NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 1565 of 2025

[Arising out of the Impugned Order dated 01.09.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench-V in C.P. (IB)/583(MB)2024]

IN THE MATTER OF:

PROGFIN PRIVATE LIMITED
76, 1 st Floor, Okhla Industrial Estate,
Okhla, New Delhi - 110020.
Email: legal@progcap.com **...Appellant(s)**

Versus

M/S. GANESH BENZOPLAST LIMITED
Dina Building, 1st Floor, M.K. Road,
Marines Lines (East), Mumbai – 400 002
Maharashtra
Email: compliance@gblinfra.com **...Respondent(s)**

Present:

For Appellant : Mr. Bishwajit Dubey, Mr. Kaustubh Rai and Mr. Vipulaaksh Moondra, Mr. Akshat Awasthi, Advocates

For Respondents : Mr. Krishnendu Datta, Sr. Advocate with Mr. Aditya Dewan, Mr. Parag Khandhar, Mr. Tapan, Ms. Pratyusha Dhodda, Advocates

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal, preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('**IBC**' in short), arises from the order dated 01.09.2025 (hereinafter referred to as the '**Impugned Order'**) passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-V) in C.P. (IB) No.583(MB) 2024. By the said Impugned Order, the Adjudicating

Authority has dismissed the Section 7 petition filed by the Appellant seeking admission of the Respondent into the rigours of Corporate Insolvency Resolution Proceedings ("**CIRP**" in short). Aggrieved by the impugned order, the Appellant has preferred the present appeal.

2. Coming to the brief factual matrix of the present case at hand, the relevant points which require to be noticed is that the Appellant-Progfin Private Ltd. (hereinafter referred to as "**Progfin**"), a Non-Banking Financial Company which is a wholly owned subsidiary of Desiderata Impact Ventures Private Limited (referred to hereafter as "**DIVPL**") had extended loan facility to the Corporate Debtor-GBL Chemical Limited (hereinafter referred to as "**GBLC**") which is a wholly owned subsidiary of parent company, Ganesh Benzoplast Ltd (hereinafter referred to as "**Ganesh Benzo**") which was also the Corporate Guarantor of the Corporate Debtor in the present matter. DIVPL was acting as the Facility Agent of the Appellant. Basis an application received from the Corporate Debtor, the Appellant-Financial Creditor had purportedly sanctioned working capital limits to the Corporate Debtor by issue of a sanction letter followed up by a Facility Agreement purportedly backed by a Board Resolution of the Corporate Debtor. The Facility Agreement and Deed of Corporate Guarantee was found by the Appellant to be in order since it was purportedly executed by Ramakant Pilani, who was both Director of the Corporate Debtor/Principal Borrower and the CEO of Ganesh Benzo-Corporate Guarantor. Besides the corporate guarantee, two personal guarantee deeds were also executed by Rishi Pilani, Director of the Corporate Debtor and Ramakant Pilani. The money sanctioned through the Agreement was supposed to be repaid within 90 days of the disbursal with interest

payments. Further as the money had been disbursed by the Appellant to the account of the Principal Borrower coupled with the fact that the money so disbursed had also been repaid by the Corporate Debtor to the Appellant from the same account, the money so disbursed was claimed by the Appellant to fall within the purview of "financial debt" under Section 5(8) of the IBC. When the Principal Borrower-Corporate Debtor had allegedly defaulted in the repayment of dues, the Appellant had issued a Recall Notice dated 15.04.2024 for the payment of outstanding dues besides invoking the Corporate Guarantee and the Personal Guarantees. The Corporate Debtor replied to the Recall Notice on 17.04.2024 denying their liability by contending that the loan was taken without proper authorization by Ramakant Pilani and that the money was disbursed into an account which though was in the name of the Principal Borrower but was opened without proper authority by Ramakant Pilani. However, by claiming that a certain amount still remained outstanding to be paid by the Principal Borrower and the Corporate Guarantor, the Appellant claimed that a default had come into existence. The Appellant thereafter filed a Section 7 petition against the Respondent-Corporate Guarantor on the ground that the twin tests of debt and default stood satisfied warranting admission of the Corporate Debtor into CIRP. The Adjudicating Authority, after considering the matter, however, came to the conclusion that though facially debt and default are established, the lending did not enure to the benefit of the Corporate Debtor and that Ramakant Pilani was not authorized to execute the transaction documents and the board resolutions basis which Ramakant Pilani had executed them were non-existent and fabricated. Hence the Adjudicating Authority dismissed the Section 7 petition

on grounds of fraud and forgery. Aggrieved by the impugned order, the Appellant has filed the present Section 7 petition.

3. Making submissions on behalf of the Appellant, Shri Bishwajit Dubey, Ld. Counsel for the Appellant submitted that the transaction documents for the grant of the loan facility of Rs.10 Cr. which was later enhanced to Rs.15 Cr. were executed by Ramakant Pilani duly supported by Board Resolutions. Ramakant Pilani who was the executor of the transaction documents was also the co-founder of the Respondent-Ganesh Benzo and was also its CEO besides being the erstwhile Director of the Corporate Debtor and heading the Chemical Division of the Ganesh Group besides being closely related to Ramesh Pilani and Rishi Pilani. The Board Resolution of 17.10.2023 had been passed by the Corporate Debtor, specifically and singly authorising either Ramakant Pilani or any other director of the Principal Borrower to execute the original Facility Agreement following which the same was executed by him on behalf of the Principal Borrower for a working capital facility of Rs.10 Cr. on 21.10.2023. Similarly, another Board Resolution of 16.10.2023 passed by the Respondent-Corporate Guarantor had also specifically and singly authorised Ramakant Pilani to execute the corporate guarantee in favour of the Appellant which had been executed on 21.10.2023 by Ramakant Pilani. Two separate personal guarantees had also been signed by Ramakant Pilani and by Rishi Pilani also on 21.10.2023 and 26.10.2023 respectively. It was pointed out that even the transaction documents for the enhanced facility were supported by a Board Resolution dated 24.01.2024, which had been passed by Respondent-Corporate Guarantor authorising Ramakant Pilani to execute the

Supplemental Corporate Guarantee in favour of the Appellant which was executed on 30.01.2024. Similarly, Board Resolution of 25.01.2024 passed by the Corporate Debtor also authorised Ramakant Pilani to execute the Addendum to the Facility Agreement which was executed on 30.01.2024. Even Supplemental Personal Guarantees had also been executed on 30.01.2024.

4. Submission was further made that disbursal of the facility had been made by the Appellant in the bank account of the Corporate Debtor maintained at SBI between 27.10.2023 and 09.02.2024. Once the Appellant had acted on the transaction documents provided to it and had disbursed the facility amount in the bank account of the principal borrower against which part repayment of the debt had also occurred, discrepancies even if any, in the transaction documents, cannot controvert the fact that there was a disbursal by the Appellant to the Principal Borrower and to that extent the Respondent was bound by the corporate guarantee given by it to secure this debt. Allegations made by the Respondent that the Board Resolutions were forged are also not relevant to the present proceedings since the Appellant was entitled to rely on the Doctrine of Indoor Management to hold that Ramakant Pilani had the ostensible authority to bind the Corporate Debtor-Principal Borrower and the Respondent-Corporate Guarantor in respect of the loan disbursed in the bank account of the Principal Borrower. It was also submitted that there is no substance in the claim of the Respondent that the Board Resolutions authorizing Ramakant Pilani were forged or that the SBI account was opened by Ramakant Pilani for his personal benefit as the

mastermind of the alleged fraud. When the loan had been disbursed by the Appellant pursuant to representations and documentation provided by the Principal Borrower which had been executed by a sitting director and CEO of the Corporate Debtor and also the Corporate Guarantor, it was emphatically asserted that the Corporate Guarantor and the Principal Borrower cannot rightfully contend to be absolved of their liability under the Facility Agreement and the corporate guarantee. It was pointed out that the impugned order is contrary to the settled law laid down by the Hon'ble Supreme Court in ***Innoventive Industries Limited vs. ICICI Bank (2018) 1 SCC 407*** and ***M. Suresh Kumar Reddy v. Canara Bank (2023) 8 SCC 387***, which had categorically held that once the twin tests of financial debt and default are satisfied, the application under Section 7 must be admitted. An *interse* dispute between the company and Ramakant Pilani does not extinguish the company's liability towards the Appellant.

5. When the SBI bank-account statements and the KPMG report clearly show that money disbursed by the Appellant into the said SBI account was used to make third-party payments, including payment to vendors and also for repayment of loan to the Appellant towards their debt-liability, submission was pressed that this clearly satisfied the twin-test of debt and default. It was asserted that the reports of the hand-writing expert and KPMG which have been placed on record by Corporate Debtor to contend that the Facility Agreement and the Deed of Corporate Guarantee are forged and fabricated, has been wrongly given undue credence by the Adjudicating Authority in contravention of the ratio laid down by this Tribunal in ***Tulip Hotel Private Ltd vs JC Flowers Asset Reconstruction Pvt Ltd in CA(AT)(Ins)No. 1146***

of 2023, wherein it has been categorically held that unilaterally prepared reports and expert opinions cannot be looked into by the Adjudicating Authority for the purpose of determining debt and default. As regards the initiation of criminal and civil proceedings, which defence has been taken by the Respondent and duly endorsed by the Adjudicating Authority while dismissing the Section 7 petition, it was pointed out that these proceedings do not have relevance in that in some cases no charge-sheet has been filed till date and the Bombay High Court has held in its order in WP (CRL) No. 5612 of 2024 that the dispute forming the subject matter of FIR No. 315 of 2024 is commercial in nature. As regards FIR No. 103 of 2024 and 581 of 2025, though charge-sheets have been filed in the said FIRs, the charge-sheet do not concern the Appellant since they are not named as an accused in the said FIRs or in the charge-sheets. It was also emphasized that the Respondent has wrongly placed emphasis on the solvent status of the Corporate Debtor; its market capitalization and high networth particularly when the documents, including MGT-7 clearly show that the Principal Borrower had a negative net-worth and was in need of funds. The contention that the auditors of the Respondent have given the opinion that there is no liability on part of the Respondent is misplaced and factually incorrect since the Director's Report for the FY 2024-25 clearly showed that there were loans of the Appellant to the Principal Borrower even though they have been reflected as "contingent liability".

6. Rebutting the arguments canvassed by the Appellant, Shri Krishnendu Dutta, Ld. Senior Counsel representing the Respondent strenuously contended that there are serious discrepancies in various documents

including the purported Facility Agreement, the purported Corporate Guarantee and the purported Board Resolutions as different dates appear on different versions of the same document besides missing signatures on different versions of the same document and mention of fictitious dates of Board Resolution meetings therein thus creating doubts about the authenticity and genuineness of the purported documents. It was submitted that the Board Resolution of 16.10.2023 of the Respondent-Corporate Guarantor and the Board Resolution of 17.10.2023 of the Corporate Debtor relied upon by the Appellant basis which the Facility Agreement and Deed of Corporate Guarantee were purportedly executed were fake and fabricated as no board meetings had taken place on those dates. Further the version of Facility Agreement filed by the Appellant in the Company Petition before the Adjudicating Authority and the version filed before this Tribunal in appeal and the one filed in the Writ Petition No. 5612 of 2024 before the Bombay High Court all carried different dates which discrepancy puts serious question marks on the veracity and genuineness of the transaction documents. Similarly, even the Deed of Corporate Guarantee which had been filed by the Appellant in the appeal before this Tribunal and that before the Adjudicating Authority in the Company Petition carried different dates. The Facility Agreement of 26.10.2023, which had been annexed with the Company Petition filed before the Adjudicating Authority, besides having discrepancy in the date also did not contain the signature of the Appellant. Even the Supplemental Guarantee Deed which was allegedly executed between the Respondent and the Appellant on 30.01.2024 referred to the date of original Guarantee Deed as 21.10.2023, whereas the purported Deed of Guarantee

filed with the Company Petition was dated 26.10.2023. It was submitted that the handwriting analysis report reports had also analysed that one of the signatures appearing on the Board Resolution submitted for opening the fraudulent SBI Account was a forged signature. All this show that the Appellant was now attempting to misuse the summary jurisdiction of this Appellate Tribunal to legitimize a non-existent transaction on the basis of forged and fabricated documents.

7. It was further added that as soon as the fraud came to the knowledge of the Respondent and the Corporate Debtor, they issued notices in the public domain regarding the fraud committed against them and also informed the State Bank of India (SBI) about the discovery of the fake and fraudulent bank account opened with them. This was followed by the filing of Commercial Suit No. 1169 of 2024 before the Bombay City Civil Court on 05.04.2024 by them. The Respondent also filed FIR No. 103 of 2024 on 05.05.2024 at the Cuff Parade P.S. in respect of the fraudulent bank account and the other related acts of fraudulent transactions including the making of forged/fabricated documents which led to framing of a charge-sheet wherein one of the SBI employees was named as an accused. Commercial Suit No. 21035 of 2024/Commercial Suit No. 60 of 2025 was also filed before the Bombay High Court on 05.07.2024 wherein the Court had granted interim relief to the Respondent after observing that allegations involving serious fraud could only be adjudicated by Civil Courts. It was emphatically asserted that only after the Respondent had filed the Commercial Suit before the City Civil Court of Bombay and the High Court of Bombay and notifying SBI of the fraudulent

transactions that the Appellant had filed the Section 7 petition before the Adjudicating Authority on 20.07.2024.

8. Submission was further pressed that no monies as such were ever received by the Corporate Debtor and mere advancement of monies to a third-party fraudulent and bogus account does not either qualify to be a Financial Debt or renders the debt binding the Respondent-Corporate Guarantor. It was also submitted that FIR No. 0581 of 2025 was registered by Andheri Police Station, Mumbai in relation to cheques allegedly issued by Ramakant Pilani to the Appellant without authorization of the Respondent or Corporate Debtor. Reliance was placed on the judgement of this Tribunal in ***Ocean Deity Investment Holdings Limited vs. Suraksha Asset Reconstruction Limited in CA(AT)(Ins) No. 795 of 2021*** wherein it was held that valid disbursement is said to have taken place only when money is no longer with the lender but with the borrower who then utilizes the money and that if there exists fraud in relation to the said transaction in question, such transactions do not create a "Financial Debt" under Section 5(8) of the IBC. It was also submitted that the amount allegedly received in the fraudulent bank account from the Appellant and other third-parties was further transferred online by one Manish Chaturvedi to another bank account of one Cardier Foods and Beverages Private Limited and one Yamuna Tradelink and other companies basis fake and fabricated invoices showing an illusory delivery of goods. Even the independent forensic audit report prepared by KPMG clearly concluded that Corporate Debtor does not seem to be a beneficiary of the funds received in the fraudulent SBI Account. Thus, when the Corporate Debtor was not the

real beneficiary of the funds received in the fraudulent bank account, the money never came to the Principal Borrower and in such circumstances, the Corporate Debtor cannot be held liable for having defaulted. Contending that the Appellant was maliciously attempting to force a solvent entity into CIRP which factum had been rightly noticed by the Adjudicating Authority and hence Section 7 petition was dismissed, reliance is placed on the judgement of the Hon'ble Apex Court in ***Anjani Technoplast vs Shubh Gautam in Civil Appeal No. 8427 of 2022*** and on the judgement of this Tribunal in ***Shitanshu Bipin Vora Suspended Director of Exclusive Linen Fabrics Pvt. Ltd. vs. Shree Hari Yarns Pvt. Ltd. in CA(AT)(Ins) No. 2204 of 2024*** wherein it was held that any attempt to weaponize the IBC based on a non-existent debt must be dismissed at the threshold with exemplary costs**.**

9. We have heard the Ld. Counsel for all the parties at length and have noted their rival contentions besides also perused the records carefully.

10. It is the case of the Appellant that it had sanctioned working capital limits to the Corporate Debtor on the basis of an application from the Corporate Debtor, which was followed up by issue of a sanction letter and execution of a Facility Agreement, which Facility Agreement was purportedly backed by a Board Resolution on 17.10.2023 of the Corporate Debtor. Besides the Facility Agreement, there was a Deed of Corporate Guarantee executed by the Respondent duly supported by Board Resolution of 16.10.2023 and two other personal guarantee deeds also executed dated 21.10.2023 and 26.10.2023. The initial sanction of Rs. 10 crore under the Facility Agreement was subsequently increased to Rs. 15 crore by way of an Addendum dated

30.01.2024, which was further secured by way of Supplemental Deeds of corporate guarantee dated 30.01.2024 and personal guarantees. The Addendum was executed by Ramakant Pilani on behalf of the Corporate Debtor purportedly backed by a Board Resolution dated 25.01.2024 while Supplemental Corporate Guarantee, also executed by Ramakant Pilani on 30.01.2024, was supported by a Board Resolution dated 24.01.2024. It has been claimed by the Appellant that in terms of the Facility Agreement the last disbursal was made to the Corporate Debtor on 09.02.2024 and the Corporate Debtor had also made their last part-repayment of debt to the Appellant on 08.02.2024 which clearly shows that debt was still due and payable. When the Corporate Debtor failed to make payment of the further outstanding amounts, the Appellant issued a loan recall and demand notice dated 15.04.2024 for immediate payment of Rs 15.44 crore. The Appellant also invoked the Corporate Guarantee and the personal guarantees and called upon the Corporate Guarantor and Personal Guarantors to fulfil the repayment liability in the event the Corporate Debtor failed in its obligations. It is the case of the Appellant that once debt and default stands established by documentary evidence, mere raising of allegations of fraud and forgery by the Corporate Debtor and Respondent-Corporate Guarantor cannot defeat their statutory remedy of invoking Section 7 under IBC. The presumption of debt and default arising from signed agreements, Board Resolutions, loan release into the Borrowers account and part-prepayment already made by the Corporate Debtor cannot be nullified by the plea taken by the Respondent of pending commercial suits, FIRs, or charge-sheets against third parties when neither the Appellant nor any of their representatives were implicated or

arrayed as an accused party. Thus, when the allegations of fraud, forgery and fabrication against the Appellant was not unequivocally established, there was no cogent ground for the Adjudicating Authority to throw out a Section 7 application.

11. Per contra, it is the case of the Respondent that the foundational transaction documents relied upon by the Appellant to assert debt and default were riddled with discrepancies which could not be accepted at face value. To substantiate their contention, it was added that there were three versions of the Facility Agreement and multiple versions of the Corporate Guarantee. Furthermore, even the date of Board Resolutions did not match with the particulars of the Board Meeting details as reflected in Form MGT-7 of the Corporate Debtor. It is further the case of the Respondent that even the Board Resolutions placed on record by the Appellant in support of execution of Facility Agreement and Corporate Guarantee suffers from gross infirmities. It is also the case of the Respondent that they became aware of the Facility on 12.04.2024 for the first time when a representative of the Appellant informed them of the same following which they acted with utmost dispatch and a letter dated 17.04.2024 was sent to the Appellant on behalf of the Corporate Debtor, the Corporate Guarantor and Personal Guarantors wherein the existence and validity of the financing documents was denied by pointing out that these were forged and fabricated documents. Further monies were remitted by the Appellant into the alleged fraudulent bank account of the Corporate Debtor at a time when by their own records held details of a different account in respect of the Corporate Debtor. It was also added that though the

Disbursement Mechanism mentioned in Schedule 1 of the Purported Facility Agreement provided that all disbursements were to be made to the Borrower's Cash Credit account but the repayments from the fraudulent bank account were routed to DIVPL which was the holding entity of the Appellant thus creating room for circumspection.

12. When we look at the material placed on record, we find that the original Facility Agreement dated 21.10.2023 had been executed by Ramakant Pilani on behalf of the Corporate Debtor. On the same date, a corporate guarantee had also been issued on behalf of the Respondent-Ganesh Benzo which Deed of Corporate Guarantee was also executed by Ramakant Pilani. The Appellant has however used multiple versions of the Facility Agreement on different occasions which are at variance with each other in terms of dates affixed thereon or the signatures contained therein. The Facility Agreement filed along with the Appeal is dated 21.10.2023 as placed at page 127 of the Appeal Paper Book (**"APB"** in short) while the Facility Agreement filed along with the Company Petition was dated 26.10.2023 as placed at page 271 of APB. The Facility Agreement dated 26.10.2023 submitted by the Appellant appearing at page 1058 of APB is not signed by the Appellant whereas the Facility Agreement of 21.10.2023 annexed to the Appeal is signed by the representative of the Appellant as placed at page 165 of the APB. Similar is the picture surrounding the Corporate Guarantees. The Corporate Guarantee dated 21.10.2023 filed with the Appeal at page 174 of APB carries the stamp of the Facility Agent-DIVPL and is signed by a representative of the Appellant as at page 179 of APB while the Corporate Guarantee filed with the Company

Petition is dated 26.10.2023 as placed at page 321 of APB which guarantee is neither stamped nor signed by the Appellant as maybe seen at page 326 of APB. Discrepancy in dates of the Facility Agreement and corporate guarantee coupled with disappearance of signatures of the Appellants from the Facility Agreement are oddities which cannot be simply overlooked. However, to be fair, explanation was offered by the Appellant to clarify the reasons for discrepancies in the documents. The Appellant admitted that as the original facility documents received from the Corporate Debtor did not carry the signature of the concerned parties on certain pages, the Corporate Debtor was requested by the Appellant to rectify the mistakes. Even in the rectified documents, the date of execution again got wrongly mentioned as 26.10.2023 instead of 21.10.2023. Before the corrections could be carried out, the parties had agreed to amend and extend the facility limit to Rs.15 Cr. which led to the execution of an Addendum to the Facility Agreement on 30.01.2024. Be that as it may, notwithstanding the explanation adduced by the Appellant, it is an indisputable fact that it emerges from the records available before us that multiple versions of the Facility Agreement with inconsistencies therein seem to be floating around. When the documentary substratum of the appeal is riddled with inconsistencies and discrepancies, it clearly lay beyond the summary jurisdiction of the Adjudicating Authority to undertake any investigation thereof.

13. Having already noticed the aforementioned discrepancies in the Facility Agreement and Deed of Corporate Guarantee before us, we now come to the various Board Resolutions which have been adverted attention to by the

Appellant to claim that the Facility Agreements and the Guarantee documents were entered into in an authorized manner. However, before going into the specific Board Resolutions, we may notice the Directors Report at page 24-25 of Reply Affidavit of the Respondent which records the Board Meeting details as under:

> *25. Committees & Meetings of the Board*
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> *During the year under review, Ten (10) Board meetings were held on May 25, 2023, June 19, 2023, August 11, 2023, September 4, 2023, November 7, 2023, November 27, 2023, December 5, 2023, December 20, 2023, January 29, 2024 and February 12, 2024. The details of number of meetings of the Board held during the year along with attendance are given in the Corporate Governance Report which forms part of this Annual Report.*

14. We now come to the Board Resolution of Respondent-Corporate Guarantor dated 16.10.2023 as placed at page 328 of APB by the Appellant in respect of Deed of Corporate Guarantee. However, when we peruse the Director's Report for FY 2023-24, it shows that no Board meeting had taken place on this date as maybe seen at page 24 of Reply Affidavit of the Respondent. The Board Resolution of the Respondent-Corporate Guarantor dated 24.01.2024 for the Supplemental Corporate Guarantee as at page 1189 of APB is contrary to the Director's Report for FY 2023-24 which shows that no meeting had taken place on this date as maybe seen at page 24 of Reply Affidavit of the Respondent. Similar discrepancies are pointed out in respect of the purported Board Resolution of the Corporate Debtor of 25.01.2024. The Board Resolution of the Corporate Debtor dated 17.10.2023 in respect of Facility Agreement as at page 172 of APB is contrary to the Form MGT-7 for FY 2023-24 which shows that no meeting had taken place on this date as

maybe seen at page 29 and 38 of Reply Affidavit of the Respondent. The Board Resolution of the Corporate Debtor dated 25.01.2024 for Addendum to Facility Agreement as at page 204 of APB is contrary to the Form MGT-7 for FY 2023-24 which shows that no meeting had taken place on this date as maybe seen at page 29 and 38 of Reply Affidavit of the Respondent. Furthermore, the wording of the Board Resolution of 24.01.2024 which purportedly authorised Ramakant Pilani to execute the purported Supplemental Corporate Guarantee shows that it was passed for the purpose of the purported Corporate Guarantee of the year 2023 which is an impossibility from the chronological perspective.

15. We now shift our focus to how the Respondent had reacted when it was confronted by a representative of the Appellant on 12.04.2024 apprising the Appellant of the Facility Agreement and other supporting transaction document purportedly executed by the Respondent though admittedly before the filing of the Section 7 petition on 06.08.2024. The Respondent not only denied the existence of these foundational documents and their authenticity but also filed an FIR vide No. 0103 of 2024 dated 02.05.2024 in the Cuffe Parade Police Station in relation to the opening of a fake and fraudulent bank account and the related acts of forgery in the opening of the fraudulent bank account and the transactions carried out therein by the Appellant as placed at page 593 of APB leading to filing of a chargesheet No. 800/PW/2024 before the CMM Court, Mumbai as can be seen at page 837 of APB. In this charge-sheet, apart from Ramakant Pilani, an employee of the SBI, Prashant Bhise, had also been named as an accused in the chargesheet as at page 882 of APB.

Upon carrying out investigations, the police authorities have also *inter alia* concluded that the alleged amount allegedly received in the fraudulent bank account from the Appellant and other third-parties was transferred by Manish Chaturvedi to another bank account of one Cardier Foods and Beverages Private Limited and one Yamuna Tradelink via online as at page 992 of APB basis invoices which were also ex-facie forged. These invoices besides not being on the letterhead of Corporate Debtor were not even part of the records of the Respondent or Corporate Debtor and the quantities of the goods shown to be delivered as per each invoice was significantly more than the load carrying capacity of the vehicles mentioned therein. Additionally, another FIR No. 0315 of 2024 had been registered by Vanrai Police Station in respect of the transactions forming subject matter herein in which an employee of the Appellant, Yogesh Parab has been made an accused. This FIR also records that the correspondence by the Appellant was carried out by using fake email ids as at pages 534 and 554 of APB. As Ramakant Pilani had also provided three undated cheques in favor of the Appellant purportedly from the official domain of the Corporate Debtor being the "ganeshgroup.com", yet another FIR No. 0581 of 2025 was registered by Andheri Police Station, Mumbai for issuing cheques unauthorizedly by Ramakant Pilani to the Appellant without authorization of the Respondent or Corporate Debtor.

16. Besides the filing of FIR's, the Respondent and the Corporate Debtor jointly challenged the tenability of the fraudulent transaction by filing of Commercial Suit No. 1169 of 2024 before the Bombay City Civil Court on 05.04.2024. Notices of Motion Nos. 1503 and 1658 of 2024 was preferred by

the Respondent in the above Commercial Suit filed before the Civil Court, Bombay wherein the Court had held that the Respondent and Corporate Debtor were victims of the alleged fraud and forgery and were not borrowers under the fraudulent loan transaction and observed that such allegations involving serious fraud could only be adjudicated by Civil Courts. This was followed by the filing of Commercial Suit No. 21035 of 2024/Commercial Suit No. 60 of 2025 filed before the Bombay High Court on 05.07.2024. The Appellant had clearly filed the Section 7 petition before the Adjudicating Authority on a date which was subsequent to the filing of Commercial Suit before the City Civil Court of Bombay and the High Court of Bombay by the Respondent as well as issue of public notice and notifying SBI of the fraudulent transactions.

17. At this stage it may be useful to see how the Adjudicating Authority has dealt with the issue. The Adjudicating Authority at para 21 of the impugned order has noticed that the Facility Agreement dated 26.10.2023; the Corporate Guarantee Deed dated 26.10.2023 and the bank statements of the account in which the monies were allegedly disbursed had all been disputed by the Respondent as fraudulent/fabricated documents. It was also noticed by the Adjudicating Authority that the Respondent had also disputed the bank account opened with SBI by Ramakant Pilani as it had been opened and operated by him in collusion with others to unauthorizedly avail credit facilities and loan from various entities to cheat and defraud the Respondent and the Corporate Debtor.

18. The Adjudicating Authority has further noticed at para 22 of the impugned order that the Respondent has relied on para 35 of the Director's Report of 30.05.2024 which contained the 37th Annual Report of the Respondent company along with the audited financial statements, wherein a disclosure had been made that the bank account was opened to borrow money in the name of the Corporate Debtor and that these transactions were conducted without valid authorization and without the express consent of the company's board or shareholders and therefore the entire amount was brought under contingent liabilities. The Adjudicating Authority therefore observed that the Annual Report of the Respondent had clearly disclosed that money borrowed in the name of the Corporate Debtor seems to have been used for an untruthful purpose and therefore no financial liability should fall on either the Corporate Debtor or the Respondent. The Adjudicating Authority thereafter has relied on the judgment of the Hon'ble Supreme Court in ***Radha Exports (India) Pvt. Ltd. v. K.P. Jayaram (2020)10 SCC 538*** wherein it has been held that disputes relating to forged signatures or fabricated records can be adjudicated upon evidence in a regular suit and not in proceedings under Section 7 of IBC since the latter proceedings are clothed with a summary jurisdiction. The Adjudicating Authority further held at para 29 that it lacked jurisdiction to adjudicate upon fraudulent transactions based on forged and fabricated documents.

19. The Appellant has assailed the finding contained at para 29 of the impugned order and contended that when Ramakant Pilani was the Director of the Corporate Debtor and the CEO of the Respondent-Corporate Guarantor

at the relevant point of time when the loan had been sanctioned and he was duly authorised by the Board Resolutions to act as the authorized representative of both the Corporate Debtor and the Respondent-Corporate Guarantor, the Adjudicating Authority could not have overlooked that mere allegations of fraud and forgery did not automatically oust its jurisdiction under Section 7 of the IBC particularly when at para 25 of the impugned order, the Adjudicating Authority has categorically held that there is debt and consequent default. Once debt and default is established, there is no discretion left with the Adjudicating Authority but to admit a Section 7 application. In support of their contention reliance was placed on ***Innoventive judgment supra*** of the Hon'ble Supreme Court which is as reproduced hereunder:

> *"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. "Default" is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. …*
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> *28. … It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may*

give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

(Emphasis supplied)

20. It was also added that the above view taken in ***Innoventive Industries judgement*** has been followed in ***E.S. Krishnamurthy v. Bharath Hi-Tech Builders (P) Ltd.(2022) 3 SCC 161*** and in ***M. Suresh Kumar Reddy judgement.*** The same dictum of law propounded by the Hon'ble Apex Court in the above judgements permeate the judgment of this Tribunal in ***Allahabad Bank v. Poonam Resorts Ltd. in CA(AT)(Ins.) Nos. 1303 & 1304 of 2019*** wherein it was held that the satisfaction the Adjudicating Authority with regard to occurrence of default has to be drawn by the Adjudicating Authority either from the records of the information utility or other evidence provided by the Financial Creditor and the Adjudicating Authority cannot direct a forensic audit or engage in a long drawn pre-admission exercise which will have the effect of defeating the object of the IBC. The initiation of Corporate Insolvency Resolution Process cannot be allowed to be thwarted unless in a given case forgery or falsification of documents is patent and prima facie established. Thus, once the Adjudicating Authority is

satisfied that there is a debt which is due and payable and default thereto has occurred, there is hardly a discretion left with Adjudicating Authority to refuse admission of the application under Section 7 and hence in the present case the Section 7 application could not have been dismissed.

21. Per contra, it is the contention of the Respondent that the Adjudicating Authority in the present case has taken into account the surrounding circumstances of fraud and fabrication at para 25 of the impugned order in rejecting the Section 7 application and hence the impugned order cannot be said to be flawed. Reliance has been placed by the Respondent on the judgement of this Tribunal in ***Ocean Deity Investment Holdings Limited Vs. Suraksha Asset Reconstruction Limited in CA(AT)(Ins)No.795 of 2021*** to contend that that the Adjudicating Authority has the jurisdiction to enquire into allegations of fraud when there is a prima facie case of fraudulent initiation of CIRP. It may be relevant to notice the relevant excerpts from the said judgment which is as follows:

> *"24. In view of this overwhelming evidence and conclusion by Statutory Bodies which are independent agencies we are of the considered view that these financial transactions have to be examined on the touchstone of the ratio laid down by the Hon'ble Supreme Court in 'Phoenix ARC Private Limited' Vs. 'Spade Financial Services Ltd. & Ors.', (2021) 3 SCC 475, wherein the Hon'ble Apex Court has observed that 'collusive transaction does not lead to a creation of 'Financial Debt' under Section 5(8) of the Code'.....Therefore, we are of the considered view that the subject commercial transactions were collusive in nature and are squarely covered by the observations made by the Hon'ble Apex Court in 'Phoenix ARC Pvt. Ltd.' (Supra). As we hold that these transactions were collusive in nature, they do not fall within the ambit of the definition of 'Financial Debt' as defined under Section 5(8) of the Code and therefore Suraksha, the Assignee, cannot be termed as a 'Financial Creditor' as defined under Section 5(7) of the Code....."*

27. Keeping in view all the aforenoted Judgements and the documentary evidence on record, we are of the earnest view that merely because there is a 'debt' and a 'default' it cannot be construed that a Section 7 Application is required to be admitted. The Adjudicating Authority ought to have examined the 'nature of these financial transactions' having regard to the Investigation Reports which were filed by the Appellant herein, the violation of the Articles of Association and assessed whether the transactions were collusive in nature or not and used its discretion whether to admit such an Application or not, keeping in view the scope and objective of the Code. It is appropriate at this juncture, to rely on the Judgement of the Hon'ble Supreme Court in 'Embassy Property Development Pvt. Ltd.' Vs. 'State of Karnataka' (2020) 13 SCC 308, in which the Hon'ble Apex Court has clearly noted that the Adjudicating Authority has the jurisdiction to enquire into allegations of fraud when there is a prima facie case of fraudulent initiation of CIRP.

28. The chequered history of the loan transactions and collusive arrangements indulged by Yes Bank demonstrate that the Term Loans disbursed in the name of Mack Star is an 'eye-wash' and Yes Bank has disbursed these loans with an ulterior motive.....This Tribunal observed that the fundamental scope & objective of IBC is 'Resolution' and 'Maximization of Assets' and not 'Recovery' of loans which do not strictly fall within the definition of 'Financial Debt' as defined under Section 5(8) of the Code."

(Emphasis supplied)

22. Reliance has also been placed on the judgement of Hon'ble Supreme Court in ***Bhaurao Dagdu Paralkar Vs. State of Maharashtra (2005) 7 SCC 605*** which held that that fraud vitiates every solemn act and if a party makes representations, which he knows to be false, and injury ensues therefrom this tantamount to be a fraud in law. Reliance has also been placed on the judgement of this Tribunal in ***M/s Acute Daily Media Pvt Ltd. & Ors. Vs. M/s Rockman Advertising and Marketing (India) Ltd. & Ors in CA(AT)(Ins) No. 1480 of 2024*** wherein the Tribunal had held as under:

"40. While there is no quarrel over the fact that Section 7 vests rights on the financial creditors to initiate CIRP proceedings against the defaulting

Corporate Debtor, however, debt and default cannot always be seen in isolation. We cannot be unmindful of the fact that the Adjudicating Authority is also required to take care that the provisions of Section 7 of IBC are not misused or abused in any manner either by the financial creditor or the promoters of the Corporate Debtor to take undue advantage at the cost of insolvency resolution…"

Basis the ratio of the above judgements, it is the contention of the Respondent that there being sufficient evidence of fraud, deception and misrepresentation on the part of Ramakant Pilani who acted in cahoots with the Appellant for ulterior reasons to create a contrived situation of debt and default, the Section 7 petition was rightly not admitted by the Adjudicating Authority.

23. Having noticed the judgements relied upon by both sides in support of their respective contention of either assailing or endorsing the impugned order, before we return our findings on the applicability of these judgements to the present factual matrix, at this stage for easy referencing, we would like to first reproduce para 25 of the impugned order which reads as under:

"25. As regards the Petitioner's contention regarding the facts relating to disbursement of the amount, consequent debt and default is concerned while one may agree with such proposition but the facts and circumstances surrounding such disbursements and consequent debt and default cannot be overlooked. The Petition under Section 7 filed by a Financial Creditor cannot be admitted unless the debt and default is established. In the present case though there is debt and consequent default but the same cannot be established against the Respondent herein in the wake of the surrounding circumstances which include the disbursement made into a bank account which is not the bank account authorizedly opened by the Principal Borrower, the Deed of Guarantee executed being claimed to be on account of fraud, the signatures and the Board Resolutions supporting such actions of opening bank account and executing Deed of Guarantee alleged to be fabricated. These aspects being disputed and consequent litigations being pursued by the Parties clearly limit the jurisdiction of this Tribunal in coming to a conclusion in respect of establishing of existence of debt and default."

(Emphasis supplied)

24. When we look at para 25 of the impugned order, we find that the Adjudicating Authority has noticed that the disbursement was made by the Appellant into a bank account unauthorisedly opened by Ramakant Pilani on behalf of the Principal Borrower; the Deed of Corporate Guarantee executed by Ramakant Pilani on behalf of the Corporate Guarantor sans the authority of Board Resolutions having been disputed by the Respondent and consequential litigations initiated and pursued by the Corporate Debtor and the Respondent to be relevant surrounding circumstances which clearly limited the summary jurisdiction of this Tribunal in ascertaining the existence of debt and default. It is therefore entirely misconstrued and misconceived on the part of the Appellant to claim that the Adjudicating Authority had admitted that debt and default stood established in the present matter, and that since these essential twin ingredients stood met, the Section 7 petition ought to have been admitted and not rejected.

25. Coming to our findings, we have no reasons to quarrel and quibble with the well-settled legal proposition laid down by the Hon'ble Supreme Court in the ***Innoventive judgment supra*** that admission of debt and default is sufficient for admission of a Section 7 petition. Basis the ratio of this judgment, the Appellant has claimed that the Adjudicating Authority cannot decline its jurisdiction under Section 7 of the IBC on grounds of allegation of fraud and forgery particularly when there is sufficient cogent documentary evidence of debt and default. It has been contended that unproven allegations of fraud, pending FIRs or civil suits cannot by themselves bar the admission

of a petition under Section 7 of the IBC, hence, the Adjudicating Authority could not have refused adjudication by harping on the principles of summary jurisdiction of the Adjudicating Authority. But what the Appellant has clearly missed out is that the Adjudicating Authority has not accepted that this is a case of unqualified debt and default for it has proceeded to take note of the circumstances surrounding the purported disbursements made by the Appellant and recorded that these circumstances have consequential impact on debt and default.

26. We are inclined to agree with the Adjudicating Authority that mere advancement of monies by the Appellant to a third-party fraudulent account does not *ipso facto* qualify as a binding financial debt on the Corporate Debtor or the Corporate Guarantor. The judgment of this Tribunal in ***Ocean Deity Investment Holdings Limited vs Suraksha Asset Reconstruction Limited in CA(AT)(Ins)No. 795 of 2021*** wherein it has been held that valid disbursement of monies creating a debt arises only when the money is no longer with the lender but with the borrower who then utilizes the money clearly comes to the aid of the Respondent. The ratio of the above judgement of this Tribunal which is predicated on the ratio laid down by the Hon'ble Supreme Court in ***Phoenix ARC Private Limited vs. Spade Financial Services Ltd. & Ors. in (2021) 3 SCC 475*** is squarely applicable in the present facts of the case in view of the multiple FIRs filed in the matter with employee(s) of the Appellant named therein and charge-sheet also having been framed in certain cases wherein an SBI employee has been arrayed as an accused in the fraudulent banking transactions entered by the Appellant;

Ramakant Pilani acting unauthorizedly on behalf of the Corporate Debtor as well as the Corporate Guarantor and himself as a personal guarantor besides other ongoing civil suit proceedings before the Civil Court, Mumbai and High Court of Mumbai. In the present facts of the case since the surrounding circumstances resonates with an element of fraud permeating the banking transactions, the Adjudicating Authority cannot be said to have committed any error in denying simpliciter admission of the Section 7 application.

27. This brings us to the other contention of the Appellant that third parties who enter into a contract with any company are protected against irregularities in the internal procedure of the company. In support of their contention, reliance was placed on the judgment of this Tribunal in ***Tulip Hotel Private Limited vs. JC Flowers Asset Reconstruction Pvt. Ltd. & Ors. in CA(AT)(Ins.) No. 1146 of 2023*** the relevant excerpts of the judgement which read as under:

> *"23. ……. In other words, the company's indoor affairs are to be treated as the company's outlook. What happens internally in a company is not a matter of public knowledge and hence an outsider can only presume the intentions of a company and cannot be expected to know the information he/she is not privy to. Only if the compliance or non-compliance with an internal requirement becomes ascertainable from the company's public documents, the protective shield of the doctrine of indoor management disclosure gets ruptured as the countervailing doctrine of constructive notice comes into play."*
>
> *(Emphasis supplied)*

It was contended that when no conclusive findings of any statutory/quasi-judicial body had come to surface which established the element of forgery and fabrication, merely on the basis of unilateral reports by hand-writing experts and/or by the KPMG in the present case, the Adjudicating Authority

could not have summarily concluded the transaction documents and Board Resolutions to be fraudulent/forged documents while considering the present Section 7 petition.

28. Per contra, the Respondent has contended that the Appellant having not done due diligence and knowingly disbursed funds to an unauthorized account thus acting in collusion cannot be seen to invoke the doctrine of indoor management. In support, reliance has been placed on the judgment of the Hon'ble Supreme Court in ***MRF Limited v. Manohar Parikkar (2010) 11 SCC 374*** which is to the effect:

> *111. The doctrine of indoor management is in direct contrast to the doctrine or rule of constructive notice, which is essentially a presumption operating in favour of the company against the outsider. It prevents the outsider from alleging that he did not know that the constitution of the company rendered a particular act or a particular delegation of authority ultra vires. The doctrine of indoor management is an exception to the rule of constructive notice. It imposes an important limitation on the doctrine of constructive notice. According to this doctrine, persons dealing with the company are entitled to presume that internal requirements prescribed in the memorandum and articles have been properly observed. Therefore, doctrine of indoor management protects outsiders dealing or contracting with a company, whereas doctrine of constructive notice protects the insiders of a company or corporation against dealings with the outsiders. However, suspicion of irregularity has been widely recognised as an exception to the doctrine of indoor management. The protection of the doctrine is not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry.*

29. Reliance was also placed on the judgment of the Hon'ble Supreme Court in ***Mahima Datla v. Renuka Datla (2022) 10 SCC 258*** which categorically held that the doctrine of indoor management cannot apply when there is suspicion of irregularity. It was emphatically asserted that when the

circumstances surrounding the transaction are suspicious enough for any prudent party to make necessary inquiries, the Adjudicating Authority cannot be seen to wear blinkers to obvious fraudulent transactions. It has been asserted that the doctrine of indoor management is a shield for the innocent and not a sanctuary for the complicit, collusive or negligent parties and in the present case the doctrine of indoor management does not apply for the Appellant's conduct is not merely negligent but it is actively complicit and collusive.

30. When we see the impugned order, we find that the Adjudicating Authority after taking notice of the multiple pending civil and criminal proceedings did not make any attempt to conduct any trial of sorts to ascertain whether the transactions are actually fraudulent thus respecting the boundaries of the limited summary jurisdiction enjoyed by it. Having said that, in our considered view, we are not persuaded to agree with the contention of the Appellant that the Adjudicating Authority had misapplied the principles laid down by this Tribunal in the ***Tulip Hotel judgment*** as in that case this Tribunal had held that allegations of fraud or forgery cannot be considered by the Adjudicating Authority at the time of adjudicating a petition under Section 7 of the IBC. In the given circumstances, we do not find the Adjudicating Authority to have either over-stepped its jurisdiction or found to have abandoned or declined to exercise its jurisdiction and therefore neither transgressed or undermined the legislative intent of the IBC in rejecting the Section 7 application.

31. In fine, we do not find any good ground to interfere with the impugned order rejecting the Section 7 application. We do not find any merit in the Appeal. The Appeal is accordingly dismissed. No costs.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

Place: New Delhi
Date : 30.06.2026
Farhan