle. It does not show that the first payment was a borrowing. The later communications of April 2025 are, on the Appellant's account, to the same effect, linking any refund to the MoU, to the funding that was not completed and to Railway receipts.

60. We reiterate that the Code is meant for resolution of a company in distress and not for recovery of money between business partners and the point has practical force here. Whether the Financial Creditor should get back its Rs. 2.25 crore, with what return, and after what set-off for the funding the Corporate Debtor says was never completed, depends on project accounts. A civil court or an arbitrator can take those accounts and hear a counter-claim. A Section 7 enquiry cannot. We do not rest on this point, but it explains why a claim of this kind belongs in a different forum.

61. We take into consideration that the Financial Creditor filed an additional affidavit, which was taken on record on 28.10.2026. It places before us a Settlement Agreement dated 26.10.2026 under which Rs. 2,50,00,000 has been paid to the Financial Creditor, and it records that the Financial Creditor does not oppose the appeal. Recital A of the Settlement Agreement accepts that the MoU provided for sharing of profits and losses. Recital B accepts that accounting and fund-transfer difficulties led to the Loan Agreements, to facilitate the transfer of funds, and that the parties continued to deal with each other under the MoU arrangement.

62. We hold that this Appellate Tribunal may take notice of events after the order under appeal to decide what relief is just. But we are also aware that a settlement is not a shortcut around the Code. After admission, a CIRP concerns all creditors, and a settlement between two parties cannot by itself bring it to an end. The Hon'ble Supreme Court has held that withdrawal after admission must follow Section 12A read with Regulation 30A of the CIRP Regulations, that before the Committee of Creditors is formed the application goes through the Interim Resolution Professional to the Adjudicating Authority, and that the inherent power under Rule 11 of the NCLAT Rules cannot be used to get around that procedure.

63. It follows that we are not setting aside the admission order because the parties settled. Had we found a financial debt, we would have left the parties to the route under Section 12A and Regulation 30A. No withdrawal is sought or granted here. Our decision rests on the statute. The existence of a financial debt is a jurisdictional fact. The consent of the parties cannot create it and cannot remove the need to find it, and for that reason we have examined the question ourselves and not accepted the Financial Creditor's silence as the answer. The Settlement Agreement and the non-opposition are relevant only to the relief. A party's admission is evidence against it, though not conclusive, and we use the recitals only in that way. They corroborate what the documents already show, and together with the non-opposition they remove any reason to send the matter back. The only creditor whose claim was before the Adjudicating Authority

does not seek to defend the admission, and the Interim Resolution Professional has not been heard in opposition.

64. We feel that the practical consequences also point the same way. The Corporate Debtor carries on Railway contracts which both sides say are still running, and the record shows that the Railways have threatened termination when work stopped. A CIRP, with the Corporate Debtor's board suspended, is a heavy burden on such a business. It would serve no purpose to continue it, or to start it again after a remand, when the admission cannot stand and the only applicant has been paid and does not oppose.

65. For these reasons, we find that the Adjudicating Authority was not justified in admitting the application. The Financial Creditor has not shown a financial debt within Section 5(8) of the Code, and the order dated 10.08.2026 cannot be sustained. Our finding does not decide the contractual rights of the parties against each other, which are for the proper forum and are in any case governed by the Settlement Agreement dated 26.10.2026.

66. The appeal succeeds on these findings. The Impugned order is set aside. There will be no order as to the cost. IA, if any, stands closed.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

Sim