

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

CP(IB) No. 5/KB/2024

*An application under Section 7 of the Insolvency and Bankruptcy Code,
2016;*

In the matter of:

SREI EQUIPMENT FINANCE LIMITED

...Financial Creditor

And

KEJRIWAL MIINIING PRIVATE LIMITED

...Corporate Debtor

Date of pronouncement of order: **12.06.2026**

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

CMDE SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)

Appearances (via Video Conferencing/Physical):

Mr. Joy Saha, Sr. Adv.] For SREI Equipment Finance Limited
Mrs. Ramya Hariharan, Adv.]
Mr. S. Rao, Adv.]

Mr. Ratnanko Banerji, Sr. Adv.] For the Corporate Debtor
Mr. Mainak Bose, Sr. Adv.]
Mr. Aniruddha Mitra, Sr. Adv.]
Ms. Shomolina Sarcar, Adv.]
Ms. Nilanjana Adhya, Adv.]
Mr. Arindam Paul, Adv.]
Ms. Debarati Das, Adv.]
Ms. Sohini Chaudhury, Adv.]
Ms. Eshika Nandy, Adv.]
Mr. Sujato P. Ghosh, Adv.]

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through a hybrid mode.
2. Ld. Sr. Counsels were heard *in extenso*.
3. The instant application under Section 7 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the said application), has been filed by Srei Equipment Finance Limited the Financial Creditor (FC in short) against Kejriwal Mining Private Limited the Corporate Debtor (CD) claiming an Overdue Instalment Rs.5,69,46,221/- plus overdue charges Rs.30,01,48,623/-. The total amount claimed to be in default is Rs.35,70,94,844/- as on 01st September, 2023.

4. Case of the Petitioner/FC in a nutshell:

- 4.1. The FC executed a loan agreement dated 22nd of July, 2014 with Parijat Vyapar Pvt. Ltd. (subsequently known as Kejriwal Pvt. Ltd. the CD, vide certificate of incorporation dated September 29, 2016 issued by Ministry of Corporate Affairs whereby a loan facility of Rs.10.88 crores was sanctioned to the Corporate Debtor.
- 4.2. The FC on the very same day also executed a loan agreement with Pioneer Barter Private Limited a related party of CD, whereby a loan facility of Rs.20,25,89,000/- was sanctioned to them.
- 4.3. In early 2016, there was an oral settlement between the Financial Creditor, Pioneer Barter Pvt. Ltd. and

Corporate Debtor that the entire loan amount shall be paid by Corporate Debtor. Pursuant to the said settlement, the Financial Creditor executed a Loan Agreement dated 1st July, 2016 whereby a loan facility of Rs.37 crores was sanctioned to Corporate Debtor.

- 4.4. The Financial Creditor has relied upon a statement of Accounts at Pg. 186 of the application, to show a sum of Rs.37 crores was disbursed on 22nd September, 2016 to CD.

5. Documents in support of FC's case:

The FC has relied upon the following documents to establish its Case.

A. Loan Agreement:

- (i) Dated 01.07.2016 (Pg.115 of the Company Petition) for an amount of Rs.37 crores (Rupees Thirty-Seven Crores) (Pg. 144 of the Company Petition).
- (ii) Repayment Schedule showing commencement of instalments from October 2016 and ending on August 2021 (Pg. 146 of the Company Petition) to prove the following:
 - (a) This agreement is signed by the CD on every page.
 - (b) The execution of the agreement and the signature of the CD appearing thereon is admitted.

(c) Thus existence of the debt cannot be disputed and it cannot be contended that no money was advanced under the said agreement.

(iii) Clause 2.8.4 on “Overdue charges” which reads as follows:

“All sums payable by the customer having an overdue period shall automatically stand increased at the rate of ₹1 (Rupee one only) per day for every Rs.1000/- (Rupees One Thousand only) of the amount overdue, on monthly basis from the date the money becomes due and payable till full and final repayment by the Customer.”

A. Deed of Hypothecation:

1. A Deed of Hypothecation, dated 01.07.2016 in regard to the loan agreement dated 1st July, 2016 to show that:
 - a. The said hypothecation agreement is also signed on every page by the CD.
 - b. The existence of this hypothecation agreement and the signature of the CD appearing thereon are not disputed.

B. Registration of Charge:

1. Form No. CHG-1 filed by the CD with the ROC, Kolkata under Sections 77, 78, 79 of the companies Act, 2013 confirming

that its assets are charged in favour of the FC for a sum of Rs. 37 crores (Pg. 155 and Pg. 157 of the Company Petition).

2. Certificate of Registration of charge issued by the Ministry of Corporate Affairs (Pg. 24 of the Rejoinder). The filing of Form CHG-1 and the certificate of charge issued by the RoC constitutes sufficient acknowledgement of debt by the CD.
3. Reliance is placed on the NCLT, Ahmedabad's decision in **Bank of India v. Pacific Pipe Systems Private Limited [2019 SCC Online NCLT 28980]** wherein the Adjudicating Authority admitted the petition filed under Section 7 of the Code on the ground that the CD has acknowledged the debts of the FC by creating charge with the ROC, Ahmedabad in favour of the FC.

C. Personal Guarantee:

Details of the Personal Guarantee:

- a. Dated – 01.07.2016 (Pg. 162 of the Company Petition)
- b. Guarantor – Mr. Siddhartha Kejriwal, director of the Corporate Debtor.
- c. Reference to the loan agreement dated 1st July 2016 for a sum of Rs.37 crores (recital 1 of the Deed of Personal Guarantee, Pg. 162 of the Company Petition).
 1. To show that, this deed is also signed by the CD on each and every page.

2. The existence of this Personal guarantee and the signature of the CD appearing thereon are also not disputed.

D. Record of Default issued by the information Utility, NESL

1. Record of Financial Information-Form C filed by the FC with the NESL (Pg. 177 of the Company Petition)
2. Record of default issued by NESL (Pg. 25 of the Rejoinder).

E. Board Resolutions:

1. Date – 26.09.2016 (Pg. 22 of Rejoinder)
2. to avail of financial assistance from SREI Equipment Finance Ltd for an amount not exceeding Rs.37 crores (Pg. 22 of the Rejoinder).

A. Disputed Facts:

A. Disbursement under the loan agreement dated July 1, 2016:

Contention of the CD

- (i) The defense of the CD is that ‘there has neither been any disbursement in terms of the loan agreements dated July 22, 2014 nor under the subsequent alleged loan agreement dated July 1, 2016.
- (ii) The CD contends that there being no disbursement under the two alleged agreements in the application, the purported debt does not arise out of disbursement for time value and money and the debt not being the financial debt within the meaning

of the Code the present application deserves to be dismissed on that ground alone.” [Para 3(b), pg. 2 of the Reply Affidavit]

Contentions of the FC

(i) The contention of the CD in Page 2 Para 3(b) of the Reply Affidavit to the effect that no money was disbursed under the Agreement dated 1st July 2016 is utterly false. Disbursements of the aforesaid sums are reflected in the bank statement of the FC maintained with the Allahabad Bank.

<u>Date</u>	<u>Amount</u>	<u>Page Nos.</u>
05.07.2016	Rs.4,07,00,057	32 of Rejoinder
04.10.2016	Rs.2,35,00,000	33 of Rejoinder

(ii) Thus while the FC claims a disbursement of Rs.37 crores whether under previous loan agreement of the late it has failed to establish such disbursement, apart from the figure of Rs.6.42 crores and odds against which a repayment of Rs.6.42 crores by the CD stands established.

B. Admitted Position

(i) There is no denial of the fact that the authorized person of CD signed on each and every page of the Loan Agreement dated July 1, 2016 (Pg. 115-148 of the Company Petition) and the deed of hypothecation dated July 1, 2016 (Pg. 149-154 of the Company Petition). The execution of loan Agreement is therefore admitted.

- (ii) Payments made by CD in terms of the repayment schedule of the Loan Agreement dated July 1, 2016 is admitted by the CD in its reply affidavit (Pg. 128-131 of the Reply Affidavit).
- (iii) Bank statements indicating repayments made by CD and/or third parties on behalf of CD (Pg. 6-151 of the supplementary affidavit).
- (iv) The board resolution dated September 26, 2016 passed by the CD for availing the loan facility of Rs.37 crores from FC (Pg. 22 of the Rejoinder) although it is subsequent to the execution of the loan agreement for which the resolution was adopted.
- (v) The CD has acknowledged its dues towards the FC by filing the standalone financial statement for the year ended March 31, 2023 (Pg. 77 of the Rejoinder), of an amount of Rs.89.48 lakhs.
- (vi) The CD has failed to dispute the record of default issued by NESL (Pg. 25 of the Rejoinder). However, the record of default is not authenticated and cannot be relied upon solely to fix the liability on the CD.
- (vii) The aforesaid events constitute sufficient proof that the CD had agreed to be indebted towards the FC for the entire loan facility of Rs.37 crores.

Admission in Balance Sheet

- (viii) The balance sheet of the CD for the year ended 31st March, 2023 specifically provides that there is a debt due and owing to SREI Equipment Finance Ltd (Pg. 77 of the Rejoinder under the heading Footnotes).

C. Maintainability of the Petition

The Petition is barred in view of 10A of the Code:

- a. CD first defaulted on its repayment obligations on May 22, 2020 and continued to do so even after expiry of the moratorium period stipulated under Section 10A of the Code, i.e. from March 25, 2020 till March 25, 2021 (Para 4(VI)(a), Pg. 7 of Rejoinder).
- b. The Financial Creditor has only considered those repayment instalments that fell due after March 25, 2021 (Para 4(VI)(b), Pg.7 of Rejoinder).
- c. The first instance of default after the expiry of the moratorium period under Section 10A of the Code occurred on April 22, 2021, and the CD continued to default thereafter, as evident from the statement of accounts annexed to the company petition at page 191.
- d. Hon'ble NCLAT in **Small Industries Development Bank of India (SIDBI) v. Sambandh Finserve Private Limited [CA (AT) (Ins.) No. 784 of 2023]**, has categorically permitted default most 10A period to be taken into account to meet the threshold where instalments fell due even subsequent to 10A period.

“The material on record (namely the statement of Account) in the instant case clearly shows that apart from the default in

10A period, it was occurring beyond the threshold independently after 25.03.2021 which is beyond the suspension period. In terms of the GCC dated 25.10.2019 governing the Loan Agreement dated 26.02.2019 and 25.10.2019, the loan was repayable in 36 equal monthly instalments, and that default to pay the principal or interest amount at each instalment amounted to a separate and independent default".

- e. Thus each instance of failure to repay the instalment in terms of the repayment schedule of the Loan Agreement gives rise to a fresh cause of action and therefore, the filing of the instant company petition is not hit by the rigors of section 10A of the Code.

6. Submissions of the Corporate Debtor:

- 6.1. The Corporate Debtor vide its reply affidavit has categorically denied disbursement of a sum of Rs.37 crores to it by the Financial Creditor, whether on 22nd of September, 2016 or on any subsequent date.
- 6.2. It is the specific case of the CD, that pursuant to various old agreements executed between 2004 to 2014 the Financial Creditor had disbursed a sum of Rs.23.51

crores which the Corporate Debtor had repaid aggregating Rs.42.77 crores details whereof have been provided from Pages 113 to 131 of the Reply affidavit. Thus, it is claimed that the repayments are against previous loans and not against the allegedly disbursed sum of Rs.37 crores.

6.3. It is asserted that After adjustments against previous dues of the FC there has been over payments by the CD.

7. Rejoinder of the FC:

7.1. In the rejoinder, FC has annexed a Bank Statement showing disbursement only of a sum of Rs.6.42 crores in two tranches on 5th of July, 2016 and on 4th of October, 2016 (Pg.31-33 of Rejoinder).

7.2. Thus, no proof of disbursement of Rs.37 crores has been established by Financial Creditor in the Section 7 application of Rs.37 crores pursuant to the Agreement dated 1st July, 2016 on 22nd of September, 2016 as pleaded in the application.

7.3. The Statements of Accounts at pg. 186 of the application is a document prepared by the FC and there is no acknowledgment of liability by the CD and thus cannot be relied upon.

8. CD's Sur-rejoinder:

- 8.1. The CD claims that the Statements of Accounts (at pg. 186 of the applications) are concocted documents and cannot be relied upon.
- 8.2. That the Financial Creditor upon failing to show disbursement of the sum of Rs.37 crores which it proposed to make out in Section 7 application has substantially changed its stand and made out a new contrary case in the Rejoinder, for para VII (b) of the rejoinder, states as follows:

*“The CD is well aware that the question of disbursement in relation to the Loan Agreement dated July 1, 2016 i.e. Contract No.115794 does not arise since it is **a re-financed contract and the outstanding amounts under the previous loan agreements dated July 22, 2014** being Contract No.66650 and 66667, **were subsumed into the present loan agreement, save and except to the extent of Rs.6,42,00,57/-** out of the total loan facility of Rs.37 crores which was disbursed into the CD’s account under Contract No.115794.”*

- 8.3. It is trite that a litigant is always shackled to its pleadings and cannot be permitted to change or take a contrary stand or be allowed to make any contradictory statement at a subsequent stage of the litigation. Thus, FC cannot be allowed to take a completely new and contradictory stand in the Rejoinder.
- 8.4. That upon the issue being brought to the notice of the Hon'ble Tribunal that no disbursement has been made by the FC, the orders dated 11th of November, 2025 and 26th November, 2025 were passed directing the Financial Creditor to produce Bank Statement in support of disbursement of the sum of Rs.37 crores to the Corporate Debtor. The FC has failed to produce any bank statement to prove disbursement of Rs.37 cr.
- 8.5. Further that, in Para 12 of the Sur Rejoinder, Corporate Debtor has stated as follows:

“The amount of Rs.6,42,00,057/- what is being alleged to have been disbursed under the July, 2016 loan facility is another incorrect and false statement inasmuch as, the said amount was disbursed in furtherance to the old loan agreements and the previous loan

facilities as well as the sum of Rs.6,42,00,057/- has been repaid in entirety which would be also evident from the statement of accounts appended to the Section 7 application.”

- 8.6. As per the Bank Statement of CD (Pg.32 of Rejoinder) a sum of Rs.4.07 cr. was paid on 05/07/2016 and the second tranche of Rs.2.35 cr. was paid on 04/10/2016, totalling to Rs.6.42 crores. Firstly, there is no reference of the July 1, 2016 agreement in the said statement. Secondly, Rs.4.07 cr. was repaid on 5th July, 2016 to FC by cheque No.112608 drawn on ICICI Bank and Rs.2.35 cr. was repaid on 4th October, 2016 vide cheque No.112677 drawn on ICICI Bank. Thus, the entire payment was Rs.6.42 cr. was repaid immediately. Nothing is due and payable to FC. As these disbursements and repayments were not in connection with the July 1, 2016 agreement the Bank Statement showing repayments were not annexed and can be filed, if so directed. FC be also called upon to produce its bank statement showing the repayment of Rs.6.42 crores.
- 8.7. Placing a repayment schedule annexed to the Reply Affidavit at Pages 113 to 131, it is contended that an

additional payment of Rs.2.50 crores was made by CD to FC, details whereof is given at Pg.132 of the reply affidavit. Thus, even taking into account the disbursement and repayment of Rs.6.42 crores, the total amount disbursed by FC is Rs.29.93 crores against which a repayment has been made of Rs.49.19 crores. Nowhere, FC has denied the repayments made by CD, nor has the Financial Creditor provided any reconciled or audited statement of account. There are no details as to how, FC had come to the figure of Rs.35,70,94,844/- as “amount in default”.

- 8.8. The alleged oral settlement between two corporate entities more so, when FC is an NBFC is unbelievable and untenable in the eye of law. The Agreement dated 1st July, 2016 (Pg.116 of the application) records a schedule of assets being 77 in numbers; however, no particulars, no registration details or chassis numbers or insurance/RTO/other documents are provided, rendering the asset schedule unverifiable.
- 8.9. That surprisingly the Deed of Hypothecation (Page 149 of the application) relied upon by the Financial Creditor which it alleges to have been executed in support of the Loan Agreement dated 1st of July, 2026, records the name of the Corporate Debtor as Kejriwal Miiniing Private

Limited as on 1st of July, 2026, whereas the fact remains that as on 1st July, 2016 the name of the Corporate Debtor was still Parijat Vyapar Private Limited and the same was only changed to Kejriwal Miiniing Private Limited on 29th of September, 2016 as would be evident from the Certificate of Incorporation issued by ROC, Kolkata. (Page 82 of the application). As such it is alleged that the Deed of Hypothecation was signed blank and the same was fraudulently filled up later by the Financial Creditor. The same is a manufactured document.

8.10. Further, the Corporate Debtor in the reply letter dated 20.10.2022 (Pg. 133 at 137 of the Reply Affidavit) has alleged that the FC had taken signatures of Directors of CD on several blank agreements including blank personal guarantee documents in 2016, which were fraudulently and arbitrarily filled up by FC. Reference is made to a copy of one such blank agreement, at Pg. 162 of Reply affidavit.

8.11. The CD claims that it would be evident from records that the parties had executed several other loan agreements and several No Due Certificates have been issued by FC (Page 194 to 196 of Reply Affidavit) in connection with previous contracts, which stood closed on repayment.

8.12. That the Financial Creditor has relied upon the Financial Statement of the Corporate Debtor for the period 2022-23 to show that a debt for a sum of Rs.89.48 lakhs (Pg.77 of Rejoinder) only as admitted by the Corporate Debtor towards Financial Creditor. The alleged outstanding of Rs.89.48 lakhs reflected in the balancesheet pertains to a separate loan account being No.177006 dated 01/04/2019, which has since been fully discharged. Balancesheet of CD for the Financial Year 2023-2024 does not show any debt towards FC. The said amount has no nexus or correlation with the loan account forming the subject matter of the present proceedings and, therefore, cannot be construed as a “financial debt” for the purposes of the present petition. The Balance Sheet of CD for FY 2023-24 is duly filed with statutory authorities and is a public document and it can be verified that there is no debt or money payable to FC.

8.13. In regard to the Form CHG-1 relied upon by the FC in regard to creation of charge with Registrar of Companies, it is submitted that the said Form CHG-1 has been uploaded by FC and not by CD, as evident from Pgs. 156, 159 and 160 of the application. The PAN number of FC is mentioned therein, and the said Form is digitally signed by Chartered Accountant of FC. The CHG-1 does

not contain any signature of CD. The said Form CHG-1 does not contain any signature of CD. The said Form CGH-1 was uploaded by the FC, after more than 6 months from the date of the alleged agreement dated 01.07.2016, after filing a condonation of delay with RoC. The said Form also does not contain any acknowledgement by CD. The alleged charge created by FC with RoC is incorrect.

8.14. In regard to the Certificate of Registration of Charge vide Form CHG-1 annexed to the Rejoinder it is submitted that it is based on Form CHG-1, which is unilaterally filed by FC with RoC without signature of the CD.

8.15. Further in regard to the Board Resolution of FC dated 26.09.2016, annexed to the Rejoinder it is alleged that it also does not show any acknowledgement of liability on the part of CD and that the said Board Resolution is of 26.09.2016 whereas the agreement in question was of dated 01.07.2016. Thus, the Board Resolution is of no help to FC. The alleged loan agreement is much prior to the board resolution.

8.16. In so far as the NeSL Form D is annexed to the rejoinder, it is submitted in the "Status of Authentication of Default" is recorded as "Deemed to be Authenticated" and the "Date of Last Acknowledgment of Debt (AoD)" is

shown as “Not Available”, clearly indicating that CD was not in a position to authenticate the same and the same was unilaterally uploaded by FC. Moreover, NeSL documents alone cannot be taken as an admission of liability on the part of CD. It is stated in the sur rejoinder that the CD was not able to authenticate or dispute the debt as the same was not shown under the option “Debts Pending for my Authentication”. CD had raised its objection before NeSL. To that effect emails have been annexed.

8.17. The CD thus would claim that in view of failure on the part of the Financial Creditor to show disbursement of a sum of Rs.37 crores in terms of the 2016 Agreement, it cannot be said that the total amount claimed to be in default is Rs.35.70 crores. In absence of any calculation, statement of accounts with regard to the repayment and/or the interest charged which culminated into the amount claimed to be in default. It is claimed that nothing is due and payable to FC. CD have repaid for in excess of what was due and payable to FC and for adjudication of which CD had filed a civil suit, which is pending. The FC having failed to prove or substantiate its claim as made in the section 7 application, the same warrants dismissal.

8.18. Finally it is contended that the date of default as stated by the Financial Creditor is 22nd of May, 2020 is hit under Section 10A of IBC. There is no concept of “continuing default” in IBC.

9. **Decisions cited by the CD:**

9.1. In support of the contention that there cannot be “continuing default” following decision are cited:

- a) **Ramesh Kymal vs Siemens Gamesa Renewable Power Private Limited 2021(3) SCC 224**, (para 11, 24, 25, 27) wherein Hon'ble Supreme Court ruled that Section 10A of Insolvency and Bankruptcy Code 2016 forbids the commencement of a corporate insolvency resolution process with regard to a default that happened on or after 25th March 2020.
- b) A Similar view taken by NCLAT in plus Corporate **Ventures Pvt Ltd vs Transnational Growth Fund Ltd – 2022 SCC online NCLAT 4857- (para 7)**.
- c) **IDBI Trusteeship Services Limited vs Direct Media Distribution Ventures Private Limited – 2023 SCC online NCLT 52359, (Para- 3.14, 3.17, 3.20, 5.4, 5.6)** wherein it was held that there is no concept of ‘continuous default’ in code. The date of default once occurred cannot be shifted. The said decision was

upheld by the National Company Appellate Tribunal in 2023 SCC online NCLAT 619 (para – 14, 18).

10. FC's refutal:

10.1. The FC alleges that in Paragraph 2 of the Sur-Rejoinder, the CD has made a sweeping denial of any disbursement by the Financial Creditor. Whereas in paragraph 14 of the same Sur-Rejoinder, the CD contradicts its earlier allegations by explicitly acknowledging that the FC has actually disbursed an amount of Rs.22 crore under the Loan Agreement dated July 1, 2016.

10.2. The CD's contention about previous loan facilities dt. July 22, 2014 is not substantiated. Whereas the principal loan facility of 1.07.2016 is substantiated by the following documents:

- a. CD's Board Resolution dt. September 22, 2016 (Pg. 22 of Rejoinder)
- b. Principal Loan Facility dt. July 1, 2016, which is signed by the Director of the Corporate Debtor on each and every page (Pg. 115-148 of C.P).
- c. Deed of Hypothecation dt. July 1, 2016, which is signed by the Director of the Corporate Debtor on each and every page (Pg. 149-154 of C.P).

- d. Form CHG-1 and Certificate of Registration of Charge in respect of the Principal Loan Facility (Pg. 155-161 of C.P.)
 - e. Deed of Personal Guarantee by Siddhartha Kejriwal, which is signed by the Personal Guarantor at each and every page (Pg. 162-173 of C.P.).
 - f. Record of Default issued by Information Utility, (Pg. 25-30 of Rejoinder)
 - g. Repayment Schedule printed on CD's letterhead (Pg. 34-35 of Rejoinder) which matches the repayment schedule to the Principal Loan Facility (Pg. 146 of C.P.).
 - h. CD has made payments in accordance with the repayment schedule till May 22, 2020 (Supplementary Affidavit filed by FC showing repayments made by CD in accordance with Repayment Schedule)
 - i. Standalone Financial Statements of the CD for the year ended March 31, 2023 shows a due of Rs.89.48 lakhs (Pg.77 of the Rejoinder). It is the contention of the FC that If overdue charges at the prescribed rate of 36.5% is charged against Rs.89.48 lakhs from 2023 onwards till date, the Rs. 1 crore threshold for admission into CIRP will be reached.
- 10.3. The CD's further contention is that between July 2004 and March 31, 2022, the CD has he paid Rs. 42.77 crores

towards payment of principal and interest towards the various loan facilities sanctioned by the FC. Whereas the CD's Financial Statement shows dues towards the FC as on 2023.

10.4. There is no denial of the hypothecation of assets by corporate debtor:

- (a) CD's contention: Deed of Hypothecation dt. July 1, 2016 appears to be a post-dated document since the name of the CD therein is 'Kejriwal Mining Pvt. Ltd. whereas the CD changed its name from Parijat Vyapaar Private Limited' to 'Kejriwal Mining Pvt. Ltd.' only on September 29, 2016 (Change of Name Certificate at Pg. 82 of Application). List of hypothecated assets (Pg. 153 of Application) appended to Deed of Hypothecation is unsigned by the CD.
- (b) FC's response: CD had never protested the filing of charge in 2017 (Form CHG-1 and Certificate of Registration of Charge) despite being aware of the same, and has taken such contention only in the Reply to the Company Petition in 2024. The list of assets appended to Deed of Hypothecation matches with the one appended to the Principal Loan Agreement (Pg. 145 of Application).

- (c) The FC has placed CD's further contention (Para (p) at Pg. 8-9 of Reply & Para 6 of Sur-Rejoinder): Assets hypothecated under the Principal Loan Facility are second-hand assets which had been hypothecated under previous loan facilities granted to the CD. They had been sold off before the Principal Loan Facility was sanctioned. Such assets are therefore non-existent.
- (d) FC's response (Para (d) at Pg. 6 of Reply to Sur-Rejoinder): CD has signed on each and every page of the Principal Loan Agreement, including schedule of hypothecated assets. Since ownership of hypothecated assets vests with the CD, it is the CD which had inserted the details of such assets in the Loan Agreement. Therefore, the assertion that assets did not allegedly exist makes the CD culpable and liable for perpetrating fraud on the lender. Filing of Form CHG-1 and issue of Certificate of Registration of Charge, and non-protest by CD is sufficient acknowledgement.
11. Case law relied upon by the Financial Creditor:
- a. Para 23.1, 23.4 of Bank of India v. Pacific Pipe Systems Private Limited (NCLT, 2019) to contend that filing of CHG-1 forms and registration of charge amounts to acknowledgement of debt on the part of the Corporate Debtor.

12. Ld. Sr. Advocates/Counselors were heard rival contentions noted and records perused.

13. Discernible Facts:

13.1. The Loan Agreement, Deed of Hypothecation, Registration of charge, Deed of Personal Guarantees are available on record but execution of such agreements/documents is not enough to substantiate a disbursement of loan amount.

13.2. Disbursement of a sum more than 6.42 crores against an alleged default of 35,70,94,844 Cr. is not borne by records.

13.3. The sum of Rs.6.42 crore although disbursed in two tranches on 05.07.2016 and 04.10.2016 seems to be repaid in two tranches on very same dates. Hence, FC's claim of default of Rs.30,58,00,000/- crores is not substantiated.

13.4. No documents to substantiate the disbursement of Rs.37cr. have been brought on record despite opportunity. Hence, disbursement of Rs.37 cr. is not substantiated.

13.5. No default pursuant to any previous loan agreement is substantiated by records.

13.6. The liability of CD as on 2022-23 is reflected in its books/financial statements is only to the tune of

Rs.89.48 lakhs which is less than threshold, no calculation amount have been furnished to show that upon accrual of interest the liability undischarged is more than Rs.1 crore on the date of filing.

13.7. In its surrejoinder at para 14 the CD has categorically denied any relevance of the repayment of Rs.22 crores in regard to the loan agreement of 2016.

14. Analysis

14.1. The question on record before this Tribunal is whether a “Financial Debt” has been established.

14.2. To understand what construes the term Financial Debt, it is important to understand the provisions of IBC which explain it, which is reproduced below:
“5(8) “financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

3[Explanation. -For the purposes of this sub-clause,-

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;”

14.3. This Tribunal while deciding on the matter of ***Kesoram Industries Ltd. v. Pratim Bayal RP, (2023) ibclaw.in 734 NCLT***

“xxx it is clear that to bring any existence of debt within the ambit of the definition of “Financial Debt”, disbursement of money is sine qua non and in the instant application nothing in record substantiates that the money has been disbursed by the Applicant to Corporate Debtor.”

The Hon’ble NCLAT while upholding the decision of this Tribunal in this Judgement held that:

*“10. The Hon’ble Supreme Court had occasion to consider Section 5(8) of the IBC and noticed the ingredients which are required to be prove for holding the debt as financial debt. Hon’ble Supreme Court in **“Anuj Jain vs. Axis Bank Limited- (2020) 8 SCC 401”** laid down following: -*

“The essentials for financial debt and financial creditor’

*“43. Applying the aforementioned fundamental principles to the definition occurring in Section 5(8) of the Code, we have not an iota **of doubt that for a debt to become ‘financial debt’ for the purpose of Part II of the Code, the basic elements are that it ought to be a disbursal against the consideration for time value of money.** It may include any of the methods for raising money or incurring liability by the modes prescribed in Sub-clauses (a) to (f) of Section 5(8); it may also include any derivative transaction or counter-indemnity obligation as per Sub-clauses (g) and (h) of Section 5(8); and it may also be the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in Sub-clauses (a) to (h). The requirement of*

*existence of a debt, which is disbursed against the consideration for the time value of money, in our view, remains an essential part even in respect of any of the transactions/dealings stated in Sub-clauses (a) to (i) of Section 5(8), even if it is not necessarily stated therein. **In any case, the definition, by its very frame, cannot be read so expansive, rather infinitely wide, that the root requirements of ‘disbursement’ against ‘the consideration for the time value of money’ could be forsaken in the manner that any transaction could stand alone to become a financial debt.** In other words, any of the transactions stated in the said Sub-clauses (a) to (i) of Section 5(8) would be falling within the ambit of ‘financial debt only if it carries the essential elements stated in the principal Clause or at least has the features which could be traced to such essential elements in the principal clause. **In yet other words, the essential element of disbursal, and that too against the consideration for time value of money, needs to be found in the genesis of any debt before it***

may be treated as 'financial debt' within the meaning of Section 5(8) of the Code.

“This debt may be of any nature but a part of it is always required to be carrying, or corresponding to, or at least having some traces of disbursal against consideration for the time value of money.”

(Emphasis Added)”

11. *It was held that the requirement of disbursal against the consideration for time value of money remains an essential part. Thus, disbursement against the consideration for time value of money has to be proved for a financial debt.”*

xxxxxxx

19. *The Adjudicating Authority in exercise of its jurisdiction under sub-section (5) of Section 60 having adjudicated the claim as submitted by the Appellant, the question to be answered in this Appeal is as to whether the order of the Adjudicating Authority adjudicating the claim of the Appellant is sustainable or not. Adjudicating Authority after noticing the judgment of the Hon'ble Supreme Court in **Anuj Jain vs. Axis Bank Limited- (2020) 8 SCC 401**” has held that the applicant has failed to prove the transaction as a deposit of money or a loan*

from the applicant's account to the Corporate Debtor's account. In paragraph 6.8, following observations has been made by the Adjudicating Authority: -

"6.8. Thus, from the statutory provisions and decisions supra, it is clear that to bring any existence of debt within the ambit of the definition of "Financial Debt", disbursement of money is sine qua non and in the instant application nothing in record substantiates that the money has been disbursed by the Applicant to Corporate Debtor. We are further of the view that though it is shown as an "Inter-Company Debt", the applicant has failed to prove the transaction as a deposit of money or a loan from the Applicant's account to the Corporate Debtor's Account before the initiation of CIRP as well as a relationship between the parties which proves that it is a mere transaction of money from one account to another account."

14.4. In view of the foregoing, it is clear that for any debt to qualify as a "Financial Debt" under Section 5(8) of the Insolvency and Bankruptcy Code (IBC), the element of disbursement against the consideration for the time value of money is indispensable.

15. Conclusion:

The present CP is not maintainable as the FC has failed to establish a debt and default more than Rs.1 crore. However, in the event the FC can demonstrate a default of more than Rs.1 cr., it can come up with a fresh CP.

16. The present CP, therefore, stands **dismissed**.

17. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

Siddharth Mishra
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Singed on this, the 12th June, 2026.

S. Ghose, (Steno)