

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – IV**

**IA(IB) No. 3642 of 2025
IN
C.P. (IB) No. 1049/MB/2021**

*[Under Rule 11 of the National Company
Law Tribunal Rules, 2016]*

In the matter of:

Advantagesai Projects Private Limited

...Applicant

V/s.

Akshay Techforge Private Limited

...Respondent

Connected with

C.P. (IB) No. 1049/MB/2021

*[Under Section 7 of the Insolvency and
Bankruptcy Code, 2016]*

Advantagesai Projects Private Limited

...Financial Creditor

V/s.

Akshay Techforge Private Limited

...Corporate Debtor

Pronounced: 22.06.2026

CORAM:

**SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (TECHNICAL)**

**SHRI K.R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)**

***Appearances* :**

Hybrid

For Applicant :

Adv. Harsh Kesharia

For Respondent : Adv. Rahul Gupta i/b Adv. Amir
Arsiwala

ORDER

1. The present Company Petition No.1049/2021 (Main Company Petition) has been filed by Advantagesai Projects Private Limited (Financial Creditor), under section 7 of the Insolvency and Bankruptcy Code, 2016 (Code), against Akshay Techforge Private Limited, (Corporate Debtor) for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor on account of default in repayment of financial assistance extended by the Financial Creditor. IA No.3642/2025 is filed by the Applicant in the Main Company Petition praying for, *inter alia*, restraining the Respondent/Corporate Debtor from alienating, encumbering and creating any third-party interests on their assets.
2. **Background**
 - 2.1 The Financial Creditor has stated that a total amount of Rs.1,48,40,466/- was disbursed to the Corporate Debtor towards financial assistance. It is further submitted that interest at the rate of 18% per annum became payable in terms of the Memorandum of Understanding dated 09.04.2020, and accordingly, the total amount in default aggregates to Rs. 2,39,17,469.66/- as on 30.09.2021. The date of default has been stated as 30.09.2021, and the Main Company Petition was filed on 20.10.2021.
 - 2.2 This Tribunal had earlier dismissed the Main Company Petition *vide* order dated 09.02.2023, holding that the transaction between the parties

did not fall within the ambit of 'financial debt' under Section 5(8) of the Code.

- 2.3 Aggrieved by the said order, the Financial Creditor preferred Company Appeal (AT) (INS) No. 510 of 2023 before the Hon'ble National Company Law Appellate Tribunal, New Delhi. The Hon'ble Appellate Tribunal, *vide* judgment dated 23.05.2025, allowed the Appeal and set aside the order passed by this Tribunal.
- 2.4 Pursuant thereto, Restoration Application No. 34 of 2025 came to be filed by the Financial Creditor seeking restoration of the Company Petition. Meanwhile, IA No.3642/2025 was filed by the Financial Creditor for interim relief, for restraining the Respondent/Corporate Debtor from alienating, encumbering and creating any third-party interests on their assets. This Bench, by order dated 06.10.2025 allowed the Restoration Application No. 34 of 2025 and restored the Main Company Petition to file for passing consequential orders in terms of the judgment of the Hon'ble NCLAT.

3. Submissions by Financial Creditor

- 3.1. The Financial Creditor submits that the Corporate Debtor had availed of loan facilities from the State Bank of India and was facing financial distress on account of outstanding liabilities. In such circumstances, the Corporate Debtor approached the Financial Creditor, seeking urgent financial assistance to repay and settle its dues.
- 3.2. It is submitted that owing to long-standing business relations and acquaintance between the parties, the Financial Creditor advanced various sums to the Corporate Debtor from time to time, aggregating to Rs. 48,36,540/- up to 12.11.2018.

- 3.3. The Financial Creditor further submits that upon request made by the Corporate Debtor, the parties entered into an Agreement to Sale dated 09.04.2019, wherein the earlier disbursal of Rs.48,36,540/- stood duly acknowledged by the Corporate Debtor, and the Financial Creditor further agreed to extend financial assistance up to Rs.1,00,00,000/-.
- 3.4. It is submitted that under the said Agreement, the Corporate Debtor undertook to repay the outstanding amount on or before 31.03.2020. It was also agreed that in the event of failure to repay the dues, the Corporate Debtor would execute a sale deed in respect of the immovable property described therein in favour of the Financial Creditor.
- 3.5. The Financial Creditor has further relied upon the ledger confirmations dated 22.08.2019 issued by the Corporate Debtor acknowledging the outstanding dues payable to the Financial Creditor.
- 3.6. It is further submitted that since the Corporate Debtor failed to honour its repayment obligations within the stipulated period, the parties executed another Agreement to Sale dated 01.04.2020, extending the time for repayment till 31.03.2021.
- 3.7. The Financial Creditor has also placed reliance upon the Memorandum of Understanding dated 09.04.2020 executed between the parties, whereby the Corporate Debtor agreed to pay interest at the rate of 18% per annum on a monthly compounding basis or alternatively 30% of the profits earned by the Corporate Debtor.
- 3.8. It is also submitted that despite repeated demands and acknowledgments of liability, the Corporate Debtor failed and neglected to repay the outstanding dues and consequently committed default.

4. Contentions by Corporate Debtor

- 4.1. The Corporate Debtor has opposed the Main Company Petition by filing its Affidavit in Reply and denied the allegations and averments made by the Financial Creditor.
- 4.2. The Corporate Debtor submits that the present Petition is not maintainable under Section 7 of the Code as the underlying transaction is purely an Agreement to Sale relating to immovable property and does not constitute a financial transaction.
- 4.3. It is contended that the Agreement dated 09.04.2019 is styled as an "Agreement to Sale" and not as a loan agreement or financing arrangement. According to the Corporate Debtor, the said Agreement contemplated the transfer of immovable property situated at Plot Nos. 17, 18 and 19, Gat No. 53, Sajapur, Taluka Gangapur, District Aurangabad, in favour of the Financial Creditor.
- 4.4. The Corporate Debtor further submits that the said Agreement records payment of sale consideration amounting to Rs.1,65,00,000/- towards purchase of the aforesaid property, and therefore the amounts paid by the Financial Creditor cannot be treated as financial assistance.
- 4.5. The Corporate Debtor has further relied upon the subsequent Agreement to Sale dated 01.04.2020 and Memorandum of Understanding dated 09.04.2020 to contend that the intention of the parties was to complete the sale transaction and not to create any financial debt.
- 4.6. It is further contended that the ledger accounts relied upon by the Financial Creditor contain entries relating to the purchase and sale of

services along with GST components, and therefore, the transactions were commercial in nature and not financial borrowings.

- 4.7. The Corporate Debtor also submits that the Agreements provided that in the event of non-payment, the sale deed would be executed in favour of the Financial Creditor. However, the Financial Creditor neither sought specific performance of the Agreements nor called upon the Corporate Debtor to execute the sale deed.
- 4.8. On the aforesaid grounds, the Corporate Debtor submits that no 'financial debt' exists under Section 5(8) of the Code and consequently the present Petition deserves to be dismissed.

5. Analysis and Findings

- 5.1. Heard the Learned Counsel appearing for the Financial Creditor and the Corporate Debtor. Perused the pleadings, documents placed on record and the judgments passed by the Hon'ble NCLAT.
- 5.2. At the outset, it is pertinent to note that this Tribunal had earlier dismissed the present Company Petition by order dated 09.02.2023, holding that the transaction between the parties did not constitute a financial debt within the meaning of Section 5(8) of the Code.
- 5.3. The said order came to be challenged before the Hon'ble NCLAT in Company Appeal (AT) (INS) No. 510 of 2023. The Hon'ble NCLAT, after detailed consideration of the Agreements executed between the parties and the surrounding circumstances, was pleased to set aside the order passed by this Tribunal.

5.4. In Company Appeal (AT) (INS) No. 510 of 2023, the Hon'ble NCLAT categorically held that the real intention of the parties was not the enforcement of a pure sale transaction, but the advancement of financial assistance by the Financial Creditor to the Corporate Debtor. The Hon'ble NCLAT further observed that the Corporate Debtor had repeatedly acknowledged receipt of loans and advances in the Agreements and ledger confirmations. The relevant observations of the Hon'ble NCLAT are reproduced herein below:

“18. Thus we found that the Ld. NCLT erred in not observing the real intention of the appellant and the respondent which rather was never to enforce the agreement to sell. Admittedly the subject property is still mortgaged with some financial institution and is not cleared for sale. Admittedly the clauses of the agreements of 09.04.2019 and 01.04.2020 clearly stipulate such property could be mortgaged by the respondent to repay the loan of the appellant. If the intention was of sale/ purchase then why such clause(s) would have been entered into the agreements dated 09.04.2019 and 01.04.2020. Thus the real intention of the parties was to treat the transaction, a loan transaction. The respondent always acknowledged the receipt of loan and advances in all its three agreements in its ledger statements and never disputed it.

5.5. The Hon'ble NCLAT further held that the amount advanced by the Financial Creditor squarely falls within the definition of 'financial debt' under Section 5(8) of the Code and consequently directed admission of the Company Petition.

5.6. In view of the categorical findings rendered by the Hon'ble NCLAT, this Tribunal is not required to re-adjudicate the issue as to whether the transaction constitutes a financial debt under the Code.

- 5.7. The material placed on record demonstrates that monies were disbursed by the Financial Creditor to the Corporate Debtor against consideration for the time value of money. The Memorandum of Understanding dated 09.04.2020 specifically provides for payment of interest at the rate of 18% per annum, thereby clearly establishing the commercial effect of borrowing.
- 5.8. The Financial Creditor has thus successfully established the existence of debt and default on the part of the Corporate Debtor. Therefore, we find it to be a fit case for admission under Section 7 of the Code.

ORDER

The above **Company Petition No. (IB) 1049/(MB)/2021** is hereby **admitted** and initiation of the Corporate Insolvency Resolution Process (CIRP) is ordered in respect of **Akshay Techforge Private Limited**.

- a. This Bench hereby appoints **Mr. Swapnil Mukund Agrawal**, an Insolvency Professional having Registration No: IBBI/IPA-001/IP-P00845/2017-2018/11429 as the Interim Resolution Professional (IRP) having his address at – 102, Krushna Kunj, Plot No. 10-C, Near Tilak Nagar Ground, Nagpur - 440010 Email id: swapnil.ip845@gmail.com to carry out the functions as mentioned under the Code.
- b. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- c. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- d. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- e. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of CIRP or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- f. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- g. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP, as the case may be. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP, in default of which coercive steps shall be taken.
- h. In exercise of the powers under Rule 11 of the NCLT Rules, we order the Financial Creditor to deposit an amount of Rs.3,00,000/- (Three Lakh Rupees) towards the initial CIRP cost on issuing public announcement, inviting claims, etc., to the IRP, if demanded by him, immediately upon communication of this Order. The amount so deposited shall be interim

finance and paid back to the FC on priority upon the funds available with IRP/RP. The expenses incurred by the IRP out of this fund shall be subject to approval by the CoC.

- i. Registry shall send a copy of this order to the concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.

3. **Accordingly, this Company Petition No.1049/2021 is admitted.**

4. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

IA(IB) No. 3642 of 2025

1. This Interlocutory Application has been filed by the Applicant/Financial Creditor seeking interim protection against alienation, encumbrance, or creation of third-party rights in respect of the assets of the Corporate Debtor pending hearing of Restoration Application No. 34 of 2025 and admission of the restored Company Petition.
2. The Applicant states that an appeal was preferred against the dismissal of the Company Petition by this Tribunal, wherein the Hon'ble NCLAT set aside the order of NCLT, and the Company Petition was admitted against the Corporate Debtor by virtue of the Order dated 23.05.2025. Given the delay in hearing the Restoration Application and passing of consequential orders activating the moratorium under Section 14 of the Code, the Applicant has filed this application. During the hearing on 22.08.2025, the Ld. Counsel for the Corporate Debtor has provided an undertaking that the Corporate Debtor will not create any further encumbrance on Plant & Machinery and will not alienate the fixed assets. This undertaking was duly recorded on 22.08.2025 and the Interim protection has been extended from time to time and until today.

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3. The main Company Petition stands admitted by virtue of the present Order, and the moratorium declared as per the provisions of Section 14 of the Code, comes into operation. In the circumstances, the reliefs sought in the present Interlocutory Application do not warrant separate consideration.
4. In view thereof, **IA (IB) No. 3642 of 2025** stands disposed of as infructuous.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)
Siddhi, LRA

Sd/-

K. R. SAJI KUMAR
MEMBER (JUDICIAL)