IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CP (IB) No.45/7/JPR/2023

(An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF:

M/S. SHANTANU INVESTMENTS PRIVATE LIMITED

Reg. Office:
7/17 Roop Nagar, Delhi- 110007

……..Applicant/Financial Creditor

Versus

M/S AKSH OPTIFIBIRE LIMITED

Reg. Office:
F-1080, Phase-III, RIICO Industrial Area,
Bhiwadi, Rajasthan

……..Respondent/Corporate Debtor

Order pronounced on: 09.06.2026

Coram:

Sh. Praveen Gupta : Member (Judicial)

Appearances:

Sh. Tanmay Mehta, Adv. along with Sagar Chawla, Adv. : *For the Financial Creditor*

Sh. Sonal Anand, Adv. along with Surbhi Singh and Pranay Rathore, Advs. : *For the Corporate Debtor*

ORDER

Per: Praveen Gupta, Member (Judicial)

1. The instant Company Petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC/Code') seeking initiation of Corporate Insolvency Resolution Process ('CIRP') against the Corporate

Debtor, in respect of which reply and rejoinder have also been filed by the respective parties. Thereafter, vide separate orders passed on 21.01.2026 by the Hon'ble Judicial Member and Hon'ble Technical Member of the NCLT, Jaipur Bench, whereby dissenting judgments have been given and accordingly, the matter has been referred to me for adjudication under section 419 (5) of the Companies Act, 2013 read with Rule 60 (2) & (3) of NCLT Rules, 2016 vide order dated 18.03.2026, File No. 06/13/2026-NCLT (JPR).

2. Accordingly, I have heard the matter on various dates through physical hearing as well as virtual mode. I have also carefully perused the pleadings, documents placed on record, and submissions advanced with the able assistance rendered by the Learned Counsels appearing on behalf of the respective parties.

BRIEF FACTS OF THE MATTER:

3. In order to set out the factual and legal premise, it would be worthwhile to notice the facts briefly hereunder:

   i. The instant company petition has been filed by M/s Shantanu Investments Private Limited (Petitioner/Financial Creditor) under Section 7 of the IBC for initiating CIRP against M/s Aksh Optifibre Limited (Respondent/Corporate Debtor). As per the disclosures made in part IV of the petition, it has been mentioned that the principal amount of default is Rs. 2,00,00,000/-, the interest amount is Rs. 1,05,15,476/-

and the penal interest amounts to Rs. 27,98,599/-, thus the total outstanding amount is stated to be Rs. 3,33,14,075/-.

ii. It is submitted that in the year 2010-2011, the Corporate Debtor approached the Financial Creditor for certain financial assistance in the form of unsecured loan of Rs. 2,00,00,000/- and promised that it shall repay the said unsecured loan along with interest calculated @15% per annum from the date of payment till the date of refund. Further, as submitted, the Corporate Debtor also assured that in case it was unable to repay the said amount, interest would be calculated @24% per annum on the outstanding interest amount from the date of payment till the date of refund.

iii. It is also submitted that the amount of unsecured loan of Rs. 2,00,00,000/- was reflected as long-term loan and advance under the head "Other Loans and Advances" attached with the balance sheet of the Applicant and as short-term borrowings under the head "Inter Corporate Deposit from Others" as on 31.03.2021 in the balance sheet of the Corporate Debtor.

iv. It has also been mentioned that a recall notice was sent on 12.08.2019 recalling the outstanding principal amount of Rs. 2,00,00,000/- along with interest of Rs. 13,38,899/- upto 31.07.2019, calling upon the Corporate Debtor to pay the amount along with interest within 15 days. Further, a demand notice was also sent on 22.01.2022 wherein the amount of Rs. 2,00,00,000/- has been claimed as the outstanding principal amount. Certain documents have been attached as mentioned in part V of the petition, including ledger accounts, confirmation letters, TDS deduction by Aksh Optifibre, recall of unsecured loan, financial statements of the Respondent/Corporate Debtor for various financial years, and the record of default attached by the Financial Creditor issued

by NeSL, wherein the status has been shown as "Deemed to be Authenticated" and the date of default, as per NeSL, is stated to be 01.09.2019.

REPLY ON BEHALF OF THE CORPORATE DEBTOR:

4. A reply has been filed by the Respondent/Corporate Debtor, inter alia, taking several averments as follows:

i. It is stated that the present petition is nothing but an abuse of the process of law and that there is no debt or financial debt as defined under Section 2(11) or Section 5(8) of the IBC which is due and payable by the Corporate Debtor to the Petitioner/Financial Creditor.

ii. It is also averred that the legal notice dated 22.01.2022 issued by the Applicant has been duly replied to on 09.02.2022 and it has been clarified by the Corporate Debtor that the Applicant was rather liable to pay an amount of Rs. 46.79 lakhs as on 31.08.2019 to the Corporate Debtor. It has also been stated that even interest was liable to be paid by the Financial Creditor to the Corporate Debtor.

iii. It has thus been contended that the amount which is claimed by the Financial Creditor as debt is a disputed amount and that the present petition is barred by limitation in view of the fact that the loan in question was obtained during the period between 2010-2012, whereas the Corporate Debtor had duly notified its dispute vide e-mail dated 24.07.2012 itself, and therefore the present petition, which has been filed in August 2022, is clearly barred by limitation.

iv. It has also been contended by the Corporate Debtor that the Petitioner has suppressed material facts and that no financial debt has been appearing in the balance sheet of the Corporate Debtor and that the

Sdr

reliance placed by the Petitioner on the two entries appearing in the balance sheet filed by the Corporate Debtor for the financial year 2020–21 are nothing but old entries, and therefore such information cannot be relied upon by the Petitioner to its advantage and in the subsequent Financial Year, it has been shown as adjusted thus reflecting nil outstanding.

v. It is also further submitted on behalf of the Corporate Debtor that it is a very old company running for the past 37 years, is ISO certified, and has been a listed company on the BSE and NSE since August 2000, and the public shareholding presently is stated to be to the extent of 73.05%. The Corporate Debtor is stated to be engaged in the manufacture of optical fibre cables and fibre reinforced plastic rods with facilities available at different locations.

vi. It has further been contended by the Respondent/Corporate Debtor that the Petitioner is being represented through one of its Directors and Promoters, who is also a partner in a partnership firm, and that Mr. Arun Sood of the Petitioner and Dr. Kailash Chaudhary of the Corporate Debtor are old friends and had great interpersonal rapport.

vii. Therefore, taking advantage of the friendship, Mr. Arun Sood had offered to the Corporate Debtor one of his properties on rent, which was in the name of his partnership firm, and the said premises was taken on license by the Corporate Debtor with an agreement between the parties that the electricity bill for the use of the said premises would be paid by the Corporate Debtor subject to the reading from the sub-meter to be installed at the premises.

viii. It has further been averred and contended that Arun Industries, on the other hand, started raising invoices for electricity consumption in the name of the Petitioner Company for the licensed premises and since the

Sol-

promoters were friends, the Corporate Debtor never raised any objections to the same.

ix. It has also been stated that this was however, being done with ulterior motives by Mr. Arun Sood, as instead of providing the actual bills with meter readings, the Petitioner used to raise invoices by manually mentioning the units allegedly consumed by the Corporate Debtor without providing the actual electricity bills. Later on, Mr. Arun Sood was appointed as an Additional Director of the Corporate Debtor in the month of May 2010.

x. However, since invoices were being raised by the Petitioner for electricity consumption by the Corporate Debtor, the amount reflected in such invoices was paid diligently by the Corporate Debtor from time to time, and in that process the Petitioner was raising highly inflated invoices for electricity consumption whereas the actual consumption by the Corporate Debtor was much less. Meanwhile, some loan was offered by Mr. Arun Sood to the Corporate Debtor to the tune of Rs. 4.55 crores, which was paid on different dates, for which no documents however, were executed in writing as both parties enjoyed mutual confidence.

xi. Later, the Corporate Debtor vacated the concerned premises in the month of October 2013, and therefore the license agreement came to an end. The Corporate Debtor also pointed out to the Petitioner the incorrectly raised invoices for alleged electricity consumption by the Corporate Debtor, and such concern was raised by the Corporate Debtor through an e-mail dated 24.07.2012, whereafter several rounds of discussions took place. It is further stated by the Respondent that later on, it was found that the Petitioner had received excess payment towards electricity charges.

xii. It was also mutually agreed that the Corporate Debtor would continue to make repayment of the unsecured loan (ICD) obtained from the Petitioner. However, at the same time, the Petitioner would refund the excess amount charged from the Corporate Debtor with respect to excessive invoices raised on account of electricity consumption allegedly by the Corporate Debtor. Later, Mr. Arun Sood was also asked to resign from the Corporate Debtor on 27.09.2013 itself. The Corporate Debtor, however, continued making repayment of the loan amount until 11.07.2019 with the clear understanding that the excess amount received by the Petitioner towards electricity charges would be reimbursed.

xiii. Since the amount had been overcharged by the Petitioner on account of electricity dues, the Corporate Debtor therefore stopped making further repayments with respect to the Inter Corporate Deposit and also keeping in view of the previous cordial relations between the parties, the Corporate Debtor continued to reflect the outstanding loan amount of Rs. 2 crores in its balance sheet records as the Applicant had promised to reimburse the excess amount.

xiv. It was further submitted that the Applicant had promised to reimburse the excess amount and upon repayment of the same, the entry of Rs. 2.0 crores was to be removed from the records as settled. It was thereafter, sometime after the Covid period was over, during which period in fact, the functionality/manufacturing activity of the Corporate Debtor remained paralyzed, that the Corporate Debtor was surprised to receive a legal notice dated 22.01.2022 alleging a debt of Rs. 2.0 crores appearing in the financial statements of the Corporate Debtor. A response was duly given by the Corporate Debtor vide letter dated 09.02.2022, wherein it also demanded an amount of Rs. 46.79 lakhs along with interest from 01.09.2019.

Sd-

xv. The Corporate Debtor has further contended and averred that the Auditors of the Corporate Debtor had pointed out that when no amount was due and payable to the Applicant/Petitioner, the entry of Rs. 2.0 crores could not continue in its books as the same would incorrectly portray the liabilities of the Corporate Debtor, and accordingly the said entry was removed from the financial statements for the year 2021–22 onwards, as adjusted amount.

xvi. It has thus been contended that the Applicant/Petitioner has not approached this Tribunal with clean hands and has made false statements regarding the alleged loan amount of Rs. 2.0 crores and that the amount liable to be adjusted by the Corporate Debtor and the excess payment made on account of electricity charges remains unadjusted. It is also contended that the present petition was initially filed in August 2022 and was registered only on 31.08.2023, which reflects that the Petitioner was not serious enough in pursuing the present petition. It is also pointed out that the Corporate Debtor is a solvent entity and a going concern having many projects in hand and is a listed company with approximately 73.05% public shareholding.

REJOINDER ON BEHALF OF THE APPLICANT:

5. A rejoinder has been filed by the Petitioner whereby the reply filed by the Corporate Debtor has been disputed making the following submissions:

i. It has been submitted that the Corporate Debtor had taken an unsecured loan of Rs. 4.55 crores wherein the Applicant/Petitioner has contended that the Corporate Debtor, by way of its reply dated 09.02.2022 sent in response to the statutory notice dated 22.01.2022 issued by the Applicant/Petitioner, has for the first time stated a concocted narrative of a pre-existing dispute of alleged over charging of electricity

consumption charges by the Petitioner. It has also been submitted that the Corporate Debtor has failed to produce any e-mail/communication or letter from the Corporate Debtor showing any document with respect to the alleged liability of a sum of Rs. 1.0 crore on account of alleged electricity dues.

ii. It has also been contended that the reliance placed by the Corporate Debtor on an e-mail communication dated 24.07.2012 is misleading, in view of the fact that the said e-mail communication was withdrawn by the Corporate Debtor itself vide another e-mail subsequently sent on 02.08.2012. Further, the Corporate Debtor has unequivocally acknowledged the unsecured debt of Rs. 2 crores in the Corporate Debtor's balance sheet, letter issued by the Corporate Debtor to the Income Tax Department in reply to a notice, confirmation issued by the Corporate Debtor, and the regular payments of interest being made by the Corporate Debtor.

iii. It has thus been contended by the Applicant/Financial Creditor that it is an admitted case of the Corporate Debtor that the Corporate Debtor had taken an unsecured loan which has been consistently reflected in the balance sheets from F.Y. 2011–12 to F.Y. 2020–21, the details of which have also been furnished in para no. 12 of the rejoinder in a tabulated manner. Further, the Corporate Debtor has duly paid interest on the loan amount from time to time, and therefore reliance has been placed on the judgment in ***Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Ltd.*** [(2020) 8 SCC 401], wherein for the purpose of Part II of the Code, the basic elements required to be met for financial debt are disbursal against consideration for the time value of money. The Financial Creditor has also relied upon certain other judgments cited **as *Innoventive Industries Pvt. Ltd. v. ICICI Bank &***

Anr. [(2018) 1 SCC 407] and ***E.S. Krishnamurthy v. Bharath Hi-Tech Builders (P) Ltd.*** [(2022) 3 SCC 161].

iv. It has also been contended in the rejoinder as well as in the submissions made on behalf of the Petitioner that, as an afterthought, the Corporate Debtor has made a concocted story regarding the alleged amount due on account of excess payment of electricity bills made by the Corporate Debtor to the Petitioner/Financial Creditor and that such excess amount is liable to be adjusted against the amount of loan disbursed by the Petitioner.

v. It has further been contended that as per the documents, the default is duly reflected on the relevant platform, as issued by NeSL, where the debt is shown as "Deemed to be Authenticated."

vi. It has also been submitted that the present application was registered on 31.08.2023 and that the delay caused in getting the application registered is not attributable to the Petitioner. It is further submitted that when the Petitioner/Financial Creditor issued notice to the Corporate Debtor, the Corporate Debtor, in order to provide some legitimacy to its fabricated narrative, suddenly extinguished the debt in the subsequent financial statements for the year 2021–22 without any basis, which is nothing but a self-serving document of the Corporate Debtor itself.

DIFFERENCE OF OPINION BY THE HON'BLE MEMBERS OF THE NCLT BENCH:

6. As briefly referred to in the opening of this order, it is noticed that the Hon'ble Member (Judicial) and Hon'ble Member (Technical) of NCLT, Jaipur Bench have passed orders on the same date i.e. 21.01.2026 by giving

Sdr

separate and divergent findings. The concluding paras of the order passed by the Hon'ble Member (Judicial) are reproduced as under:

> *"8.....On perusal of communication dated 24.07.2012 and 09.02.2022, it is evident that there is a pre-existing dispute between the parties, the reconciliation of account has been carried out and with mutual consent the amount of Rs. 46,79,908/- has been stated to be due by the Petitioner to the Respondent. Therefore, in view of its preliminary submissions itself, the present petition deserves to be dismissed.*
>
> .....
>
> *10. Therefore, after having perused the documents placed on record and the contention of both the counsels, this court is of the considered opinion that the Petitioner in the present case has failed to bring the most relevant facts and necessary documents on record namely:-*
>
> *A) The director of the Petitioner was one of the directors in the Respondent Company.*
>
> *B) At the time of disbursal of the loan, he was on the board of the Respondent Company.*
>
> *C) He entered into deed of license with the Respondent Company and leased out the premises of sister concern Arun Industries.*
>
> *D) The invoices qua electricity charges were raised in the name of the Petitioner Company instead of Arun Industries, the licensor.*
>
> *E) The Petitioner has been raising electricity charges invoice upon the Respondent which were duly paid.*
>
> *F) There were issues with respect to the inflated electricity charges between the parties.*
>
> *G) The said issued of inflated charges was raised by the Respondent vide email dated 24.07.2012.*

Sd/-

H) Loan recall notice was duly responded to by the Respondent vide email dated 09.02.2022 and the detailed response gave out the entire background of the transactions between the parties. This document makes it conspicuous that in 2019 after reconciliation of the accounts by both the parties, an amount of Rs. 46,79,908/- was stated to be pending to be paid to the Respondent/ Corporate Debtor by the Petitioner/ Financial Creditor.

11. The aforementioned conscious non-disclosure of relevant facts and necessary documents by the Petitioner itself establishes that the Petitioner has not approached this Adjudicating Authority with clean hands.

12. At this juncture, this Court consider it appropriate to refer to the judgment of the Hon'ble coordinate bench in the case of Santoshi Finlease Pvt. Ltd. vs. Mothers Pride Dairy India Pvt. Ltd. wherein the Hon'ble Court in a similar set of circumstances has been pleased to hold that: -

> *"Since the alleged loan was disbursed and defaulted during the Directorships of Mr. Kaushal Mittal and Mr. Yug Mittal in the Corporate Debtor, who are the "Current Directors" in the Petitioner Company M/s Santoshi Finlease Pvt. Ltd., and at whose behest the Petition (IB)662(ND)/2022 under Section 7 has been filed, it is evident that the petition is not filed with an intent of seeking resolution of the Corporate Debtor rather it is for causing injury to the Corporate Debtor M/s Mothers Pride Dairy India Private Limited by its own Ex-Directors."*
>
> *The aforementioned judgment has been upheld by the Hon'ble NCLAT. The facts of the present case are identical to the facts in the aforementioned\ judgment and thus, the same is fully applicant to the present case.*

13. Further, on perusal of the record, it transpires that an attempt has been made to mislead the court into initiating the CIRP of an otherwise solvent entity.

Sdr

On perusal of the documents, it is evident that the Respondent is not an insolvent company. The present Petition has been filed by the Petitioner not for the resolution of the Respondent Company but for recovery of the amount. The Court has also been informed that a recovery suit stands filed by the Petitioner and the same is pending before the Hon'ble Delhi High Court which further establishes the fact that the interest of the Petitioner lies in recovering the amount and not in the resolution of the Respondent Company.

14. Thus, keeping in view the totality of circumstances and the conduct of the Petitioner, this Court does not consider it appropriate to grant any indulgence in the present case. Thus, the Company Petition bearing CP No. 45/7/JPR/2023 stands dismissed."

7. The relevant concluding paras of order passed by the Hon'ble Member (Technical) are reproduced as under:

"24. After perusing the order of Judicial Member and considering the abovestated facts in the pleadings, documents, and binding precedents, I am satisfied that: -

a) financial debt exists;

b) default has occurred; and

c) application is complete and maintainable as per section 7 of the IBC 2016.

25. The objections raised by the Corporate Debtor involve disputed questions of fact and accounting, which cannot be adjudicated in summary proceedings under Section 7 of IBC, 2016.

26. In my view, rejection of the petition would amount to enlarging the jurisdiction of the Adjudicating Authority beyond what is contemplated under the Code. Accordingly, I hold that the Company Petition deserves admission. I would therefore: -

a) Admit the Company Petition under Section 7 of the Insolvency and

Sd/-

Bankruptcy Code, 2016;

b) Declare moratorium under Section 14 of the Code;

c) Appoint an Interim Resolution Professional in accordance with law; and

d) Direct public announcement as per the Code and Regulations.

27. In view of the same, let the matter be placed before the Hon'ble President, NCLT, New Delhi for appropriate instructions."

8. It is in the aforesaid background of difference of opinion given by the Hon'ble Members vide their respective judgements/order that the present matter has come before me to hear and decide with respect to the difference of opinion in the orders passed by the Hon'ble Members.

FINDINGS:

9. I have heard the Ld. Counsels for the Petitioner and the Respondent and perused the records, exhibits/annexures. I have also heard the Ld. Counsels on the points of difference arising from the separate orders passed by the Hon'ble Members.

10. Upon careful perusal of the judgments passed by the Hon'ble Members, I find that the points of difference of opinion arising from the two judgments, which require determination by me, can be culled out and configured in the form of the questions in the following manner:

a. Whether there is a debt and default.

b. Whether at the stage of adjudication under Section 7 of the Code, the argument of pre-existing disputes can be considered.

c. Whether the concealment of surrounding facts and circumstances as alleged are of any material relevance under the given facts and circumstances of the present case.

i. Whether there is debt and default.

11. As regards the question of existence of "financial debt" and occurrence of "default" for the purposes of Section 7 of the Code, the Financial Creditor has submitted that the Corporate Debtor had approached it in the financial year 2010-11 for financial assistance in the form of unsecured loan of Rs.2,00,00,000/-. In support of the said contention, the Financial Creditor has also placed on record certain documents as already discussed in para 3(iv) of this order.

12. At this stage, in order to determine whether the financial debt and default stand established, it becomes necessary to examine the balance sheet entries and the rival contentions of the parties with regard to acknowledgment of liability. In this regard, it is seen that the Financial Creditor has annexed copies of the Corporate Debtor's Balance Sheets from Financial Year 2011-12 to Financial Year 2020-21 and has submitted that the claim amount of Rs. 2,00,00,000/- had been continuously acknowledged in the Balance Sheets of the Corporate Debtor. It has further been submitted that subsequent to

Financial Year 2021-22, the Corporate Debtor unilaterally wrote off the aforesaid amount. The details of the same are tabulated herein below:

S. No.	Financial Year	Amount reflected in the Balance Sheet of the Corporate Debtor	Head/remark under which the amount is reflected in the Balance Sheet
1.	2011-2012	3.55 Crore	Short-term borrowings Unsecured Loans Deposits (unsecured) 15% Inter Corporate Deposit from others repayable on demand
2.	2012-13	2.30 Crore	Short-term borrowings Unsecured Loans Deposits (unsecured) 15% Inter Corporate Deposit from others repayable on demand
3.	2013-14	2.00 Crore	
4.	2014-15	2.00 Crore	
5.	2015-16	2.00 Crore	
6.	2016-17	2.00 Crore	
7.	2017-18	2.50 Crore	
8.	2018-19	4.00 Crore	Inter Corporate Deposits from others are repayable on demand and carries rate of interest @ 11.50% to 15% p.a.
9.	2019-20	2.50 Crore	Inter Corporate Deposits from others are repayable on demand and carries rate of interest @ 11.50% to 16% p.a.
10.	2020-21	2.00 Crore	Inter Corporate Deposits from others are repayable on demand

13. Per contra, the Corporate Debtor has submitted that no such financial debt appears in its balance sheets for Financial Years 2021-22 and 2022-23 and that the entries relied upon by the Petitioner are merely old entries. It has further been contended that after the meeting held in September 2019 between the parties, the Petitioner, instead of refunding the excess amount

charged towards electricity dues, proceeded to issue a legal notice dated 22.01.2022, which was duly replied to by the Respondent vide reply dated 09.02.2022, whereby an amount of Rs. 46.79 lakhs along with interest was demanded from the Petitioner allegedly in lieu of excess payment made on account of electricity bills.

14. It has also been submitted by the Respondent that upon receiving no response to the aforesaid reply, the auditors of the Corporate Debtor pointed out that since no debt was due and payable, the entry of Rs. 2 crores could not continue in the books of accounts of the Corporate Debtor and accordingly the same was written off from the balance sheets of the Corporate Debtor from Financial Year 2021-22 onwards.

15. Since the contention of the Corporate Debtor is that subsequent removal of entries from the books of accounts reflects that no debt is due and payable, it becomes necessary to examine whether such a write-off in the books of accounts by the Corporate Debtor results in discharge of liability. In this regard, reference may be made to the judgment of the Hon'ble Supreme Court ***in Salim Akbarali Nanji vs. Union of India & Ors.*** **[(2006) 5 SCC 302]**, wherein it was observed as follows:

> *"17. ...The write off is only an internal accounting procedure to clean up the balance sheet, and it does not affect the right of the creditor to proceed against the borrower to realize his dues..."*

16. Further, the Ld. Counsel for the Petitioner has placed reliance on the judgment of Hon'ble NCLAT in ***Subrata Sardar v. Central Bank of India and Anr., (Company Appeal (AT) (Ins) No. 45 of 2025)*** to support its argument that what is relevant is acknowledgment of the debt by a party and not how it has treated the debt in the books of accounts. The relevant excerpts in this regard are reproduced hereinbelow:

> *"13.1 .....The respondent explains that in the balance sheet of the guarantor-CD for 2019–2020, 2021–2022, and 2022–2023, it has acknowledged its liability arising out of its contract of guarantee and hence its petition under Sec.7 is within time. But the appellant would contend that in its balance-sheet the liability to the respondent is disclosed only as 'contingent liability' and that it would not amount to an acknowledgement.*
>
> *13.2 This argument is impressive but it fails to hide the fallacy within. .....It is an unilateral and a self-serving statement which the appellant has made in its books merely. What is contextually relevant is, whether the appellant has acknowledged its liability, and not how he has chosen to describe it in the books of accounts of the corporate guarantor. Viewed thus, this tribunal holds that the appellant indeed has acknowledged its liability within the period of limitation, and necessarily it has to be held that the petition filed under Sec.7 IBC is not barred by time."*

17. Similarly, the Petitioner also relied on the judgment of the Hon'ble Delhi High Court in ***Arti Mittal vs. State*** **(Crl. M.C. No. 1525/2008)** wherein it was observed as follows:

> *"8. First of all these annual returns are in the nature of self-serving documents in as much as they are filed by the party or the Company Secretary or any other official of the company.*

Sd-

One of the fundamental principles of evidence as enunciated under Section 21 of the Evidence Act is that although a self- harming admission is relevant because no person would make an admission against his own interest unless and until it happens to be true but as a self- favouring admission on the basis of the same analogy is held to be not admissible and not relevant. If that is permitted to be done then a party can manufacture as much of evidence in his favour as is possible within his means to save him or her from the clutches of law. Therefore, on this analogy the annual return cannot be a basis for quashing the complaint or the summoning order. Further, in one of the annual returns there is a detail of the share holding in respect of the present petitioner and her husband Amit Mittal which is given apart from holdings of the other persons."

18. Further, the Hon'ble Supreme Court in ***State Bank of India vs Doha Bank Q.P.S.C & Anr.*** **(Civil Appeal No. 8527 Of 2022)** observed as under:

"25. It is pertinent to note that in the communication dated 19.03.2019 sent by the counsel of the CD, it is stated that disclosures about the corporate guarantees have been made by the CD in their financial statements on an ongoing basis. In any case, mere non-disclosure of corporate guarantee in the financial statements of CD for financial years 2016-17 and 2017-18, cannot deprive the appellants from making a claim on the basis of the said guarantees. At best, it could be treated as default committed by the CD."

19. In Commissioner ***of Income-Tax, West Bengal II vs. Durga Prasad More*** **(Civil Appeals Nos. 1898 and 1899 at 1968)** the Hon'ble Supreme Court observed as follows:

"11....It is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. In a case of the present kind a party who relies

Sdr

on a recital in a deed has to establish the truth of those recitals otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents."

20. The Hon'ble Appellate Tribunal for Forfeited Property, New Delhi in ***Shri Ajaib Singh vs. Competent Authority*** **(FPA No. 31/Delhi of 1991)** observed as under:

"9. In the ultimate analysis, the petitioner has relied mainly upon the so-called balance-sheets or statements of assets and liabilities as on March 31, 1970, to March 31, 1976, to explain not only the investments made by him in the two forfeited properties, viz., Vasant Vihar House at Delhi, and 116 kanals of land in village Sabowal, District Jalandhar, but also the investment of Rs. 2,95,000 made by his wife, Smt. Rajinder Kaur, in the purchase of 121K-19M of land on September 17, 1970. These balance-sheets are at best self-serving statements prepared by the appellant and are not at all substantiated by any books of account or documentary evidence and, therefore, cannot be relied upon."

21. From the aforesaid judgments, discussed hereinabove, the settled legal position which emerges is that while books of accounts and balance sheet entries constitute relevant material for determining the existence of liability, greater evidentiary value is attached to admissions made against the interest

S9r

of a party than to documents subsequently created in its own favour. It has also been observed that a unilateral act of changing the accounting treatment, removing entries, or altering the manner in which liabilities are reflected in the financial statements does not, by itself, determine the non-existence of a debt. Likewise, self-serving documents or self-favouring declarations in the balance sheet cannot be regarded against the Financial Creditor and in favour of the party who has created the document, as otherwise a party would be permitted to create evidence in its own favour through its own unilateral acts. This becomes all the more important in the facts and circumstances of the present case where in the financial statement of the previous years the corporate debtor has continued reflecting the financial debt while making due entries in the financial statement/ balance sheets and thereafter suddenly has shown the liability as nil in the later year of its financial statement.

22. Applying the aforesaid principles to the facts of the present case, it is seen that the Financial Creditor has relied upon disbursal of the loan amount, continuous payment of interest by the Corporate debtor year after year for establishing the debt in question as also has relied upon the financial statements and records of the Corporate Debtor, wherein the amount in question had continuously been reflected from Financial Year 2011-12 till Financial Year 2020-21 as an '*outstanding unsecured loan/inter-corporate deposit*'. Such entries were made by the Corporate Debtor in its own records

Sd-

over a considerable period of time. Such documents amount to acknowledgements emanating from the Corporate Debtor itself and, being admissions against its own interest, carry considerable evidentiary value.

23. The Corporate Debtor, on the other hand, seeks to rely upon the subsequent financial statements for Financial Year 2021-22 onwards, wherein the earlier entries reflecting the said entries ever since from the year 2011 onwards were written off on the basis that the auditors had advised that no amount remained due and payable after taking into account the alleged adjustment of electricity dues. However, such subsequent financial statements admittedly came to be prepared after disputes had arisen between the parties and after legal notices had already been exchanged.

24. In view of the aforesaid judicial precedents, these subsequent omissions or deletions from the books of accounts by the Corporate Debtor, being self-serving in nature, cannot be placed on the same footing as the earlier consistent acknowledgements made over several years. Further, in the absence of any independent material demonstrating actual discharge, settlement, reconciliation, or extinguishment of liability, the subsequent removal of entries appears to be an unilateral and self-serving creation by the Corporate Debtor, hence, the Corporate Debtor cannot defeat the effect of earlier acknowledgements which establish the debt merely by relying upon documents subsequently generated in support of its own stand. Therefore, the

Sd/-

consistent reflection of the said amount of Rs. 2 crores under the head of unsecured loans/inter-corporate deposits repayable on demand and carrying interest constitutes a valid acknowledgement of debt by the Corporate Debtor.

25. Additionally, to establish the debt, the Financial Creditor has also placed on record the Ledger Account maintained with the Corporate Debtor for the period from 01.04.2010 till 22.07.2022, attached as Annexure-1 with the petition, evidencing that payments were indeed made to and received from the Corporate Debtor, with remaining outstanding balance reflected as Rs. 2,00,00,000/-. Further, the Financial Creditor has also placed on record a letter dated 03.09.2018 issued by the Corporate Debtor addressed to the Income Tax Officer, wherein the Corporate Debtor also provided a summary of the ledger accounts relating to the loan transaction evidencing the interest paid on the loan at the rate of 15% since Financial Year 2010-11 (page no. 47 of the petition). In the said communication, the Corporate Debtor had also categorically acknowledged that the amount of Rs. 2,00,00,000/- advanced by the Financial Creditor was in the nature of an 'unsecured loan'. The relevant excerpts of the said communication are as follows:

> "...
>
> *Sir,*
>
> *With reference to your notice dated 28-08-2018 received by our office on 31-08-2018 in assessment proceedings of M/s*

Sdr

Shantanu Investments Private Limited, we are attaching below details as required by you-

1. Ledger statements (Electricity Reimbursement A/c, Loan A/c and Interest A/c) of M/s Shantanu Investments Private Limited from F.Y. 2010-11 till date – Annexure 'A', 'B' and 'C'.

2. Nature of transaction held with above said company during F.Y. 2010-11 – Aksh Optifibre Limited has taken unsecured loan of Rs. 2 Crores and paid interest of Rs. 13,69,521.00 in F.Y. 2010-11 and deducted 10% TDS on the same Aksh Optifibre Limited has reimbursed electricity charges of Rs. 37,27,661.00 to M/s Shantanu Investments Private Limited.

….."

26. It would also be relevant to mention that the Corporate Debtor has not denied receipt of funds from the Financial Creditor but instead has acknowledged the same at various instances in its reply and the Corporate Debtor's principal defence is not that no amount was ever advanced, but that the amount allegedly stood adjusted against excess electricity dues. The relevant averments in this regard from the reply of the Corporate Debtor are reproduced hereinbelow:

"4. .....The loan in question was obtained during the period between 2010 to 2012. However, the CD had duly notified its dispute vide its email dated 24.07.2012 itself.

10. (g) In the meantime, Mr. Arun Sood also offered the CD Company an unsecured loan of ₹4,55,00,000/- (Rupees Four Crores and Fifty Five Lacs) through the Applicant Company and paid the same on various dates between 21.09.2010 to 17.02.2012 as Inter Corporate Deposit ("ICD"). Since the promoters were good friends, no documents were executed in writing. The CD was making regular payment including the

Sd/-

interest agreed between the parties towards repayment of the above-mentioned ICD....

10. (h) ....It was further agreed that for the accounting purposes, the CD would continue to make repayment of the unsecured loan (ICD) obtained from the Applicant, however, the Applicant at the same time would refund the excess amount received by them to the CD....

10. (i) Based on the above understanding, the CD continued making repayment of the loan amount till 11.01.2019. The aforesaid repayment was being made with a clear understanding that the excess amount received by the Applicant as electricity charges would be reimbursed and the Applicant was continuously assuring the CD that the said payment would be released by them.

11. ....Its mala fide intentions are also evident from the mere fact that it has falsely stated that the loan amount was ₹2,00,00,000 (Rupees Two Crores) whereas the actual amount was ₹4,55,00,000/- (Rupees Four Crores and Fifty Five Lacs Only)..."

27. Having considered the material placed on record regarding the existence and acknowledgment of the transaction, it would now be appropriate to examine the contention regarding the absence of any formal written agreement between the parties and whether such absence, by itself, would negate the existence of a financial debt. The law in this regard is well settled. In ***Agarwal Polysacks Ltd. v. K.K. Agro Foods and Storage Ltd.*** **(2023 SCC Online NCLAT 624),** wherein the Hon'ble NCLAT held that a written financial contract is not the only basis for proving a financial debt, and that debt can be proved by other relevant documents. The relevant excerpts from the judgment are reproduced below:

Sd/-

"21. When we look into the statutory scheme as reflected in the Application to Adjudicating Authority Rules, 2016 and CIRP Regulations, 2016, it is clear that financial debt can be proved from other relevant documents and it is not mandatory that written financial contract can be only basis for proving the financial debt. We, thus, answer Issue No.1 holding that it is not necessary that written financial contract be the only material to prove the financial debt."

28. Similarly, in ***Arunkumar Jayantilal Muchhala v. Awaita Properties*** **2024 SCC Online NCLAT 428**, the Hon'ble NCLAT observed as follows:

"31. The Adjudicating Authority, however, took a view that there should be a financial contract between the parties which elucidate the rate of interest and date of repayment. The Adjudicating Authority took a view that there is no written agreement to establish the nature of transaction between the parties, hence, Appellant failed to prove the debt. We have already held that requirement of written financial contract is not a pre-condition for proving debt....."

29. Applying the aforesaid principles to the facts of the present case, although admittedly no formal written loan agreement was executed between the parties, however, the additional material placed on record evidencing the existence of an unsecured loan, prima facie indicates that the transaction was not merely a simple transfer of funds devoid of any commercial understanding, particularly when the fact that the loan was advanced has also not been denied by the Corporate Debtor and interest thereon was continued to be paid by the Corporate debtor year after year since the time the disbursal was made which remains an undisputed fact on the part of the Corporate debtor. Additionally, the contemporaneous documents placed on record,

52 –

including ledger accounts, financial statements, confirmation letters and communications issued by the Corporate Debtor itself, independently lend support to the nature of the transaction as a financial debt. Therefore, merely because no written agreement was executed between the parties, the transaction cannot automatically be deprived of its character as a financial debt and the absence of a formal written agreement by itself cannot be treated as determinative of the nature of the transaction.

30. On the basis of the material placed on record by the Financial Creditor, the amount being continuously reflected as an unsecured loan/inter-corporate deposit in the financial statements of the Corporate Debtor, the amount of loan being specifically acknowledged by the Corporate Debtor in its communication dated 03.09.2018 as an unsecured loan carrying interest and the interest actually being paid year after year, and in the absence of any cogent material produced by the Corporate Debtor demonstrating discharge or extinguishment of liability, I am satisfied that the amount in question constitutes a "financial debt" within the meaning of Section 5(8) of the Code.

31. As regards "default" under Section 3(12), the same means non-payment of a financial debt when it has become due and payable, in whole or in part, and is not paid by the debtor or the Corporate Debtor. In the present case, the Financial Creditor has placed on record the recall notice dated 12.08.2019 recalling the outstanding principal amount of Rs. 2,00,00,000/- along with

52—

accrued interest, calling upon the Corporate Debtor to repay the amount within the stipulated period. Thereafter, legal notice dated 22.01.2022 was also issued seeking repayment of the outstanding dues. It is the case of the Financial Creditor that despite such recall and subsequent demands, the Corporate Debtor failed to repay the amount claimed to be due and payable.

32. It is true that the Corporate Debtor, in response to the legal notice dated 22.01.2022, issued a reply dated 09.02.2022 raising objections and alleging adjustment of electricity dues against the amount claimed by the Financial Creditor. However, as already discussed hereinabove, the defence of the Corporate Debtor is not that no amount was ever received from the Financial Creditor, but rather that the same stood adjusted against alleged excess electricity charges. Further, apart from such assertions, no independent material has been placed on record by the Corporate Debtor demonstrating actual discharge, settlement, reconciliation, or extinguishment of the liability. Rather, the Corporate Debtor itself, in its reply, has admitted as follows:

> *"10. (j) On account of continuous failure of the Applicant to refund the excess amount received by them, despite repeated requests, the CD was constrained to stop making any further payment with respect to the ICD which was even otherwise being made only for accounting purposes as it was the Applicant who owed money to the CD...."*

33. Hence, the aforesaid admission regarding stoppage of payments particularly the interest on the loan amount, coupled with the mere assertion of adjustment in the absence of any supporting material evidencing a concluded

Sd-

reconciliation or settlement between the parties shows that the Corporate Debtor failed to repay the amount due and payable.

34. The Financial Creditor has also placed on record the Record of Default issued by NeSL wherein the status of the debt has been reflected as "Deemed to be Authenticated" as per Form-D wherein the date of the default has also been reflected as 1st September 2019. Hence, although the Corporate Debtor disputes the liability and raises issues relating to adjustment of accounts, once the existence of financial debt and recall of the amount stand prima facie established and mere dispute with regard to the quantum or alleged adjustments that too at the stage of Section 7, cannot, in itself displace the material placed on record indicating non-payment of the recalled amount. Therefore, prima facie, the record indicates occurrence of default within the meaning of Section 3(12) of the Code.

35. To summarize the findings discussed hereinabove, I conclude, upon cumulative evaluation of the material placed on record, that the Financial Creditor has established: (i) disbursal of funds to the Corporate Debtor, (ii) the transaction being in the nature of a financial debt, notwithstanding the absence of a written loan agreement, in view of the surrounding circumstances and material placed on record, (iii) continuous acknowledgment of liability by the Corporate Debtor in its financial statements from Financial Year 2011-12 till Financial Year 2020-21, (iv)

Sd-

issuance of recall notice and subsequent legal notice seeking repayment of the amount due, (v) failure on the part of the Corporate Debtor to repay the recalled amount, and (vi) the Record of Default placed on record issued by the Information Utility reflecting the status as "Deemed to be Authenticated". Further, the Corporate Debtor has failed to place any cogent and contemporaneous material establishing actual discharge or extinguishment of the liability by way of adjustment of electricity dues.

36. Thus, in view of the aforesaid analysis and findings, I am satisfied that the Financial Creditor has established the existence of "financial debt" and occurrence of "default" within the meaning of Sections 5(8) and 3(12) of the IBC, 2016 respectively.

ii. Whether at the stage of adjudication under Section 7 of the Code, the argument of pre-existing dispute can be considered.

37. As regards the issue whether, at the stage of adjudication under Section 7 of the IBC, 2016, disputes relating to the debt, including alleged adjustment of electricity dues as contended by the Respondent herein, are required to be considered, it becomes necessary to examine the nature of the defence raised by the Corporate Debtor and the scope of enquiry permissible under Section 7 of the Code.

38. It is the case of the Corporate Debtor that it subsequently came to know that inflated invoices had allegedly been raised towards electricity consumption

Sd/-

by the Petitioner in respect of electricity supplied on the licensed premises belonging to the partnership firm of the Petitioner's Director. According to the Corporate Debtor, upon detecting such discrepancies, an email dated 24.07.2012 was addressed to the Petitioner wherein day-wise details of electricity consumption along with particulars of the alleged discrepancies and excess amounts charged were furnished, and according to the Respondent, the excess amount allegedly charged was to the tune of more than Rs.1,00,00,000/-. It has further been submitted that no response thereto was received from either Arun Industries or Mr. Arun Sood.

39. The Corporate Debtor has further submitted that pursuant to the aforesaid communication, meetings were held between the representatives of both parties for resolution of the issue and after several rounds of discussions, it was allegedly agreed that excess amounts had been received by the Petitioner towards electricity charges and the same would be reimbursed to the Corporate Debtor. It has also been contended that for accounting purposes, the Corporate Debtor was to continue repaying the unsecured loan/inter-corporate deposit obtained from the Petitioner while the Petitioner was to allegedly simultaneously refund the excess electricity amount to the Corporate Debtor.

40. It has further been contended that another meeting was held in September 2019 wherein the parties once again allegedly agreed that the excess amount

would be refunded and since the promoters of both entities had friendly relations, no formal documentation was executed in this regard. However, apart from such assertions, no minutes of meetings, correspondence, settlement documents, reconciliation statements, or any contemporaneous record evidencing such arrangement have been placed on record by the Corporate Debtor.

41. In this regard, the settled legal position governing admission of an application under Section 7 of the Code is that the Adjudicating Authority is only required to satisfy itself regarding the existence of financial debt and occurrence of default and is not required to enter into an adjudication of disputes in the manner contemplated under Section 9 of the Code wherein the issue of pre-existing dispute is also available to the Corporate Debtor to raise as a defence against the alleged debt and default. In this context, the observations of the Hon'ble Supreme Court in ***Innoventive Industries Limited vs. ICICI Bank and another*** **(2018) 1 SCC 407** are of relevance and are reproduced hereinbelow:

> *"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*

52 -

authority that the adjudicating authority may reject an application and not otherwise."

42. Similarly, the Hon'ble Supreme Court in ***Catalyst Trusteeship Limited versus Ecstasy Realty Pvt. Ltd.*** **(Civil Appeal No. 7424 Of 2025)** while reiterating the principles laid down in ***Innoventive Industries*** **(supra)**, observed as follows:

"12..... Thus, the concept of a pre-existing dispute, which may be a stumbling block for admission of an application filed under Section 9 of the Code by an operational creditor, has no bearing on an application filed by a financial creditor under Section 7 of the Code."

43. From the aforesaid judgments, the legal position which emerges is that the concept of "pre-existing dispute", which assumes significance in proceedings under Section 9 of the Code, does not by itself constitute a ground to reject an application under Section 7 filed by a Financial Creditor. The scope of enquiry under Section 7 is confined to determining whether a financial debt exists and whether a default has occurred in relation thereto.

44. However, even assuming for the sake of argument that the defence relating to adjustment of electricity dues raised by the Corporate Debtor is examined on merits, it is seen that the same primarily rests upon alleged oral understandings and purported meetings between the parties. Though reliance has been placed upon email dated 24.07.2012 raising concerns regarding electricity charges, the subsequent case of the Corporate Debtor regarding an alleged oral understanding for adjustment and reimbursement of amounts is

not supported by any written settlement, reconciliation statement, board resolutions, correspondence, or any independent material evidencing conclusion of such arrangement.

45. The Respondent has further submitted that the amount of Rs. 46.79 lakhs claimed in reply dated 09.02.2022 had been arrived at after making adjustments towards the loan amount and other payments allegedly due from the Petitioner. In support of the plea of adjustment and set-off, reliance has been placed on the judgment of the Hon'ble Supreme Court in ***Bharti Airtel Limited and Another vs. Vijaykumar V. Iyer and others (*Civil Appeal Nos. 3088-3089 of 2020)** wherein the following was observed:

> *"50. On the aspect of mutual dealings and also equity, it is to be noted that adjustment of the inter-connect charges are under a separate and distinct agreement. The telephone service providers use each other's facilities as the caller or the receiver may be using a different service provider. Accordingly, adjustments of set-off are made on the basis of contractual set-off. These are also justified on the ground of equitable set-off. The set-off to this extent has been permitted and allowed by the Resolution Professional. The transaction for purchase of the right to use the spectrum is an entirely different and unconnected transaction.....For the same reason, we will also reject the argument that by not allowing set-off, new rights are being created and, therefore, Section 14 of the IBC will not be operative and applicable. Moratorium under Section 14 is to grant protection and prevent a scramble and dissipation of the assets of the corporate debtor. The contention that the "amount" to be set-off is not part of the corporate debtor's assets in the present facts is misconceived and must be rejected."*

46. However, the reliance placed upon the aforesaid judgment does not appear to advance the case of the Corporate Debtor. In ***Bharti Airtel*** **(supra)**, the set-off was considered in the context of mutual dealings arising out of contractual arrangements between parties and founded upon independent agreements governing such transactions. In the present case, no such independent agreement or established arrangement regarding adjustment of electricity dues against the loan amount has been placed on record. Hence, mere assertions regarding an oral understanding or friendly relationship between promoters, without any contemporaneous material establishing a concluded arrangement, cannot by themselves establish a legally enforceable adjustment or extinguishment of liability.

47. Also, the Petitioner has specifically denied the existence of any such arrangement and has disputed the Corporate Debtor's assertions regarding reconciliation and adjustment of accounts. Thus, the rival stands taken by the parties would necessarily require detailed examination of disputed questions of fact, including oral understandings, meetings between the parties, reconciliation of accounts and adjustment of mutual claims, which cannot be undertaken within the limited scope of proceedings under Section 7 of the Code.

48. Accordingly, in view of the judicial precedents discussed hereinabove and the settled legal principles governing the limited scope of enquiry under

Section 7 of the Code, I am of the considered view that the plea of pre-existing dispute raised by the Corporate Debtor cannot defeat the maintainability of the present proceedings. Even otherwise, the alleged adjustment of electricity dues is not supported by any contemporaneous material establishing extinguishment of the liability. Therefore, in the facts of the present case, such defence cannot displace the material placed on record already establishing the existence of financial debt and occurrence of default as discussed in the preceding paragraphs of this order.

iii. Whether the concealment of surrounding facts and circumstances as alleged are of any material relevance under the given facts and circumstances of the present case.

49. The Respondent has contended that the Petitioner has suppressed and concealed material facts, inasmuch as (i) the Corporate Debtor had raised a dispute with the Petitioner as far back as in the year 2012, which was again reiterated in September 2019, (ii) in response to the legal notice dated 22.01.2022 vide reply dated 09.02.2022 the Corporate Debtor had specifically stated that the Applicant was liable to pay a sum of Rs.46.09 lakhs along with interest after making necessary adjustments towards the loan and subsequent payments made thereafter, (iii) the promoters of both entities shared friendly relations and taking advantage of such relationship, Mr. Arun Sood had permitted use of premises belonging to Arun Industries

under a Deed of License, whereafter disputes allegedly arose regarding electricity charges, and (iv) the Petitioner has incorrectly reflected the loan amount as Rs.2,00,00,000/- whereas according to the Corporate Debtor the aggregate loan amount was Rs.4,55,00,000/-.

50. In support of the contention that the Petitioner has not approached this Tribunal with clean hands, reliance has been placed by the corporate debtor on a judgment of the Hon'ble Supreme Court in ***Kishore Samrite vs State Of U.P. & Ors*** **(Criminal Appeal No.1406 of 2012)** relating to suppression of material facts and concealment of relevant circumstances on the judgment wherein the Hon'ble Court observed as under:

> *"33.....A litigant is bound to make "full and true disclosure of facts.....*
>
> *....*
>
> *35. No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court..."*

51. Further, the Respondent also relied on the judgment of the Hon'ble NCLAT ***Shree Ambica Rice Mill vs. Kaneri Agro Industries Ltd.*** **(Company Appeal (At) (Insolvency) No.143 of 2021)** to contend that while considering an application under Section 7, the Adjudicating Authority is not precluded from

examining the true nature of the underlying transaction and the surrounding circumstances. The relevant observations are reproduced hereinbelow:

> *"Issue No. (i) Whether the Adjudicating Authority has exceeded in its jurisdiction while examining the nature of transaction in question?*
>
> *15. We would like to refer the Judgment of Hon'ble Supreme Court in the case of Phoenix Arc Pvt. Ltd. Vs. Spade Financial Services Ltd.&Ors. Civil Appeal No. 2842 of 2020 decided on 1st February, 2021 which reads as under:*
>
> *"48 The IBC has made provisions for identifying, annulling or disregarding "avoidable transactions" which distressed companies may have undertaken to hamper recovery of creditors in the event of the initiation of CIRP. Such avoidable transactions include: (i) preferential transactions under Section 43 of the IBC; (ii) undervalued transactions under Section 45(2) of the IBC; (iii) transactions defrauding creditors under Section 49 of the IBC; and (iv) extortionate transactions under Section 50 of the IBC. The IBC recognizes that for the success of an insolvency regime, the real nature of the transactions has to be unearthed in order to prevent any person from taking undue benefit of its provisions to the detriment of the rights of legitimate creditors."*
>
> *...*
>
> *18. The Hon'ble Supreme Court in the above-mentioned case held that even if the Application filed under Section 7 meets all the requirements, then also the Adjudicating Authority has exercised discretion carefully to prevent and protect the Corporate Debtor from being dragged into the Corporate Insolvency Resolution Process malafide.*
>
> *19. Thus, it is clear that the Adjudicating Authority is obliged to investigate the nature of the transaction and should be very cautious in admitting the Application in order to prevent taking undue benefit of provisions of IBC to detriment of the rights of legitimate creditors as well as to protect the Corporate Debtor*

S2-

from being dragged into CIRP with malafide. Section 65 provides that if any person initiates the Insolvency Resolution Process or liquidation proceedings fraudulently or with malicious intend for any purpose other than for resolution of Insolvency or Liquidation, the Adjudicating Authority may impose upon such person a penalty."

52. The Respondent has also relied on the judgment of the Hon'ble NCLAT in ***Acute Daily Media Pvt. Ltd. & Ors. vs. Rockman Advertising and Marketing (India) Ltd. & Ors.*** **(Company Appeal (AT) (Insolvency) No. 1480 of 2024)** wherein it was observed 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....*"

53. Reliance has further been placed on the judgment of Hon'ble NCLAT in ***M/s Santoshi Finlease Private Limited vs. State Bank of India*** **(Company Appeal (AT) (Insolvency) No. 974 of 2023).** The relevant observations are reproduced hereinbelow:

"*38. As noted above by us that rejection of attempted CIRP due to reasons of its fraudulent and malicious initiation, we need not go into the issue of the existence of financial debt and default, yet for sake of completeness we are delving into it to find out the real nature of the transactions in this case. On the issue of the existence of debt, we find that the Appellant transferred a sum of Rs 92,00,000/- (Page 147 of the Appeal)*

52 -

to the CD, as per the account statement of the Appellant. The true nature of the purported 'Loan Agreement' has been noted by us previous in paragraphs. .....Therefore, in the facts and the circumstances of the case we find that all the amounts shown as amount paid by the Appellant, were paid to acquire stake in CD and appoint the Directors. We cannot but conclude that the amount of Rs 92,00,000/- in question was not a loan but instead infused by the Appellant as an investment in equity to acquire control and Directorship in the CD, and not as a loan or financial debt. And the said investment was not in the nature of a disbursement against time value of money, which is a fundamental criterion for a financial debt.

...

50. Based on the facts and circumstances, we conclude that the Section 7 petition was filed with malicious intent...."

54. There can be no dispute with the legal proposition emerging from the aforesaid judgments that a litigant is under an obligation to disclose all material facts and that Section 7 proceedings cannot be permitted to be used for any purpose other than insolvency resolution. Further, where surrounding circumstances indicate fraud, collusion, or artificial creation of a debt, the Adjudicating Authority is empowered to examine the real nature of the transaction. However, such examinations must rest on objective material placed on record and not merely on allegations.

55. The judgments relied upon by the Respondent are distinguishable on facts. In ***Kishore Samrite*** **(supra)**, the issue pertained to deliberate suppression and concealment of material facts having a direct bearing on adjudication. In ***Acute Daily Media*** **(supra)**, contemporaneous material disclosed collusive

arrangements and artificial creation of debt, leading to a finding of fraudulent initiation of CIRP. Similarly, in ***Santoshi Finlease*** **(supra)**, apart from the existence of common directorship, the contemporaneous material itself demonstrated that the amounts advanced were in substance the investments made for acquisition of stake, control and management of the Corporate Debtor rather than genuine financial debt. It was in such peculiar circumstances that the Hon'ble Courts proceeded to examine the real character of the transaction and concluded that the proceedings were initiated with malicious intent. However, in the present case, although certain surrounding circumstances and prior associations between the parties have been pointed out, no material has been placed on record demonstrating that the transaction in question was intended for acquisition of control, artificial creation of debt, or initiation of CIRP with malicious intent. It has also not been brought on record as to how previous association of the parties concerned has prejudiced the corporate debtor in any manner particularly when there is a clear disbursal of the loan amount duly admitted by the corporate debtor as reflected in its balance sheets, as also in its reply and further in the backdrop of the fact that the interest was being paid by the corporate debtor on such loan amount from time to time.

56. Further, the allegation of concealment of material facts against the Petitioner also requires examination in light of the pleadings as a whole. It is also

relevant to note that the Petitioner has not remained silent on the aforesaid allegations raised by the Corporate Debtor. Rather, in the rejoinder, the Petitioner has specifically denied the allegations regarding the alleged adjustment of electricity dues and sought to explain the surrounding circumstances alleged and relied upon by the Corporate Debtor.

57. The Petitioner has also disputed the Corporate Debtor's contention that disputes had existed between the parties since the year 2012 and has contended that the email dated 24.07.2012 relied upon by the Corporate Debtor itself stood subsequently withdrawn. Had there been any deliberate intention to suppress material facts from this Tribunal, the Petitioner would not have specifically dealt with and contested the said allegations upon these being so raised.

58. The Petitioner has also taken a specific stand in the rejoinder that for the purposes of adjudication under Section 7 of the Code, the enquiry is confined to determination of debt and default and has placed reliance on ***Innoventive Industries*** **(supra)** and ***E.S. Krishnamurthy*** **(supra)** in support thereof. Hence, the mere fact that all surrounding factual assertions subsequently raised by the Corporate Debtor were not elaborately narrated in the petition itself cannot automatically lead to an inference of deliberate suppression or lack of bona fides, particularly when such allegations have been specifically dealt with and denied through subsequent pleadings and supporting material.

Sd/-

Also, no prejudice has been shown by the corporate debtor in view of the alleged association between the parties in the past. Moreover, the contention of the Respondent Corporate Debtor for alleged concealment of surrounding facts and circumstances relating to prior association between the parties and one of the director of the Petitioner being on the board of the Respondent Corporate Debtor is of no significance when such surrounding facts are seen and tested under the facts and circumstances of the present case relating to debt and default. I find that such surrounding facts as allegedly concealed do not have any bearing or impact whatsoever on the merits of the case under Section 7 of the Code, not even remotely, as the debt and default is conclusively proved as there is an admitted disbursement and consequential non-repayment.

59. Similarly, the contention regarding variation in the amount of loan being Rs. 2 crores or Rs. 4.55 crores also does not by itself establish fraud or suppression of material particulars. The relevant consideration is whether the claim forming the subject matter of the present proceedings has been substantiated by the material placed on record. Merely because there may exist financial dealings of a larger value between the parties would not automatically lead to an inference that the claim made in the present petition is false or that material facts have been concealed.

60. The issue, therefore, does not appear to be one of concealment of material facts, but rather revolves around the rival interpretations of the same set of transactions and surrounding circumstances by the respective parties. Accordingly, the judgments relied upon by the Respondent are distinguishable on facts and do not advance its case and, therefore, the argument of concealment of material facts cannot be accepted in the peculiar facts and circumstances of the present case.

61. In view of the foregoing discussion and findings on the issues framed hereinabove and while agreeing with the order of the Hon'ble Member (Technical), I conclude that the Financial Creditor has been able to establish the existence of "financial debt" and occurrence of "default" within the meaning of Sections 5(8) and 3(12) of the IBC, 2016. I further conclude that the plea of pre-existing dispute raised by the Corporate Debtor does not constitute a valid ground for rejecting the present proceedings under Section 7 of the Code and that the allegations regarding concealment of material facts and surrounding circumstances, in the facts of the present case, do not disclose any fraud, collusion, artificial creation of debt, or malicious initiation of CIRP so as to warrant rejection of the petition.

62. In view of the above findings, I am of the considered opinion that there is a debt and default which meets the ingredients of Section 7 of the Code, and therefore the petition deserves to be admitted. I order accordingly and direct

52

initiation of Corporate Insolvency Resolution Process against the Corporate Debtor along with all consequential directions, including declaration of moratorium under Section 14 of the Code and appointment of the Interim Resolution Professional (I.R.P.).

63. The reference (File No. 06/13/2026-NCLT (JPR)) as per the order of the Hon'ble President, is answered accordingly.

64. Let the matter be placed before the concerned/Regular Bench for further proceedings, as per law.

Sd/-

Praveen Gupta
Member (Judicial)

Date: 09.06.2026