**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI**

**COURT-IV**

**C.P. (IB) 638/ND/2022**

**Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016**

**IN THE MATTER OF:**

SBI Global Factors Ltd.

...Applicant/Financial Creditor

Versus

AKS Electricals & Electronics Pvt. Ltd.

...Respondent/Corporate Debtor

**CORAM:**

**SHRI MAHENDRA KHANDELWAL**
**HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI**
**HON'BLE MEMBER (TECHNICAL)**

**Order delivered on: 10.07.2026**

**PRESENT:**

For the Applicant: Mr. Jitendra Kumar, Mr. Ayush Parmar, Advocates

For the Respondent: Mr. Gautam Singhal, Mr. Rajat Chaudhary, Ms. Anjali Maurya, Advocates

## ORDER

## PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The present application C.P. (IB) 638/ND/2022 has been filed by SBI Global Factors Limited ("Applicant/Financial Creditor/FC") under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process ("CIRP") against AKS Electricals & Electronics Private Limited ("Respondent/Corporate Debtor/CD") on the ground that the Corporate Debtor had committed a default in payment of Rs. 1,19,00,502.34/- (Rupees One Crore Nineteen Lakhs Five Hundred Two and Thirty-Four Paise Only).
2. The Corporate Debtor i.e., AKS Electricals & Electronics Pvt. Ltd. having CIN: U45200DL2007PLC158316 is incorporated dated 23.01.2007 under the provisions of the Companies Act, 1956 having its registered office situated at E-216, First Floor, East of Kailash, New Delhi South Delhi DL 110065 India. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. **Contentions of the Applicant**

Brief facts of the case and contentions of the applicant as mentioned in the instant application are as follows:

i. The Financial Creditor, registered with the Reserve Bank of India, provides factoring services between the supplier of goods and the buyer of goods and acts as financer for the transaction by providing discounting and rediscounting of invoices raised by the supplier on the buyer. The financer i.e., the financial creditor herein makes payment to the supplier on behalf of the buyer and on or after due date the buyer makes payment to the financer. In other words, a business sells/assigns its accounts receivables (invoices) to the financer to meet its short term liquidity needs. After assignment, the financer is entitled to recover the invoice dues from the purchaser whose invoices have been discounted by the seller in favour of the financer.

ii. The applicant has been providing factoring services to a corporate entity - PSR Metals Pvt. Ltd. ("PSR") since May 2019. On 02.05.2019, the applicant sanctioned Domestic Factoring Facility to the tune of Rs. 3 Crores by way of Sanction Letter dated 02.05.2019.

iii. In view of Sanction Letter dated 02.05.2019, various documents dated 09.05.2019 were executed by PSR Metals Pvt. Ltd. and the Personal Guarantors, which included - Global Account Receivables Management Agreement, Deed of Charge, Demand Promissory Note, Joint and Several Personal Guarantee Deeds, Deed of Assignment of receivables.

iv. The Trade Finance Facility/Domestic Factoring Facility was renewed vide Sanction Letter dated 12.12.2019 and Deed of Assignment of receivables dated 07.01.2020 was entered into between the Seller (PSR Metals Pvt. Ltd.) and the Applicant whereby the Trade Receivables due to the tune of Rs.2,22,22,222/- (Two Crores Twenty-Two Lakhs Twenty-Two Thousand Two Hundred and Twenty-Two Only) from the Respondent was assigned by PSR Metals Pvt. Ltd. to the Applicant. PSR Metals Pvt. Ltd. submitted FIU (Fund in Use) cheques of Rs. 3 Crores under Covering Note dated 21.01.2020.

v. The trade facility continued and was renewed by SBI Global Factors Ltd. by way of Sanction Letter dated 16.10.2020. The Applicant kept following up with the Respondent for repayment of its dues with regard to the receivables assigned to it. The Respondent, acknowledging the debt issued 7 cheques amounting to Rs.1,17,88,420.67/- (One Crore Seventeen Lakhs Eighty-Eight Thousand Four Hundred Twenty and Sixty-Seven Paise Only) drawn on various dates between 25.02.2021 to 04.03.2021 in favour of the Applicant. All these cheques were returned unpaid with remarks "Funds Insufficient". Applicant issued Legal Notice dated 11.06.2021 u/s 138 of Negotiable Instruments Act, 1881 ("NI Act"), however despite the legal notice payment was not made by the Respondent.

vi. The Applicant continued following up with the Respondent for the repayment of dues. The Respondent submitted a letter dated 17.03.2022 along with six cheques payable on different dates between 17.03.2022 to 17.08.2022, however, the first cheque dated 17.03.2022 was dishonoured on presentation. The Applicant did not present the remaining cheques.

vii. Still, despite continued follow-ups, no payment was made by the Respondent. The Applicant issued Legal Demand Notice dated 06.07.2022 demanding repayment of Rs.1,19,00,502.34/- (Rupees One Crore Nineteen Lakhs Five Hundred Two and Thirty-Four Paise Only) due as on 24.03.2022 along with interest, within 15 days of receipt of notice failing which proceedings under IBC, 2016 would be initiated. Despite receipt of notice, no payment was made.

viii. The Applicant submits that it is a Financial Creditor as defined u/s 5(7) of the Code in as much as the debt under the trade finance carried out by the Applicant, has been assigned by the Seller PSR to the Applicant who availed Domestic Factoring Facility with regard to the trade receivables. It is further submitted that the debt of Corporate Debtor is a financial debt in terms of the definition of financial debt in Section 5(8)(e) of the Code in as much as, the trade receivables have been discounted and assigned to the Applicant by the Seller PSR on non-recourse basis.

4. **Contentions of the Respondent**

The averments of the Respondent as contained in the reply on behalf of the Respondent are as follows:

i. The Respondent submits that the applicant is a Non-Banking Financial Company (NBFC) engaged in factoring business and is not in the business of lending. Therefore, the applicant is not entitled to initiate the proceedings under Section 7 of Insolvency and Bankruptcy Code, 2016 against the respondent claiming to be a Financial Creditor.

ii. The present Application is not maintainable as the Reserve Bank of India in Para 8A of its circular dated 01.07.2015 (Updated as on April 11, 2016) titled as "Master Circular - The Non-Banking Financial Company - Factors (Reserve Bank) Directions, 2012" has stipulated the exposure norms for single and group borrower limits. As per the circular the facilities extended by way of factoring services would be covered within the overall exposure ceiling and the exposure shall be reckoned as under -:

*“a. In case of factoring on "with-recourse" basis, the exposure would be reckoned on the assignor.*
*b. In case of factoring on "without-recourse" basis, the exposure would be reckoned on the debtor, irrespective of credit risk cover/protection provided, except in cases of international factoring where the entire credit risk has been assumed by the import factor.”*

iii. The applicant does not fall under the scope and category of Financial Creditor qua the respondent as defined under Section 5(8) of Insolvency and Bankruptcy Code, 2016. The alleged debt, on the basis of which this application has been filed does not fall under the category and scope of Financial Debt as defined under Section 5(8)(e) of the Code. The Factoring agreement relied upon by the applicant herein is "on recourse basis", hence, the applicant will only be entitled to file the application under Section 7 of the Code against the assignor i.e. PSR Metals Private Limited. The applicant is not entitled to file Section 7 application against the respondent. As per the RBI circular, the applicant has to reckon the debt in the hands of assignor i.e. PSR Metals Private Limited and not in the hands of the respondent.

iv. There is no disbursal of funds from the applicant to the respondent against the time value of money so as to claim the existence of a financial debt.

v. The application is barred under Section 10A of the Code. The applicant itself in Part IV (Particulars of Financial Debt) of Form 1 has stated as follows -:

*"Payment date between 31.12.2020 to 16.01.2021 and due date between 15.02.2021 to 02. 03. 2021."*

The alleged invoices on the basis of which this application has been filed pertain to the period between 31.12.2020 till 16.01.2021, having their respective due dates between 15.02.2021 till 02.03.2021.

vi. The Applicant has failed to file appropriate affidavit under Section 63(4) of the Bharatiya Sakshya Adhiniyam, 2023. It is submitted that the Indian Evidence Act, 1872 stands repealed and has been replaced by the Bharatiya Sakshya Adhiniyam, 2023, and therefore any certificate claimed to have been issued under Section 65B of the repealed enactment is legally unsustainable and inadmissible in evidence.

5. Vide Order dated 16.02.2023, this Adjudicating Authority had dismissed the present application by relying on Reserve Bank of India's circular dated 30.07.2015 titled "Provision of Factoring Services by Banks-Review". The said circular stipulated the exposure norms for single and group borrower limits, wherein it is clearly stated that facilities extended by way of factoring services would be covered within the overall exposure ceiling. Para 6 also states that the exposure shall be reckoned as under:

> *(a) In case of factoring on with-recourse basis, the exposure would be reckoned on the assignor.*
> *(b) In case of factoring on without-recourse basis, the exposure would be reckoned on the debtor, irrespective of credit risk cover/protection provided, except in cases of international factoring where the entire credit risk has been assumed by the import factor.*

The Relevant excerpt of the order reads:

> In the present matter, the assignor is M/s PSR Metals Private Limited. Therefore, as per the exposure norms, the exposure would be reckoned on the said organisation but not against M/s Aks Electricals And Electronics Limited i.e. the respondents in the instant application.
>
> The applicant herein is basically an NBFC doing the factoring business. The Factoring Agreement between the applicant and the assignor is 'ON RECOURSE BASIS'. Therefore, the applicant will be entitled to pursue/maintain Section 7 application in the case of assignor only and following the RBI circular it has to reckon the debt against the assignor only. The applicant does not have the jural relationship of 'Creditor' and 'Debtor' with the respondents herein, as there is no 'disbursal' of any amount to them by the applicant for 'time value of money'. This Adjudicating Authority is, therefore of the considered view that the instant application under Section 7 is not maintainable within the framework of Insolvency & Bankruptcy Code, 2016.

No other point was considered at that time.

6. The Applicant preferred an Appeal in the Hon'ble National Company Law Appellate Tribunal ("NCLAT") bearing Company Appeal (AT) (Insolvency) No. 664 of 2023, whereby the Hon'ble NCLAT vide order dated 07.08.2025 set aside the above order of this Adjudicating Authority, taking in view the submissions made by the Applicant regarding the Global Account Receivables Management Agreement, Deed of Assignment executed between PSR and the Applicant and Demand Notice and Payment Schedule given by the Respondent. The Hon'ble NCLAT directed restoration of Application. Relevant paragraph of the order of Hon'ble NCLAT reads thus:

> 6. Since the impugned order does not discuss/interpret clause 9 of the agreement dated 09.05.2019 and its effect as also the Assignment Deed dated 07.01.2020 and its effect; the aspect of admission of liability by the Respondent to pay to the appellant herein, hence we set aside the impugned order dated 16.02.2023 with a request to the Ld. NCLT to restore the petition at its original number to be decided afresh after examining the provisions of the Agreement, Assignment Deed, acknowledgment and correspondence on record. The Respondent shall be at liberty to raise all its contentions before the Ld. NCLT.

7. Learned Counsel for the Applicant has submitted that the default occurred in May 2021 when the cheques given by the Corporate Debtor to be paid against the due date between 15.02.2021 to 02.03.2021, got dishonoured and hence the default was committed by the Corporate

Debtor. The default was committed in May 2021 and present application was filed in August 2022 and hence the present application is in compliance of Section 10A of the Code.

8. Learned Counsel for the Applicant has further submitted that the debt of the Applicant, due and payable by the Corporate Debtor is a 'Financial Debt' in terms of Section 5 (8)(e) of the Code. This Financial Debt occurred on account of receivables discounted or sold other than any receivable sold on non-recourse basis. In the present case the receivables were sold or discounted by the Applicant on recourse basis however the recourse as provided under clause 9 of the Global Account Receivables Management Agreement is contingent against the assignor i.e. PSR Metals Private Limited upon happening of certain events against the Corporate Debtor. Further the RBI guidelines provides for domestic factoring that in the case of domestic factoring, the exposure would be reckoned against the assignor when the factoring is on recourse basis and when it is non-recourse basis the exposure would be reckoned against the debtor. However, RBI guidelines does not provide for anything in the case of recourse being limited or contingent.

9. Learned Counsel for the Respondent has relied on the following judgments to support their arguments:

   i. ***M/s Canbank Factors Ltd. vs. Brijesh Singh Bhaduria & Ors. [CA (AT) (Insolvency) No. 742 of 2025 delivered on 28.01.2026]***, wherein a claim in the capacity of Financial Creditor was filed under Form C and the Hon'ble NCLAT held that:

*"40. The present is a case of transaction, wherein, seller, buyer and financers are registered and transaction takes place for sale and purchase of goods and discounting of invoices, payments and recoveries of payment by Financers. In the present case, no disbursement was made to the Corporate Debtor, hence, the transactions cannot be held to be a 'financial debt". The debt in question is an operational debt coming within the meaning of Section 5(21) of the Code, having arisen from the Corporate Debtor's procurement of goods from its suppliers during the ordinary course of business operations. The mere subsequent assignment of these trade receivables to the Appellant does not change the fundamental nature of the debt from operational to financial.*

*41. In the facts and circumstances of the present case, we find that the Adjudicating Authority has rightly dismissed the Appellant's claim under Form C and correctly held that the nature of the debt in question is operational. There exists no legal or factual basis for treating the Appellant as a Financial Creditor in the present case."*

ii. ***M/s Canbank Factors Limited Vs. M/s Shree Jaya Laboratories Private Limited, [CP (IB) 83/2021], Hyderabad Bench delivered on 21.02.2022*** wherein NCLT Hyderabad Bench has held the following:

*"26. On a consideration of all facts and the legal position, we have no doubt in holding that in view of the explicit clause in the factoring*

*agreement entered into between the Applicant/ Assignee and the Client/ Assignor in relation to the purchase of debts ON RECOURSE basis, read with the RBI Guidelines discussed supra, there is no jural relationship of creditor and borrower between the Applicant and Respondent. Consequently, the applicant herein cannot claim to be Financial Creditor qua the Respondent so as to maintain the instant application filed u/ s 7 of the Code against the Respondent."*

iii. ***Manish Mukim Vs. Ms. Rakho & Anr. [CA(AT)(Ins.) No. 617 of 2023]*** wherein the Hon'ble NCLAT held that the default which occurred during the Section 10A period therefore cannot be included in the calculation of debt and default for initiating CIRP.

iv. ***Mr. Bhavit Sheth Vs. Mr. Madan Bajrang Lal Vaishnawa (Interim Resolution Professional) & Anr. [CA(AT)(Ins.) No. 328 of 2024]*** wherein the Hon'ble NCLAT has held:

*"20. We, thus are satisfied that application filed by the Operational Creditor was clearly hit by Section 10A and ought not to have been admitted. Adjudicating Authority committed error in admitting Section 9 application disregarding the bar under Section 10A."*

**FINDINGS AND ANALYSIS**

10. We have heard the arguments advanced by the Ld. Counsel for the Applicant and the Respondent and have perused the documents on record.

11. The Present Application has been filed by SBI Global Factors Limited, which is an NBFC licensed by Reserve Bank of India carrying on

Factoring/Trade Finance Business. In the present case the petitioner entered into Global Accounts Receivables Management Agreement dated 09.05.2019 with PSR Metals Private Limited after issuing sanction letter dated 02.05.2019 issued by the applicant whereby the invoices of the Corporate Debtor were offered by PSR Metals Private Limited to be discounted and receivables from the Corporate Debtor was assigned to the Applicant. The Trade Finance Facility/Domestic Factoring Facility was renewed twice vide Sanction Letters dated 12.12.2019 and 16.10.2020. The Corporate Debtor defaulted in the payment to be made to the Applicant in lieu of the assigned invoices and hence the Applicant has preferred this Application under section 7 of the Code for initiation of CIRP against the Respondent.

12. The Applicant submits that in the present case the receivables were discounted on recourse basis however the recourse as provided under clause 9 of the Global Account Receivables Management Agreement is contingent against the assignor i.e. PSR Metals Private Limited upon happening of certain events against the Corporate Debtor. Clause 9 of the Global Account Receivables Management Agreement reads as under:

9. **RECOURSE AND CREDIT PROTECTION**

9.1 SBIGFL shall have Recourse in respect of:

9.1.1 each Receivable which the Debtor shall be, or shall claim to be, unable to pay by reason of legal constraints or acts or orders of Government (unless otherwise specified in paragraph 9 of the Schedule);

9.1.2 each Receivable in respect of which the Debtor shall dispute liability for payment whether in whole or in part;

9.1.3 each Receivable in respect of which the Debtor shall assert any right of lien, retention, counterclaim or set-off or shall claim discount, commission or allowance not previously Notified in writing by the Client to SBIGFL;

9.1.4 the non-payment of each [Approved] Receivable which has arisen as a consequence (whether direct or indirect) of the occurrence of any of the following events:

(i) a nuclear explosion or contamination (whatever its origin); or

(ii) a war (whether declared or not), between two or more of the following countries, namely France, the People's Republic of China, the Russian Federation, the United Kingdom and United States of America;

9.1.5 (except where the Credit Protection Facility is indicated as applicable in paragraph 9 of the Schedule, in which case clause 9.3 shall apply) each Approved Receivable (not being a Receivable included in clauses 9.1.1, 9.1.2, 9.1.3 or 9.1.4) which remains unpaid in whole or in part after it has become due for payment by the Debtor;

9.1.6 each Receivable in respect of which the Client is unable to perfect title; all of which shall forthwith and automatically be deemed Unapproved Receivables whereupon SBIGFL shall be entitled to adjust the Supplier Account (and any other relevant account) to reflect the change.

9.2 SBIGFL will credit the Client with sums subsequently received by SBIGFL in respect of any Receivable in respect of which it has exercised its right of Recourse.

9.3 Where the Credit Protection facility is indicated as applicable in paragraph 9 of the Schedule then SBIGFL will accept the risk or risks therein specified (except in relation to taxes recoverable by the Client and the Client's Credit Risk Element) that an Approved Receivable will remain unpaid in whole or in part after it has become due for payment in the amount and upon such further terms as may be specified in paragraph 9 of the Schedule. The provisions of this clause shall not prevent SBIGFL having Recourse in respect of any taxes not recoverable by the Client, the Client's Credit Risk Element and any settlement, trade or retrospective discount taken or claimed in respect of any Approved Receivable which remains unpaid after expiry of the period referred to above nor in relation to any amount by which the unpaid element of such Receivable exceeds the relative Debtor's Credit Limit.

13. Clause 9 of the Deed of Assignment of Receivables dated 07.01.2020 lays down necessary conditions in case of default reproduced as below:

9. **DEFAULT**

9.1 Without prejudice to the right of the Assignee to proceed against the Debtor, the non-payment of the Receivables by the Debtor on or after the due date under the respective Receivables (s), in full or in part, shall grant and vest with the Assignee the right to require the Assignor, forthwith upon notice, to pay to the Assignee an amount equal to the amount remaining unpaid by the Debtor of the Assignment Price along with Charges therein under this deed from time to time.

9.2 The failure of the Assignor to pay the amounts demanded under the notice issued under Clause 9.1 hereinabove will result in the occurrence of the Event of Default contemplated in Clause 18 of the Agreement.

9.3 The Assignor confirms and declares that, in case of delay in payment by the Debtor of all and/or part amount of Receivables on Due Date, the Assignee is entitled to receive interest for delayed period at such rate of interest as per the terms and conditions as amended from time to time, till the date of realization.

14. Before examining the said agreement and other relevant documents for the nature of recourse basis, it is pivotal to examine the nature of debt/receivables accruing in the present case to ascertain the maintainability of this Section 7 application under the Code.

15. The Deed of Assignment of Receivables dated 07.01.2020 defines receivables as:

"**Receivables**" means the right to a monetary amount (or, where the context so requires, a part of the amount) due from the Debtor under various invoices/ bills of exchange/ supply agreement/ power of attorney/ any other agreement (as applicable) raised/ to be raised, issued / to be issued/ executed by and between the Assignor and the Debtor from time to time, pursuant to Supply Contract(s)/ Purchase Order(s)" entered into with such Debtor, including any tax or duty payable by the Debtor, together with its Associated Rights, whether such right is existing, accruing, arising in future, conditional or contingent as on the date of this deed;

This definition establishes that receivables in the present case are due from invoices/bills of exchange/supply agreement.

16. Moreover, the schedule to Global Accounts Receivable Management Agreement, which lays down the details of the approved debtor i.e. the Respondent, clearly stipulates in the Special Terms that invoices submitted for factoring need to be acknowledged by the debtor for receipt of material and Matching Purchase/Work Order need to be submitted with each invoice.

16 Approved Debtors

Term Sheet

| | |
|---|---|
| Reference : | 2019/1 (sanction Letter dated 02.05.2019) |
| Nature of Facility: | Domestic Factoring Facility |
| Max. Prepayment Limit: | Rs. 3,00,00,000/-(Rupees Three Crores Only) |
| Facility Documentation: | 1. Global Accounts Receivable Management Agreement |

| | |
|---|---|
| Other Terms: | 1 Matching Purchase Order/ Work Order to be submitted with each invoice.<br>2 All invoices w.r.t Approved Debtor to be submitted to SBI Global Factors Ltd (SBIGFL) for factoring.<br>3 Copies of all invoices sent to the approved debtor and 'SBIGFL' should bear the assignment sticker as provided by 'SBIGFL'.<br>4 Prepayments will be made net of advances or retention money if any.<br>5 All prepayments will be made after adjusting for charges and / or purchase order finance if availed.<br>6 Each payment by the debtor should be accompanied by the debtor's remittance advice giving details of the invoices paid,or realisation of the payment should be from the debtors transanction based PDCs. |
| Special Terms: | 1 Invoices submitted for factoring to be acknowledged by the debtor for receipt of material or accompanied by acknowledged lorry receipt/ delivery challan or consignment note or material receipt issued by the debtor for receipt of material or email communication from the debtor to the Client for receipt of material with respect to the specified invoice/s.<br>2 Lorry receipt in cases where the goods have been dispatched or the Client's declaration in case the goods have been dispatched through own vehicle.<br>3 E-way bill, where applicable.<br>4 The debtors transaction based PDCs. The debtor's PDC date should be within the recourse period proposed for the debtors. Funding under the DF Facility should be restricted to 90% of the invoice value/ debtor transaction based PDC value, whichever is lower.<br>5 Funding against the debtors to be subject to the debtors having a threshold external credit rating of 'BBB-/A3' from Crisil, Icra, Care, India Ratings, Brickwork or Acuite Ratings during the currency of the factoring arrangement. The debtors external credit rating should not be older than 15 months as on the date of funding of the invoice. |

17.The communication sent to the Respondent by the Applicant dated 09.05.2019 intimating the Respondent about the Factoring Arrangement mentions that *"Please make* ***all payments due against supplies****, present and future, due to PSR Metals Pvt. Ltd., directly to SBIGFL…"* and the First Schedule of the Deed of Assignment of Receivables establishes the status of the Respondent as "Company Debtor".

FIRST SCHEDULE

(PART-I)

DEBTORS CREDIT LIMIT: 11,111,111.00

| SR. NO. | PARTICULARS | DETAILS OF THE DEBTOR |
|---|---|---|
| BASIC STATISTICAL RETURN CODE: | | |
| | COMPANY DEBTOR | |
| 1. | Company Name | AKS ELECTRICALS & ELECTRONICS PVT. LTD. |
| 2. | Corporate Identity Number/ Foreign Company Registration Number | U45200dl2007PTC 158316 |
| 3. | Company PAN | AAGCA1292H |

COMPLETE ADDRESS

| | |
|---|---|
| SHOP/ HOUSE/ FLAT/ GALA NO. | S-1/S-15, |
| PLOT NO. | |
| BUILDING NO. | |
| BUILDING NAME | |
| STREET NO./ STREET NAME | Bulandshar Road, Industrial Area, |
| VILLAGE | |
| TALUKA | |
| TOWN/ CITY | |
| DISTRICT | |
| STATE/ UT | Ghaziabad – 201 002, Uttar Pradesh |
| PIN CODE | 201002 |
| EMAIL ID | syanoelectronics@yahoo.co.in |
| TELEPHONE NO. | 9810019626 |

18. Hence, it is inferred that the relationship between PSR Metals Pvt. Ltd. and the Respondent is of supplier and buyer of goods. The invoices arising from this relationship have thereafter been assigned to the Applicant. The nature of debt accruing from non-payment against such invoices is therefore, operational in nature.

19. The Hon'ble NCLAT in ***M/s Canbank Factors Ltd. vs. Brijesh Singh Bhaduria & Ors. [CA (AT) (Insolvency) No. 742 of 2025 delivered on 28.01.2026],*** has categorically examined the nature of debts arising out of invoice discounting/factoring transactions where a claim under Form C was submitted in the capacity of Financial Creditor. The Appellate Tribunal held that where the financer merely discounts invoices raised by the supplier and no disbursement is ever made to the purchaser/corporate debtor, the essential ingredients of a "financial debt" under Section 5(8) of the Code are absent. It was further held that the debt continues to be an operational debt arising from supply of goods and its subsequent assignment to a factor does not alter its intrinsic character so as to convert it into a financial debt. The relevant paragraphs of the judgement of Hon'ble NCLAT delivered on 28.01.2026 read as under:

> *"40. The present is a case of transaction, wherein, seller, buyer and financers are registered and transaction takes place for sale and purchase of goods and discounting of invoices, payments and recoveries of payment by Financers. In the present case, no disbursement was made to the Corporate Debtor, hence, the transactions cannot be held to be a 'financial debt". The debt in question is an operational debt coming within the meaning of Section*

*5(21) of the Code, having arisen from the Corporate Debtor's procurement of goods from its suppliers during the ordinary course of business operations. The mere subsequent assignment of these trade receivables to the Appellant does not change the fundamental nature of the debt from operational to financial.*

*41. In the facts and circumstances of the present case, we find that the Adjudicating Authority has rightly dismissed the Appellant's claim under Form C and correctly held that the nature of the debt in question is operational. There exists no legal or factual basis for treating the Appellant as a Financial Creditor in the present case."*

20. We find that the ratio laid down in the aforesaid judgment squarely governs the facts of the present case. The Corporate Debtor never availed any loan, credit facility or financial accommodation from the Applicant. The monies were admittedly disbursed by the Applicant to PSR Metals Private Limited under a discounting/factoring arrangement to facilitate the assignor's liquidity requirements. The Corporate Debtor was merely the purchaser of goods from PSR Metals Private Limited and was liable to discharge the invoice value. Thus, the transaction between the Applicant and the Corporate Debtor lacks the fundamental element of disbursal against consideration for the time value of money, which is the defining characteristic of a financial debt under the Insolvency and Bankruptcy Code. The mere assignment of invoices does not change the character of debt from Operational to Financial.

21. The Hon'ble NCLAT, while restoring the present petition observed that this Adjudicating Authority should examine the Global Account Receivables Management Agreement, the Deed of Assignment and the

other relevant documents before arriving at a conclusion. The Hon'ble NCLAT did not express any opinion on the merits of the Applicant's claim nor did it hold that the debt in question was a financial debt. The contractual documents do not disclose any disbursal of money by the Applicant to the Corporate Debtor or create a borrowing relationship between the Applicant and the Corporate Debtor so as to alter the nature of debt.

22. In view of the foregoing discussion, we hold that the Applicant has failed to establish that it is a "Financial Creditor" of the Corporate Debtor within the meaning of Section 5(7) of the Code or that the amount claimed constitutes a "financial debt" under Section 5(8). Since the very jurisdictional requirement for maintaining an application under Section 7 of the Code is absent, this Adjudicating Authority cannot invoke the insolvency resolution process against the Corporate Debtor. The present proceedings under Section 7 of the Code are not maintainable.

23. Accordingly, **C.P. (IB) No. 638/ND/2022** filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 stands **dismissed**.

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **(ATUL CHATURVEDI)** | **(MAHENDRA KHANDELWAL)** |
| **MEMBER (TECHNICAL)** | **MEMBER (JUDICIAL)** |