IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

COURT – IV

C.P. (IB) NO.: 165/ND/2024

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

IN THE MATTER OF:

Tourism Finance Corporation of India Limited

...APPLICANT/FINANCIAL CREDITOR

VERSUS

Genesis Infratech Private Limited

...RESPONDENT/CORPORATE DEBTOR

CORAM:

SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 30.01.2025

For the Applicant : Mr. Nitin Dahiya, Mr. Sushant Kumar, Advs.

For the Respondent : Mr. Akhil Shankhwar, Mr. Krishna Kant Bhardwaj, Advs.

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. The present Petition has been filed by Tourism Finance Corporation of India Limited (Financial Creditor) through Mr. Rudra Nath Jha, Auhtorised Representative of the Petitioner herein in accordance with Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as '***Code***') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as well as other allied rules therein, for the alleged default by the Respondent herein in repayment of a financial debt amounting to INR 13,00,63,069/- (Rupees Thirteen Crores Sixty-three Thousand Sixty-nine only) as on 28.02.2024.

2. The Financial Creditor/Applicant herein is a body corporate which had been constituted by and under the Companies Act, 1956; having its registered office at 4TH Floor, Tower 1, NBCC Plaza, Pushp Vihar, Sector 5, Saket, New Delhi-110017. The Applicant herein has filed the instant Application under the

aforementioned section in order to initiate corporate insolvency resolution process against the Corporate Debtor/Respondent herein.

3. The Corporate Debtor/Respondent herein is a company duly incorporated in the year 2006, under the provisions of the Companies Act, 1956; and is engaged into manufacturing agricultural disk blades along with diverse areas of agricultural developments. The Registered office of the Respondent herein is situated at Shop No.:20, Shyam Park, Near metro Pillar No. 736, Uttam Nagar, West Delhi, New Delhi-110059.

CONTENTIONS

4. The details of the transactions which have led to the filing of the instant Application, as averred by the Financial Creditor/Applicant herein, have been briefly summarized hereunder:

    a. That the Corporate Debtor/Respondent herein had availed Term Loan facilities vide three separate agreements to the tune of Rs.19,56,00,000/- (Rupees Nineteen Crore Fifty-six Lakhs only) being the aggregate sanctioned amount. The details of the same are mentioned hereinbelow:

        i. Term Loan Agreement dated 09.03.2020 amounting to Rs.15,00,00,000/- (Rupees Fifteen Crore only)

ii. Term Loan under ECLGS-I Agreement dated 21.08.2020 amounting to Rs.2,28,00,000/- (Rupees Two Crore Twenty-eight Lakhs only)

iii. Term Loan under ECLGS-III Agreement dated 18.06.2021 amounting to Rs.2,28,00,000/- (Rupees Two Crore Twenty-eight Lakhs only)

b. As per the records available with the Financial Creditor/Applicant herein, the total outstanding amount of the debt owed by the Corporate Debtor/Respondent herein is to the tune of Rs.13,00,63,069/- (Rupees Thirteen Crore Sixty-three Thousand Sixty-nine only) as on 28.02.2024, which has been established through the account statement attached in the Petition therein.

c. It is pertinent to mention herein that the Corporate Debtor/Respondent herein has not denied the existence of debt, per se; but has only attempted to mislead this Adjudicating Authority with a certain clause which details the definition of default in the event if the Financial Creditor wishes to opt for the right of conversion of their loan amount into equity shares of the Corporate Debtor/Respondent herein.

d. That the Financial Creditor/Applicant herein has submitted that the account of the Corporate Debtor was declared as 'Non-Performing Asset' on 13.02.2024; irrespective of the declaration, it has been submitted that the Corporate Debtor has been

continuously defaulting in the repayment since 15.11.2023. Therefore, the Financial Creditor has filed the instant Petition.

e. That due to the accounts of the Respondent with the Financial Creditor/Applicant herein, became irregular; the Applicant classified the aforesaid bank accounts as NPA on 13.02.2024. Subsequently, proceedings in accordance with Section 13(2) under SARFAESI Act, 2002 were initiated on 18.03.2024.

f. That there was continuing default on behalf of the Corporate Debtor which can be established vide their letter dated 25.05.2023 that admits the debt and chronic default, further undertaking to deposit Rs.5,00,00,000/- (Rupees Five Crores only) and balancing the cash flows for the residual loan amount.

g. The contention of the Corporate Debtor repaying Rs.5,00,00,000/- (Rupees Five Crores only) vide their letter dated 12.06.2023 as part of their repayment schedule was rife with incomplete information as well as was being presented in a manner to mislead this Adjudicating Authority. There was another letter dated 12.06.2023 which prescribed the conditions precedent for No Objection Certificate. The Financial Creditor gave No Objection Certificate subject to the 'Operationalization of Escrow Account' which was not attached with the letter that was presented as 'additional essential document' by the Corporate Debtor. It is pertinent to mention herein that as per clause 3.1.A (a) of the loan agreement, the Corporate Debtor had to route all

revenues through an Escrow Account which would be utilized for debt servicing. Further, another clause, i.e., clause 2.2 of Loan Agreement dated 09.03.2020, it is clearly stated that non-compliance of any of the terms of the loan will be treated as default. Therefore, non-adherence to the aforementioned escrow terms was also an act of default as per the loan agreement which has not been remedied by the Corporate Debtor.

h. In the light of the aforesaid facts and circumstances, the Corporate Debtor had failed to pay the financial debts amounting to Rs.13,00,63,069/- as on 28.02.2024; as a result of which the Applicant has filed the instant Application under Section 7 of the Code to initiate the CIRP of the Respondent.

5. The Corporate Debtor has also filed its Reply in which several contentions have been elaborated upon, the said objections have been briefly reiterated hereinbelow:

a. That the present Application is said to be expressly barred on the ground of the prescribed format not being followed through which is in accordance with the catena of judgments passed by the Hon'ble National Company Law Appellate Tribunal which highlights the importance of specific power of attorney as well as specific board resolution. This issue has been dealt in the case of *Palogix Infrastructure Private Limited vs ICICI Bank Limited, C.A. (AT) (Ins.) No.:30 of 2017;* wherein it was clarified that a general

power of attorney or any such general authorization does not suffice as a valid authorization for filing an application for initiation of insolvency proceedings under the Code.

b. It has been highlighted that the Financial Creditor has not filed the instant petition under the prescribed format in accordance with Section 7(2) as well as Section 7 (3) of the Code. To that extent, Part-IV of the Petition filed ideally elaborates upon the date of default as well as the manner in which the default took place, which has been depicted under Form-I of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Applicant in the instant Petition, has deliberately failed to state the date of default as required in Part-IV, which ought to be sufficient ground for rejection of the instant Petition.

c. That there is a loan agreement which enumerates the conditions precedent for the definition of default on loan instalments. In accordance with Article 2.6(i)(a) of the Loan Agreement, it is specifically mentioned that the Debtor will be considered to default on the loan instalments in case the Debtor fails to repay the instalments for three (03) consecutive instalment schedules. Even though, it is apparent from the records that there is no default of three consecutive instalments on part of the Corporate Debtor. The relevant portion of the Article 2.6(i) (a) of the Loan Agreement is reiterated hereinbelow:

2.6 CONVERSION RIGHT IN CASE OF DEFAULT OR MISMANAGEMENT:

(i)(a) If the Borrower commits a default in payment or repayment of three consecutive instalments of principal amounts of the Loan or interest thereon or any combination thereof; or

(b) the affairs of the borrower pertaining to the project are, in the opinion of the lead institution/lenders, being mismanaged in a manner which is likely to affect prejudicially the interest of the Lenders;

then the Lenders shall have the right to convert (which right is hereinafter referred to as "the conversion right") at its option the whole of the outstanding amount of the Loan or a part not exceeding 20% of the Loan, whichever is lower, into fully paid-up equity shares of the Borrower, at par, in the manner specified in a notice of not less than 30 days in writing to be given by the Lenders to the Borrower (which notice is hereinafter referred to as "notice of conversion") prior to the date on which the conversion is to take effect which date shall be specified in the said notice of conversion (hereinafter referred to as the "date of conversion").

(ii) On receipt of the notice of conversion, the Borrower shall under written advice to the Lenders allot and issue the requisite number of fully paid-up equity shares to the Lenders as from the date of conversion and the Lenders shall accept the same in satisfaction of the principal amount of the Loan to the extent so converted. The part of the Loan so converted shall cease to carry interest as from the date of conversion and the Loan shall stand correspondingly reduced. Upon such conversion, the instalments of the Loan payable after the date of conversion as per Schedule V hereto shall stand reduced proportionately by the amount of the Loan so converted. The equity shares so allotted and issued to the Lenders shall carry from the date of conversion, the right to receive proportionately the dividends and other distributions declared or to be declared in respect of the equity capital of the Borrower. Save as aforesaid the said equity shares shall rank pari-passu with the existing equity shares of the Borrower in all respects. The Borrower shall, at all times, maintain sufficient un-issued equity shares for the above purpose.

(iii) The conversion right reserved as aforesaid may be exercised by the Lenders on one or more occasions during the currency of the Loan(s) on the happening of any of the event specified above.

(iv) The Borrower assures and undertakes that in the event of the Lenders exercising the right of conversion as aforesaid, the Borrower shall get the equity shares in **demat form** which will be issued to the Lenders as a result of the conversion, listed with the Stock Exchange(s) at Bombay Stock Exchange and any other Stock Exchange as may be desired by the Lenders.

d. That in accordance with the aforementioned Article, it is apparent that the parties involved have agreed to provide the Financial Creditor the right to convert at its option the whole of the outstanding amount of the loan or a part upto 20% of the loan, whichever is lower, into fully paid equity shares of the Corporate Debtor in the event of three consecutive default in repayment schedule on part of the Corporate Debtor, which is to be moved ahead upon a notice of not less than 30 days in writing.

e. That furthermore, the Corporate Debtor never received any notice purporting to be a default notice; on the contrary, the Corporate Debtor has been releasing payments as has been mutually agreed which can be establish from the statements filed by the Financial Creditor in the instant Petition.

f. That the Financial Creditor had deliberately alleged that the account of the Corporate Debtor was classified as Non-Performing Assets (hereinafter referred to as 'NPA') on 13.02.2024, which is an utter lie as the Financial Creditor has omitted to specify the entity responsible for the declaration of Corporate Debtor's account as an NPA. Further, there was no notification in adherence to the Reserve Bank of India circulars prior to the purported classification, nor was there any communication indicating the same.

g. That it is important to highlight that the Corporate Debtor has not defaulted in the payment of their dues as per the repayment plan which is evident from the account statement attached with the Petition, which additionally highlights that the Financial Creditor has received the dues as recently as February 2024.

h. That it is pertinent to mention that the parties involved had agreed on the condition that the Corporate Debtor will be required to pay an interest of 15% p.a. on the principal amount; however, it is submitted that the Financial Creditor arbitrarily started

charging an interest of 17% which is clear violation of initial terms of the Loan Agreement.

i. That there is Notice dated 18.03.2024 under Section 13(2) of SARFAESI Act, 2002 attached to the Petition, but have failed to issue any evidence of Recall Notice dated 15.03.2024, which is essential for the purposes of the same.

j. That the Financial Creditor has failed to satisfy the grounds before attaching the electronic record in the form of statement accounts, as mentioned under Section 65B of the Evidence Act, 1870. It is also relevant that the Hon'ble Supreme Court in catena of judgments has clarified the position that a certificate under Section 65B is mandatory, and a condition precedent to the admissibility of evidence by way of an electronic record.

k. That the Code is not to be used as an alternate mechanism for recovery of dues, which could lead to 'civil death' of the Corporate Debtor, which otherwise, has not committed any default. It has been further pleaded that since the provisions of the Code are quite draconian in nature, therefore, they have to be interpreted strictly.

l. That the Corporate Debtor has been a fully solvent company duly incorporated under the then Companies Act, 1956. Therefore, the instant application should be considered as yet another tactic for debt recovery and nothing else.

m. It is, thus, submitted that there is no financial debt payable by the Corporate Debtor to the Applicant herein; let alone any default with respect to re-payment of the same by the Corporate Debtor.

6. That the Applicant, vide its Replication on 13.05.2023 have made the following arguments against the objections raised by the Corporate Debtor:

   a. That the debt was crystallized due to the classification of the Respondent's bank accounts as NPA; and subsequently, with the acknowledgement of debt vide the very first OTS Sanction letter dated 10.10.2016 signed amongst all parties to the tune of Rs.86 crores.
   b. That thereafter, there had been several acknowledgements via OTS letter sanctioned as well as the Recovery Certificate that had been granted vide Order dated 01.02.2019, after which the Applicant herein had filed the instant Application under Section 7 of the Code. Nevertheless, the Respondent herein has acknowledged the debt via OTS letter dated 14.11.2017, 22.09.2019 as well as 04.11.2022.

7. We have heard the Ld. Counsels for both of the parties appearing for the Financial Creditor as well as the Corporate Debtor and perused the averments as well as enclosures placed on record by both the parties. It was further

directed to both of the parties to place their written submissions along with relevant judicial precedents on record vide Order dated 12.07.2024.

Consequently, we have thoroughly perused the contents of the all of the arguments placed on record via their written submissions as well.

8. It is interesting to note that the written submissions thus filed by the Financial Creditor have attempted to place new information on record, details of which have been reiterated hereinbelow:

   a. The Corporate Debtor has not strictly denied the existence of default, but has only specially maintained that the Corporate Debtor has not committed default for three consecutive times in their repayment schedule.

   b. The default has been explained as well as substantiated with the placing of account statements with the Petition; the gist of which is mentioned hereinbelow:

Loan	Principal	Interest
Term Loan	---	Rs. 44,29,387/-
Term Loan under ECLGS-I	Rs. 8,00,000/-	Rs. 10,74,009/-
Term Loan under ECLGS-III	Rs. 32,00,000/-	Rs. 5,84,089/-
Total	Rs. 40,00,000/-	Rs. 60,87,485/-
Total Default Amount	Rs. 1,00,87,485/-	

   c. There was continuing default on part of the Corporate Debtor and the account had been initially downgraded, which is also established with the admission that there was non-payment of their dues leading to chronic default which was to be countered with the deposit of

Rs.5,00,00,000/- (Rupees Five Crores only). This information was knowingly suppressed by the Corporate Debtor.

d. The Corporate Debtor never replied to the Recall Notice dated 15.03.2024 making *sub-silentio* acceptance of the same, which had been issued as established with the postal receipts *qua* service.

e. It is pertinent to mention herein that out of the said pre-payment of Rs.5,00,00,000/- (Rupees Five Crores only), the Financial Creditor adjusted Rs.2.03 crore against the defaulted principal and interest amount from 15.01.2023 to 15.06.2023 to regularize the account from NPA and Rs.0.5 crore were adjusted for DSRA (Debt Service Reserve Account) of 2 months' principal and interest as the Corporate Debtor had failed to furnish DSRA in compliance to the terms and conditions of the Loan Agreement. Balance Rs.2.43 crore were adjusted towards part advance of principal instalments till 15.04.2025 in term loan account. However, the default still persisted.

f. The Financial Creditor filed both Power of Attorney as well as Board Resolution duly authorizing the Authorised Representative herein to file and pursue the present application before this Hon'ble Tribunal, which can be established from the judgment passed by the Hon'ble National Company Law Appellate Tribunal in the matter of *ICICI Bank vs Palogix Infra* (supra) case.

9. Additionally, the written submissions thus filed by the Corporate Debtor have also attempted to place new information on record, details of which have been reiterated hereinbelow:

   a. The Corporate Debtor has submitted that due to COVID-19 pandemic, the repayment schedule revised for existing term loan of Rs.15,00,00,000/- (Rupees Fifteen Crore only) which changed the repayment schedule for the purpose of recording entries which is clearly depicted in the ledger filed by the Financial Creditor with the Petition.
   b. The Financial Creditor has maliciously failed to apprise this Hon'ble Tribunal of partial pre-payment of the loan amount out of sale proceeds to the tune of Rs.5,00,00,000/- (Rupees Five Crore only) for which the Financial Creditor had issued No-Objection Certificate and the same amount were to be adjusted by the Financial Creditor in the loan account.
   c. The Financial Creditor even failed to act upon and make adjustment as per the aforesaid terms. It is pertinent to mention herein that the Financial Creditor had filed a summary ledger to cover up the omission of entries form the respective accounts, which is not permissible.
   d. It is submitted that upon reviewing the repayment schedule, it is evident that until the alleged dated default, the Financial Creditor had sufficient reserves for adjustments in the loan accounts. However, these adjustments were omitted with ulterior motives to fabricate a default date, thereby maliciously initiating Section 7 proceedings against the Corporate Debtor.

e. It is stated that there was no default by the Corporate Debtor ono the alleged sate of default and there were sufficient funds available for adjustment, the Financial Creditor did not have the authority to recall the entire loan via the letter dated 15.04.2024. further, any action taken on the basis of defective ledger is not maintainable under the law.

ANALYSIS

10. We have examined as well as deliberated upon the contents of the averments placed on record by both of the parties. It has been sufficiently established by the Financial Creditor herein that the outstanding amount to the tune of Rs. 13,00,63,069/- (Rupees Thirteen Crore Sixty-three Thousand Sixty-nine only) has been admitted as the contended dues, which is to be categorised as the financial debt extended by the Financial Creditor in favour of the Corporate Debtor herein.

11. A mere reading of the provision under Section 7 of the Code shows that in order to initiate the corporate insolvency resolution process under the aforementioned section, the Applicant is mandated to establish that there is financial debt and that a default in the nature of financial debt has been committed by the Respondent. The Code further expressly requires the Adjudicating authority to ascertain and record satisfaction in a summary adjudication regarding the existence of default prior to the admission of default thereunder.

12. The Hon'ble Supreme Court, in the matter of *M. Suresh Kumar Reddy vs. Canara Bank, (2023) 8 SCC 387*, it has been held that once the Adjudicating Authority is satisfied that the default has occurred, the scope of discretion left the Adjudicating Authority to refuse admission of the application under Section 7 of the Code, is minimum. The relevant excerpt of the aforementioned judgment is reproduced hereinbelow:

> *"11. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under section 7. "Default" is defined under sub-section (12) of Section 3 of IBC which reads thus:*
>
> > *3. Definitions — In this Code, unless the context otherwise requires —*
> >
> > ***
> >
> > *(12) "default" means non-payment of debt when whole or any part of instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;*
>
> *Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission under Section 7 IBC must follow. If NCLT fins that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application."*

13. Furthermore, it has also been opined by the Hon'ble Supreme Court that the role of the Adjudicating Authority is confined to establishing that a Financial Debt exists and there has been default against the corresponding debt in the matter of *E.S. Krishnamurthy & Ors. vs. M/s, Bharath Hi-Tech Builders Pvt. Ltd., C.A. No.:3325 of 2020*. The germane portion from the said precedent has been reiterated as under:

> "*The Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. These are the only courses of action which are open to the Adjudicating Authority in accordance with Section 7(5).*"

14. The date of default, in accordance with the documents placed on record by the Financial Creditor, is concluded to be the date of lapse in repayment schedule by the Corporate Debtor on 15.11.2023. The same has been sufficiently established via the Demand Notice under Section 13(2) SARFAESI Act, 2002 which has been placed on record in the Application. Thereafter, the default has been acknowledged by the Corporate Debtor herein, by expressly stating that there has been no default for three consecutive instalments as per the loan agreement. There are two dates that need to be taken for consideration which have been established to sufficiently conclude that there is default being committed on behalf of the Corporate Debtor, first being the

date where the debt was acknowledged by NeSL Form-D authenticating the lapse in repayment schedule as on 15.11.2023 on part of the Corporate Debtor; second relevant acknowledgement is due to the Demand Notice dated 15.03.2024 issued by the Financial Creditor against the Corporate Debtor elaborating upon the default committed by the Corporate Debtor.

15. Therefore, the contention raised by the Corporate Debtor with respect to absence of date of default falls short and does not hinder the acknowledgement made with Form-D, in order to establish the existence of default under Section 7 of the Code. The Corporate Debtor further attempts to allege that the Applicant has been trying to use the Code as a debt recovery mechanism with malicious intentions. However, due to lack of any corroboration supporting the said contention, it cannot be taken into consideration, provided that the Applicant has adequately met the requirements of the Section 7 of the Code with respect to the existence of financial debt and default.

16. Another contention raised by the Corporate Debtor herein is that the term 'default' is clearly defined under the conditions set forth in the Loan Agreements between the parties involved. It has been highlighted by the Corporate Debtor that Article 2.6(i)(a) of the Loan Agreement dated 09.03.2020 mentions that there can only be default committed in the event wherein the Corporate Debtor has not made repayments for three instalments

consecutively. However, this contention is found to be lacking as the Article expressly deals with the eventuality wherein the Financial Creditor wishes to convert their lapsed loan amount into equity shares, and in such an event; the Financial Creditor can only be allowed such a conversion when there has been 'default' committed three times consecutively by the Corporate Debtor.

17. This Adjudicating Authority has categorically as well as thoroughly perused the terms and conditions as mentioned in the Loan Agreement dated 09.03.2020 signed between the parties. The Corporate Debtor herein attempts to bring Article 2.6 of the aforementioned Loan Agreement to establish the lack of default which is factually incorrect. The said Article deals with the eventuality of an alternative being present with the Financial Creditor to convert their loan amount into equity shares of the Corporate Debtor. This eventuality does not automatically define the notion of default herein. They ought to be considered as separate events and/or options present with the Financial Creditor. It is further very important to mention herein that the Corporate Debtor has failed to conclusively establish that the default has not been committed on part of the Corporate Debtor as defined under the relevant provisions of the Code. The Corporate Debtor has only mentioned that there has been no default for three consecutive instalments, which is different from stating that there was no default as mentioned by the Financial Creditor on 15.11.2023.

18. Subsequently, the Financial Creditor has satisfied this Adjudicating Authority while establishing that there has been default committed by the Corporate Debtor in accordance with the relevant section of the Code comprising of the outstanding debt of the financial nature. The parameters thus set are very vital for adjudication under Section 7 of the Code, and this Adjudicating Authority has to strictly ensure the compliance of the same.

19. Furthermore, this Adjudicating Authority further has noticed that the Financial Creditor has alleged a total outstanding default of Rs.13,00,63,069/- as on 28.02.2024, which has not been categorically denied by the Corporate Debtor/Applicant herein. It is also noteworthy that this default has been further corroborated vide Form-D issued by NeSL under sub-regulation (4) of Regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, and the same has been deemed to be authenticated which lends further credence to the existence of the said default.

20. The Hon'ble Supreme Court in the landmark judgment of *Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Ors., (2018) ibclaw.in 31 SC;* has held that before admission of an application under Section 7, the Adjudicating Authority is to first ascertain the existence of a default within 14 days of receipt of the application, which is specified in Section 7(4) of the Code. Upon satisfaction that such default has occurred, it may then admit such

application, subject to rectification of defects, which the proviso in Section 7(5) says **must** be done within 7 days of receipt of such notice from the Adjudicating Authority by the applicant.

21. Furthermore, the Hon'ble Court in *M. Suresh Kumar Reddy vs. Canara Bank & Ors., (2023) ibclaw.in 67 SC*, has held that once the Adjudicating Authority is satisfied that the default has occurred, there is hardly a discretion left with the Adjudicating Authority to refuse admission of the application under Section 7of the Code. Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a Corporate Debtor. In such a case, an order of admission under Section 7 of the Code must follow. If the Adjudicating Authority finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application.

22. It is plainly evident from the landmark judgments passed by the Hon'ble Supreme Court that the Adjudicating Authority has very jurisdiction with regards to the admission of the Petition filed under Section 7 of the Code. As far as the parameters with regards to the existence of debt along with the same becoming due and payable are met, such a petition filed under Section 7 of the Code is considered complete and therefore, allowed. In the present facts and circumstances surrounding the present application, it has been established that there is existence of debt due to the loan agreements as

attached in the Petition filed under Section 7 of the Code. Further, the default has also been established which has not been conclusively negated by the Corporate Debtor through the present application; which further lends credence to the Petition filed under Section 7 of the Code. It is also pertinent to mention herein that the Corporate Debtor has failed to provide sufficient documentary evidence to conclusively prove any malicious intention on part of the Financial Creditor with regards to the filing of the Petition under Section 7 of the Code.

23. Resultantly, we are satisfied that the present application is complete in all appropriate respects and the Financial Creditor/Applicant herein is entitled to claim its outstanding financial debt from the Corporate Debtor and that there has been default in payment of the Financial Debt which is duly admitted as well as acknowledged by the Corporate Debtor.

CONCLUSION

24. In light of the abovementioned facts as well as averments along with arguments on part of the parties involved, this Adjudicating Authority **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.

25. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the

IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

26. We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

> "*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
>
> *(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
>
> *(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
>
> *(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*"

27. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply

of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force with effect from 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

28. We also declare a moratorium in terms of Section 14 of the Code. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

29. Sub-section (3) (b) of Section 7 of the Code mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof, the Applicant has proposed the name of **M/s. KVG Insolvency Advisors Pvt. Ltd.** having Registration No.: IBBI/IPE-0108/IPA-1/2022-23/50019. His e-mail ID is kvg@kvginsolvency.com. The Interim Resolution Professional, so appointed, shall file a valid AFA as well as disclosure about non-initiation of any disciplinary proceedings against him, within seven (7) working days from the pronouncement of this order. In the event of the

compliance thereof, **M/s. KVG Insolvency Advisors Pvt. Ltd.** is appointed as IRP.

30. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.

31. We direct the Applicant to deposit a sum of Rs. 2 lakhs with the appointed Interim Resolution Professional, namely M/s. KVG Insolvency Advisors Pvt. Ltd. to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount, however, is subject to adjustment by the Committee of Creditors, as accounted for by IRP and shall be paid back to the Financial Creditors.

32. The Interim Resolution Professional shall perform all his functions contemplated, *inter-alia*, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in

accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority with a prayer for passing an appropriate order.

33. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

34. The Interim Resolution Professional, so appointed, is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

35. The office, in accordance with Section 7(7) of the Code, is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

36. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

37. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.

38. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Accordingly, the present petition bearing **C.P. (IB) No.:165 of 2024** is **admitted.**

Sd/-	**Sd/-**
(DR. SANJEEV RANJAN)	**(MANNI SANKARIAH SHANMUGA SUNDARAM)**
MEMBER (T)	**MEMBER (J)**

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

COURT – IV

I.A. No.:383/2025

IN

C.P. (IB) NO.: 165/ND/2024

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

IN THE MATTER OF:

Tourism Finance Corporation of India ...Financial Creditor

Versus

Genesis Infratech Pvt. Ltd. ...Corporate Debtor

AND IN THE MATTER OF:

Genesis Infratech Private Limited ...Applicant

Versus

Tourism Finance Corporation of India ...Respondent

CORAM:

SH. MANNI SANKARIAH SHANMUGA SUNDARAM,

HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN,

HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 30.01.2025

For the Applicant/Corporate Debtor : Mr. Akhil Shankhwar, Mr. Krishna Kant Bhardwaj, Advs.

For the Respondent/Financial Creditor : Mr. Nitin Dahiya, Mr. Sushant Kumar, Advs.

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. This Application has been filed under Rule 11 of the National Company Law Tribunal Rules, 2016 by the Applicant herein, who is also the alleged Corporate Debtor (M/s. Genesis Infratech Private Limited) in the above-captioned petition, i.e., C.P. (IB) No.:165 of 2024, seeking interim stay of e-auction process that had been initiated by the Financial Creditor in the above-captioned petition, i.e., C.P.(IB) No.:165 of 2024 due to the said process of auctioning the assets of Corporate Debtor, being alleged as fraudulent and malicious on part of the Financial Creditor. The instant application has been submitted for the purpose of being granted an interim stay on the process of e-auction initiated by the Financial Creditor, in accordance of which the said e-auction was scheduled to be conducted on 22.01.2025.
2. The Applicant, being the Corporate Debtor in the aforementioned petition, has prayed for the following reliefs:

    a. Stay the operation and Implementation of the E-Auction Notice dated 17.12.2024 till the pronouncement of the Order in C.P. (IB) No.:165 of 2024

titled as Tourism Finance Corporation of India Limited vs M/s. Genesis Infratech Private Limited; and/or

b. *Till pendency of the C.P. (IB) No.: 165 of 2024 titled as Tourism Finance Corporation of India Limited vs M/s. Genesis Infratech Private Limited, grant ad-interim ex-parte stay towards the E-Auction scheduled dated 22.01.2025; and/or*

c. *Pass any other order(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case.*

3. The Applicant herein has made arguments which are elucidated hereinbelow for the purpose of adjudication:

A. That the Applicant herein states that the Financial Creditor has published an e-auction notice dated 17.12.2024 during the pendency of the aforementioned captioned petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as 'Code') bearing C.P. (IB) No.: 165 of 2024 via proper publication. It is pertinent to mention herein that the said notice outlines the timeline for the proposed e-auction process initiated by the Financial Creditor or the answering Respondent herein.

B. That in accordance with the said sale notice for all of the assets of the Corporate Debtor or the Applicant herein, the last date for participants to deposit their Earnest Money to become eligible for the said auction was

21.01.2025 along with the said e-auction scheduled to take place on 22.01.2025.

C. That the Applicant herein further alleges that the said E-Auction Notice provides the claim amount for all of the assets of Corporate Debtor amounts to Rs.13,00,00,000/- (Rupees Thirteen Crores only). However, the valuation of such properties in question has been ascertained as Rs.54,00,00,000/- (Rupees Fifty-four Crores only), which has been established in Form-I. This further showcases the malicious intention on part of the Financial Creditor as the said assets have been significantly undervalued.

D. That the Applicant herein further states that the Financial Creditor has filed the Section 7 Petition before this Adjudicating Authority for the Resolution of the Corporate Debtor. However, it is significant to mention herein that this Adjudicating Authority had reserved the order on 04.09.2024, and the Financial Creditor, dissatisfied with the delay in the pronouncement of order; proceeded with issuance of the E- auction notice. It clearly shows the intent of the Financial Creditor herein that they had filed the Section 7 Petition for the recovery and not for the Resolution of the Corporate Debtor.

E. Without prejudice to the foregoing submissions, it is submitted that conducting the E-Auction during the pendency of the aforementioned Petition would defeat the purpose of the Code, particularly if the property is auctioned at a significantly undervalued price. Notably, the Respondent herein is the sole Secured Financial Creditor of the Corporate Debtor. Even

if the CIRP is initiated against the Corporate Debtor, the rights concerning the claim of the Respondent herein would remain fully protected.

F. In light of the facts and circumstances elucidated hereinabove, the Applicant herein has filed the present application under Rule 11 of the National Company Law Tribunal Rules, 2016 to stay the said process so that the Financial Creditor is unable to take undue advantage of the proceedings herein.

4. We have heard the submissions as well as arguments made by the Learned Counsel for the Corporate Debtor/Applicant herein and further perused the averments made in the instant Application filed herein. The Applicant has moved the present application herein to seek an interim stay on the ongoing process of the said e-auction of the assets of the Corporate Debtor.

5. During the course of the arguments tendered by the Ld. Counsel for the Applicant herein, it has been submitted by the said Counsel for the Corporate Debtor that they have approached the Ld. Debt Recovery Tribunal seeking the same reliefs as the sale Notice for e-auction had been published in accordance with the SARFAESI Act, 2002. The Counsel further submits that they have filed another application seeking the exact same reliefs before the Hon'ble High Court of Delhi invoking their inherent powers to seek justice for their cause.

6. This Adjudicating Authority has recorded the submissions made therein concerning the multiple applications that have been filed by the Applicant herein,

i.e., the Corporate Debtor in order to hinder the course of justice that is to be taken by this Adjudicating Authority with regards to the aforementioned petition bearing C.P. (IB) No.: 165 of 2024 filed under Section 7 of the Code.

7. The instant application as well as the submissions made therein reveals the forum-shopping or deplorable or disreputable practice, which is reminiscence of the Hon'ble Supreme Court's judgment in the matter of *M/s. Chetak Construction Ltd. vs Omprakash and others, (1998) 4 SCC 577*, which held that any attempt on the litigant's part to go forum shopping cannot be allowed as a litigant cannot be permitted to choice of the forum and every attempt at the forum shopping must be crush with heavy hands. The Hon'ble Supreme Court had referred to the principle of judicial decorum which elaborates upon discipline and attitude. The judgment further highlighted that the litigant cannot be allowed to think of indulging in forum shopping to get favourable decision and it is a depreciable conduct in the law. Forum shopping has no sanction or sanctity in the eyes of law. If such practice prevails, it will likely to give birth to anarchy. Ultimately, it will shake the faith and confidence in the adjudicating system. This Adjudicating Authority cannot allow the forum shopping practice or encourage it.

8. In light of the multiple frivolous applications that have been admitted to be filed before different forums, this Adjudicating Authority is of the view that this is but an attempt on part of the Applicant herein to drag on the proceedings and build an approach to have a road-way for forum-shopping, which is a sheer abuse of the process of the law.

On the aforementioned observations, the **I.A. No.: 383 of 2025** stands **dismissed with costs.**

Resultantly, this Adjudicating Authority strictly reprimands such an action on part of the Applicant herein and further directs to impose the cost of Rs.1,00,000/- (Rupees One Lakh only) that is to be deposited in the Prime Minister's National Relief Fund within ten (10) days from the receipt of this Order.

Sd/-

DR. SANJEEV RANJAN
MEMBER (TECHNICAL)

Sd/-

MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

COURT – IV

I.A. No.:2573/2024

IN

C.P. (IB) NO.: 165/ND/2024

[*Under Section 65 of the Insolvency & Bankruptcy Code, 2016 Rule 11 of the National Company Law Tribunal Rules, 2016*]

IN THE MATTER OF:

Tourism Finance Corporation of India ...Financial Creditor

Versus

Genesis Infratech Pvt. Ltd. ...Corporate Debtor

AND IN THE MATTER OF:

Genesis Infratech Private Limited ...Applicant

Versus

Tourism Finance Corporation of India ...Respondent

CORAM:

SH. MANNI SANKARIAH SHANMUGA SUNDARAM,

HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN,

HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 30.01.2025

For the Applicant/Corporate Debtor : Mr. Akhil Shankhwar, Mr. Krishna Kant Bhardwaj, Advs.

For the Respondent/Financial Creditor : Mr. Nitin Dahiya, Mr. Sushant Kumar, Advs.

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. This Application has been filed under Section 65(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 11 of the National Company Law Tribunal Rules, 2016 by the Applicant herein, who is also the alleged Corporate Debtor (M/s. Genesis Infratech Private Limited) in the above-captioned petition, i.e., C.P. (IB) No.:165 of 2024, seeking declaration against initiation of corporate insolvency resolution process for Corporate Debtor due to the same being alleged as fraudulent and malicious on part of the applicant. The instant application has been submitted for the purpose of getting the application filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 dismissed.

2. The Applicant in the present application has prayed for the following reliefs

a. *Impose a penalty of not less than one Lac rupees on the Petitioner under Section 65 of the IB Code; and/or*

b. *Dismiss the Petition under Section 7 of the Insolvency & Bankruptcy Code with exemplary costs; and*

c. *Pass any other order(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case.*

3. The Applicant herein has made arguments which are elucidated hereinbelow for the purpose of adjudication:

a. That the Applicant herein states that the format prescribed under Section 7 has not been strictly followed in accordance with the relevant provisions of the Code. It is pertinent to mention herein that the date of default is not mentioned in Part-IV by the Financial Creditor along with no explanation for the method of default taking place, which is prescribed in Form-I of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

b. That the Applicant herein has submitted that the Financial Creditor has not complied with the conditions precedent which are enumerated under the loan agreement with regards to the definition of the default. They have submitted that in accordance with the loan agreement existing between the parties involved, the default can only be

considered in case the Corporate Debtor herein fails to repay the instalments for three (3) consecutive instalment schedules which has been provided under Article 2.6(i) of the loan agreement. The relevant excerpt from the Article has been detailed therein.

c. Due to the existence of the aforementioned clause which clearly depicts that default can only be considered in case there has been lapse in repayments for three consecutive instalments by the Applicant herein under the loan agreement.

d. That the Applicant herein has submitted that the Financial Creditor/Respondent herein has not issued any default notice intimating the Applicant herein of any default being committed on part of the Applicant.

e. That it is pertinent to mention herein that the Applicant herein had not received any notification in adherence to the Reserve Bank of India circulars prior to the purported classification of the account as Non-Performing Assets, nor was there any communication indicating the account's designation as Non-Performing Assets.

f. That the Applicant has categorically stated that the Corporate Debtor has not defaulted in the payment of their dues as per the payment plan which is also evident from the account statement attached by the

Financial Creditor itself in the annexure attached in the Petition submitted therein. It is pertinent to mention herein that the Financial Creditor has received the dues as recently as February 2024 and the action taken by the Respondent herein is only speculative and devoid of any legal backing.

g. That the Applicant has further submitted that the pre-determined interest rate on the principal amount of loan was 15% in accordance with the loan agreement; however, the Respondent herein started charging 17% arbitrarily which was in clear violation of the initial terms of the agreement and the same has been vehemently objected by the Applicant herein. This clearly establishes the *mala fide* intention of the Respondent herein towards the Applicant.

h. That the Applicant submits that the Respondent herein has furnished the present Petition under Section 7 of the Code without proper authority. It is respectfully submitted that in accordance with catena of judgments passed by the Hon'ble National Company Law Appellate Tribunal, it has been held that the Petition should have a valid as well as specific Power of Attorney as well as Board Resolution which has been passed after the alleged date of default, which is clearly lacking in the instant case. Presently, the Respondent herein has only furnished a General Power of Attorney dated 05.12.2022.

i. That the Applicant has categorically submitted that the Respondent herein is using the Code as an alternate mechanism for recovery suits, which goes against the very essence and object of the Code.

j. That the Applicant has further submitted that the Corporate Debtor/Applicant herein is a solvent as well as fully functional company, and therefore a running concern. It has been successfully running the infrastructure business under the aegis and name. The Applicant herein is in very stable financial health and the same is evident from the Fair Market Value, Realizable Sale Value, Distress Sale Value as indicated in Part-V of the Petition. In essence, in the garb of the Petition under Section 7 of the Code, the Respondent herein wants to take control of the entire company, instead of recovery.

k. In light of the facts and circumstances elucidated hereinabove, it has been established that the Petition filed under Section 7 of the Code is done as a money recovery tool, which falls within the purposes other than Insolvency and therefore, is liable to be dismissed with costs as envisaged under Section 65 of the Code.

4. We have heard the submissions as well as arguments made by the Learned Counsel for the Corporate Debtor/Applicant herein and further perused the averments made in the instant Application filed herein. The Applicant has

moved the present Application under the Section 65 of the Code to declare the initiation of the Corporate Insolvency Resolution Process by the Financial Creditor/Respondent herein as fraudulent as well as malicious and further impose strictures upon the Financial Creditor for deliberately causing harm to the Corporate Debtor by filing the Petition under Section 7 of the Code.

5. It is pertinent to mention herein that the Financial Creditor has opted to forgo a written reply specifically for the instant application; but has however, tendered their arguments before this Adjudicating Authority along with furnishing their written submissions on record. We have perused the written submissions furnished by the parties involved herein, for the purpose of adjudicating the instant application.

6. At this juncture, the mentioned section is reiterated hereinbelow for the purpose of ensuring greater clarity and enhancing the understanding of the provision relevant to the filing of the present application:

"***65. Fraudulent or malicious initiation of proceedings —***

(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees;

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.

(3) If any person initiates the pre-packaged insolvency resolution process—

(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or

(b) with the intent to defraud any person,

the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees."

7. It has been expressly stated that the aforementioned Section of the Code can be invoked only when there is substantial and corroborative evidence to explicitly prove 'malice' as well as 'fraud' on part of the Petitioner filing the application in question. There should be specific as well as conclusive documentary evidence to establish the same, and this burden lies upon the party invoking the Section 65 of the Code.

8. The Hon'ble National Company Law Appellate Tribunal, in the matter of *Monotrone Leasing Private Limited vs PM Cold Storage Private Limited, 2020 SCC OnLine NCLAT 581*, has categorically held that:

"*34. Section 65 of the Code provides for penal action for initiating Insolvency Resolution Process with a fraudulent or malicious intent or for any purpose other than the resolution. However,* ***the same cannot be construed to mean that if a petition is filed under Section 7, 9 or 10 of the Code without any malicious or fraudulent intent, then also such a petition can be rejected by the Adjudicating Authority on the ground that the intent of the Applicant/Petitioner was not resolution for Corporate Insolvency Resolution Process. As the proceedings under IBC are summary in nature, it is difficult to determine the intent of the Applicant filing an application under Section 7, 9 or 10 of the Code unless shown explicitly by way of documentary evidence. This situation may arise in specific instances where a petition is filed under IBC specifically with a fraudulent or malicious intent.***"

9. It has been sufficiently established by the aforementioned settled provision of law that there needs to be specific documentary evidence to conclusively establish the malicious intention for any purpose other than for the resolution of insolvency on part of the Financial Creditor invoking the present Petition under Section 7 of the Code.

10. However, the contentions raised by the Corporate Debtor herein, for the purpose of showcasing the malicious intent on part of the Financial Creditor

are in no way sufficient to establish the required *mens rea* in order to invoke Section 65 of the Code. The Applicant herein has attempted to obfuscate the matters by bringing irrelevant portion of the facts as well as evidence to suit their concocted version of events.

11. This Adjudicating Authority has categorically as well as thoroughly perused the terms and conditions as mentioned in the Loan Agreement dated 09.03.2020 signed between the parties. The Applicant herein attempts to bring Article 2.6 of the aforementioned Loan Agreement to establish the lack of default which is factually incorrect. The said Article deals with the eventuality of an alternative being present with the Financial Creditor to convert their loan amount into equity shares of the Corporate Debtor. This eventuality does not automatically define the notion of default herein. They ought to be considered as separate events and/or options present with the Financial Creditor. It is further very important to mention herein that the Corporate Debtor has failed to conclusively establish that the default has not been committed on part of the Corporate Debtor as defined under the relevant provisions of the Code. The Corporate Debtor has only mentioned that there has been no default for three consecutive instalments, which is different from stating that there was no default as mentioned by the Financial Creditor on 15.11.2023.

12. This Adjudicating Authority further has noticed that the Financial Creditor has alleged a total outstanding default of Rs.13,00,63,069/- as on 28.02.2024, which has not been categorically denied by the Corporate Debtor/Applicant herein. It is also noteworthy that this default has been further corroborated vide Form-D issued by NeSL under sub-regulation (4) of Regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, and the same has been deemed to be authenticated which lends further credence to the existence of the said default.

13. The Hon'ble Supreme Court in the landmark judgment of *Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Ors., (2018) ibclaw.in 31 SC;* has held that before admission of an application under Section 7, the Adjudicating Authority is to first ascertain the existence of a default within 14 days of receipt of the application, which is specified in Section 7(4) of the Code. Upon satisfaction that such default has occurred, it may then admit such application, subject to rectification of defects, which the proviso in Section 7(5) says **must** be done within 7 days of receipt of such notice from the Adjudicating Authority by the applicant.

14. Furthermore, the Hon'ble Court in *M. Suresh Kumar Reddy vs. Canara Bank & Ors., (2023) ibclaw.in 67 SC,* has held that once the Adjudicating Authority

is satisfied that the default has occurred, there is hardly a discretion left with the Adjudicating Authority to refuse admission of the application under Section 7of the Code. Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a Corporate Debtor. In such a case, an order of admission under Section 7 of the Code must follow. If the Adjudicating Authority finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application.

15. It is plainly evident from the landmark judgments passed by the Hon'ble Supreme Court that the Adjudicating Authority has very jurisdiction with regards to the admission of the Petition filed under Section 7 of the Code. As far as the parameters with regards to the existence of debt along with the same becoming due and payable are met, such a petition filed under Section 7 of the Code is considered complete and therefore, allowed. In the present facts and circumstances surrounding the present application, it has been established that there is existence of debt due to the loan agreements as attached in the Petition filed under Section 7 of the Code. Further, the default has also been established which has not been conclusively negated by the Corporate Debtor through the present application; which further lends credence to the Petition filed under Section 7 of the Code and not the instant application under 65 of the Code filed by the Corporate Debtor. It is also

pertinent to mention herein that the Corporate Debtor has failed to provide sufficient documentary evidence to conclusively prove any malicious intention on part of the Financial Creditor with regards to the filing of the Petition under Section 7 of the Code.

16. In light of the facts as well as arguments presented hereinabove, this Adjudicating Authority has reached the conclusion that it would be inappropriate to state that the Financial Creditor has filed the present Petition under Section 7 of the Code with malicious or fraudulent intention for any purpose other than for resolution of insolvency. Therefore, we find no merit in the contentions raised by the Applicant herein.

Hence, the **I.A. No.: 2573 of 2024** stands **dismissed.**

Sd/-

DR. SANJEEV RANJAN
MEMBER (TECHNICAL)

Sd/-

MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)