

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1467 of 2023

[Arising out of Order dated 18.10.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, (Special) Court No.II, Kolkata in IA (IBC) No. 957/KB/2023 in CP (IB) No. 250/KB/2021]

In the matter of:

Kesoram Industries Limited

....Appellant

Vs.

Pratim Bayal

...Respondent

For Appellant: Mr. Mainak Bose, Ms. Priyata Chakraborty, Mr. Vasu Sastry, Mr. Debangha Basu, Mr. Rahul Poddar, Advocates.

For Respondents: Mr. S. N. Mookherjee, Sr. Advocate with Mr. Abhijeet Sinha, Mr. Shaunak Mitra, Mr. Avishek Guha, Mr. Soumya Dutta, Advocates with Mr. Pritam Bayal, RP in person for R-1.

**JUDGMENT
(5th January, 2024)**

Ashok Bhushan, J.

This Appeal has been filed against the order dated 18.10.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench (Special), Court No.II, Kolkata in IA (I.B.C) No.957/KB/2023 in Company Petition (IB) No. 250/KB/2021. IA (I.B.C) No. 957/KB/2023 filed by the Appellant challenging the decision of the Resolution Professional rejecting the claim of the Appellant as Financial Creditor has been dismissed, aggrieved against which order, this Appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding this Appeal are:-

2.1. The Corporate Debtor demerged under a Scheme of Arrangement under Sections 230-232 of the Companies Act, 2013 between the Appellant and the Corporate Debtor approved by the NCLT, Kolkata vide order dated 08.11.2019. An Application under Section 9 was filed in the year 2021 against the Corporate Debtor which was admitted by order dated 05.05.2022 and one Mr. Seikh Abdul Salam was appointed as Interim Resolution Professional (IRP). In pursuance of the public announcement dated 07.05.2022, Appellant filed its claim in prescribed Form C as Financial Creditor for an amount of Rs.5,18,28,91,356/-. Earlier Resolution Professional (RP) collated the claim for an amount of Rs.516,81,01,037/-. Appellant was initially admitted to the Committee of Creditors (CoC) of the Corporate Debtor but subsequently was removed by the RP as related party. Appellant had filed an IA No.638 of 2022 challenging his removal before the Adjudicating Authority. The Adjudicating Authority vide order dated 31.10.2022 replaced the RP- Mr. Seikh Abdul Salam with Mr. Pratim Bayal- Respondent No.1 as Resolution Professional of the Corporate Debtor. On 23.12.2022, Resolution Professional- Respondent No.1 sent an e-mail to the Appellant seeking additional information/documents in relation to financial claim submitted by the Appellant. Appellant vide its reply dated 27.12.2022 informed the Resolution Professional that his claim has already been admitted, the issue raised by the Resolution Professional vide his e-mail dated 23.12.2022 are not relevant and cannot be used to embark upon process of re-verification of an admitted claim. Resolution Professional again

sent an e-mail dated 27.12.2022 requesting the Appellant to provide relevant documents to prove his claim. Appellant on 28.12.2022 replied to the Resolution Professional stating that the provisions of the Code do not authorise the Resolution Professional to recheck, re-verify and relook into an admitted claim of the Appellant. The Resolution Professional vide an e-mail dated 19.04.2023 communicated the Appellant that since no such records have been furnished nor any financial records of the Corporate Debtor reflects any such transaction with regard to alleged inter-company loan, hence, in absence of any material he is unable to verify and admit the claim of the Appellant. Challenging the e-mail dated 19.04.2023, an IA No.957 of 2023 was filed by the Appellant in which IA following reliefs have been sought:

“(a) An order be passed declaring the decision of the Respondent as contained in his email dated 19 April 2023, being Annexure "P- 12" hereto, rejecting the claim of the Applicant as illegal, null and void;

(b) An order be passed setting aside the decision of the Respondent contained in his email dated 19 April 2023, being Annexure "P- 12" hereto;

(c) An order be passed directing the Respondent to restore the claim of the Applicant as a Financial Creditor;

(d) Pending the hearing of the present application, the Respondent be restrained from giving effect to and/or further effect to the email dated 19 April 2023 being Annexure "P-12" and further restraining the

Respondent from altering the claim of the Applicant in the list of Creditors of the Corporate Debtor;

(e) Ad interim order in terms of prayers above;

(f) Such further or other order or orders be passed and/or direction or directions be given as this Hon'ble Tribunal may deem fit and proper.

And for this Act of kindness, your applicants as in duty bound shall ever pray.”

2.2. IA filed by the Appellant was replied by the Resolution Professional. Adjudicating Authority heard the Appellant as well as the Resolution Professional and by the impugned order rejected the IA upholding the decision of the Resolution Professional rejecting the claim of the Appellant as Financial Creditor. Aggrieved by the impugned order dated 18.10.2023, this Appeal has been filed.

3. We have heard Shri Mainak Bose, Learned Counsel for the Appellant, Shri S.N. Mookherjee, Learned Senior Counsel with Shri Abhijeet Sinha, Learned Counsel for the Respondent No.1- Resolution Professional.

4. Shri Mainak Bose, Learned Counsel for the Appellant submits that the Regulations 8, 10 and 13 of the CIRP Regulations, 2016 permits and IRP or RP to call for and/or seek from a creditor for substantiation of the claim prior to its admission. Once a claim is admitted by an IRP or RP, provisions of the said Regulations 8, 10 and 13 are no more available to the RP and his powers thereafter is limited only to revising the admitted claim. None of the Regulations authorises the RP to re-verify an admitted claim. The decision of

the RP to disallow the claim allegedly for non-furnishing of loan documents is misconceived and contrary to law. The audited financial statements of the Corporate Debtor for the year ending 31.03.2022 under the heading “Financial Liabilities Note No.13” mentioned inter-corporate deposit and under the heading “Other Financial Liabilities Note No.14”, a sum of Rs.521 Crores is mentioned as ‘Payable to Demerged Company’ (demerged company being the Appellant). Annual report and financial statement though formed part of the Application before the NCLT, the same was neither considered nor appreciated. Learned Counsel for the Appellant has referred to Clause 4.2.10 of the Scheme of Demerger. It is further submitted that the consortium lenders of the Appellant Company did not give effect to the demerger and transfer the loan relating to the tyre business until February 2021 and by reason of the delay by the Lenders until February 2021 in giving effect to the transfer of the aforesaid debt of the tyre business under the sanctioned Scheme to Corporate Debtor, the interest and repayment of above loans were recovered by the lenders from the Appellant during the period from 01.01.2019 to 28.02.2021. The amount of Rs.521 Crores being reflected in the financial statement ending on 31.03.2022 to the extent of Rs.521 Crores, the above fully proves that the financial debt was inexistence which was recognised by the Corporate Debtor in its financial statement. Adjudicating Authority committed error in not admitting the aforesaid claim. It is submitted that the interest and loan repayment which was funded by the Appellant was Rs.232.87 Crores. Letters of Credit and BG devolved was Rs.65.15 Crores and loss for the period 01.01.2019 to 30.09.2019 to the extent of Rs.128.98 Crores was funded by the Appellant totalling to Rs.519

Crore. The action of the Resolution Professional excluding the admitted debt of the Appellant is illegal.

5. Shri S.N. Mookherjee, Learned Senior Counsel appearing for the Resolution Professional refuting the submissions of the Counsel for the Appellant submits that there was no financial debt owed by the Corporate Debtor to the Appellant nor there was any proof or material on record to prove the financial debt. It is submitted that the claim Form C does not mentions the details of how and when debt is incurred as 'inter-company loan given from time to time along with the accrued interest thereon' whereas no loan was given at any point of time to the Corporate Debtor nor there was any disbursement of any loan to the Corporate Debtor. There being no transaction which gave rise to the financial debt, the claim of the Appellant as a Financial Creditor was unfounded and in spite of the Resolution Professional asking by repeated e-mails to the Appellant to submit the documents to prove the financial debt, neither any document was submitted nor any reply was given, leaving no option to the Resolution Professional except to reject the claim of the financial debt. During the arguments, Counsel for the Appellant contended that the claim is based on a Scheme of Demerger whereas claim form did not mention the Scheme of Demerger as basis of the claim. Scheme of demerger does not mention any loan of Appellant to the Corporate Debtor. The actual transactions of borrowings of the Corporate Debtor relating to the demerger period are for Rs.133 Crores and Rs.55 Crores whereas the alleged claim of Appellant is for Rs.518 Crores which makes the claim and the submissions contrary. Even assuming that any amount can be claimed by the Appellant from the

Corporate Debtor, the said claim cannot be a financial debt, there being no financial transaction within the meaning of Section 5(8) of the Code. The balance sheet for the financial year 2021-2022 on which much reliance has been placed by the Appellant, no amount is shown to be due to the Appellant under loan or borrowing. Rather, an amount is reflected only under the heading “Other Financial Liabilities” and not borrowings. Other financial liabilities not being borrowings cannot be financial debt. The books of accounts of the Corporate Debtor do not support the Appellant’s claim for financial debt. It is further relevant to notice that the balance sheet of the Corporate Debtor is prepared at the instance of the Appellant and signed by common Chairman of both Appellant and the Corporate Debtor. Appellant failed to refer to any document on the basis of which Appellant can claim a financial debt. The figure given in Form C is imaginary figure which was not supported by single document. Appellant itself in its e-mail has admitted that there is no disbursement of money by the Appellant. When there is no disbursement for time value of money, there is no occasion to accept the transaction as financial debt. The balance confirmation dated 02.05.2022 was obtained just three days before the CIRP commencement which balance confirmation also does not prove that any financial debt has been acknowledged. It is submitted that the balance confirmation was obtained after the orders were reserved in Section 9 petition on 05.04.2022. The Resolution Professional has not conducted an adjudicatory exercise but has only asked Kesoram to submit necessary proof and documents to substantiate its claim as a financial creditor. Regulation 10 empowers the Resolution Professional to call for such other evidence or clarification as he

deems fit from a creditor for substantiating the whole or part of its claim. The Adjudicating Authority has rightly come to the conclusion that the Appellant has failed to prove any financial debt and its rejection of the claim as a financial creditor is in accordance with law.

6. We have considered the submissions of the Counsel for the parties and perused the record.

7. The claim which was filed by the Appellant on 16.05.2022 is as follows:-

“FORM C
SUBMISSION OF CLAIM BY FINANCIAL CREDITORS
(Under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

16th May, 2022

From
Kesoram Industries Limited
Birla Building,
9/1 R.N Mukherjee Road.
Kolkata-700 001.

To
Mr. Seikh Abdul Salam [Interim Resolution Professional]
64J, Linton Street. Beniapukur.
Kolkata- 700 014.

Subject: Submission of claim and proof of claim.

Sir,

Kesoram Industries Limited, hereby submits this claim in respect of the corporate insolvency resolution process of Birla Tyres Limited. The details for the same are set out below:

Relevant Particulars		
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
1.	<i>Name of the financial creditor</i>	<i>Kesoram Industries Limited</i>

2.	Identification number of the financial creditor	CIN: L17119WB1919PLC003 429
3.	Address and email address of the financial creditor for correspondence	Address: Birla Building, 9/1 R.N. Mukherjee Road, Kolkata- 700 001 Email: corporate@kesoram.net
4.	Details of claim, if it is made against corporate debtor as principal borrower: (i) Amount of claim (ii) Amount of claim covered by security interest, if any (Please provide details of security interest, the value of the security, and the date it was given) (iii) Amount of claim covered by guarantee, if any (Please provide details of guarantee held, the value of the guarantee, and the date it was given) (iv) Name and address of the guarantor(s)	(i) Total claim: Rs.518,28,98,356 Principal: Rs.424,25,19,253 Interest: Rs.92,13,86,995 TDS Recoverable: Rs.1,89,92,111 (ii), (iii), (iv)- NIL
5.	Details of claim, if it is made against corporate debtor as guarantor: (i) Amount of claim (ii) Amount of claim covered by security interest, if any (Please provide details of security interest, the value of the security, and the date it was given) (iii) Amount of claim covered by guarantee, if any (Please provide details of guarantee held, the value of the guarantee, and the date it was given) (iv) Name and address of the principal borrower	NIL
6.	Details of claim, if it is made in respect of financial debt covered under clauses (h) and	NIL

	<i>(i) of sub-section (8) of section 5 of the Code, extended by the creditor:</i> <i>(i) Amount of claim</i> <i>(ii) Name and address of the beneficiary</i>	
7.	<i>Details of how and when debt incurred</i>	<i>Inter Company Loan given from time to time along with accrued interest thereon.</i>
8.	<i>Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim</i>	<i>NIL</i>
9.	<i>Details of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a resolution plan</i>	<i>IndusInd Bank</i> <i>Savitri Towers,</i> <i>3A, Upper Wood Street,</i> <i>Kolkata- 700 017</i> <i>A/c. No:-</i> <i>200001871757</i> <i>IFSC Code:</i> <i>INDB00000015</i>
<i>(Signature of financial creditor or person authorised to act on its behalf)</i>		
<i>Gautam Ganguli</i>		
<i>Company Secretary</i>		
<i>Address: 49C, Block C, New Alipore, Off Diamond Harbour Road, Taratala Road crossing, Kolkata-700053</i>		

DECLARATION

1. *Gautam Ganguli, currently residing at 49C, Block C, New Alipore, Off Diamond Harbour Road, Taratala Road crossing, Kolkata-700053, do hereby declare and state as follows:-*

1. *Birla Tyres Limited, the corporate debtor was, at the insolvency commencement date, being the 5th day of May 2022, actually indebted to Kesoram Industries Limited for a sum of **Rs. 518,28,98,356.***

2. *In respect of the claim of the said sum or any part thereof, Kesoram Industries Limited has relied on the documents specified below:*

- *Balance confirmation from Birla Tyres Limited as on 30th April, 2022.*
- *Statement of Balance Outstanding*

3. The said documents are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.

4. In respect of the said sum or any part thereof, neither I, nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever.

5. I undertake to update the claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.

6. Kesoram Industries Limited is not a related party of the corporate debtor, as defined under section 5 (24) of the Code.

Date: 16th May, 2022.

Place: Kolkata

For Kesoram Industries Ltd.

Company Secretary
(Signature of the claimant)

VERIFICATION

1, Gautam Ganguli, on behalf of Kesoram Industries Limited, the claimant, hereinabove, do hereby verify that the contents of this proof of claim are true and correct to my knowledge and belief and no material fact has been concealed therefrom.

Verified at Kolkata on this 16th day of May, 2022

For Kesoram Industries Ltd.

Company Secretary
(Signature of claimant)"

8. The above form clearly mentions the manner in which debt was incurred i.e. 'Inter Company Loan given from time to time along with accrued interest thereon'. In support of financial claim in Form C only two documents were referred in Form C i.e. (i) balance confirmation from Birla Tyres Limited as on 30.04.2022 and (ii) Statement of Balance Outstanding. The balance confirmation has been filed along with Form C which is as follows:-

"Subject: Balance confirmation as on 30th April, 2022 of Birla Tyres Ltd

To

Kesoram Industries Ltd.
9/1, R. N. Mukherjee Road
Kolkata - 700 001.

We acknowledge that we have received a communication from you to confirm the outstanding balance as per our records as on 30th April 2022.

Pursuant to this, we confirm that the balance is as follows:

Receivable from you: Nil

Payable to you: Principal- Rs 424,25,19,253

Interest- Rs 92,13,86,995

It is further confirmed that this balance confirmation has been signed by the authorised signatory of our establishment in this regard.

Name: Susanta Kumar Sadhukhan
Designation: Accounting Controller
Contact No: 9330020296
Date: 02.05.2022"

9. The above balance confirmation, as noted above, was issued on 02.05.2022 i.e. three days before initiation of the CIRP where the order under Section 9 was already reserved. On 05.04.2022, in any view of the matter, the said balance confirmation does not prove in any manner that there is any financial debt is due. Section 5(8) defines 'financial debt' in following manner:-

“5. Definitions. – (8) “financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes–

- (a) money borrowed against the payment of interest;*
- (b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;*
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
- (e) receivables sold or discounted other than any receivables sold on non-recourse basis;*
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*

[Explanation. -For the purposes of this sub-clause, -

- (i) any amount raised from an allottee under a real estate project shall be deemed to be an*

amount having the commercial effect of a borrowing; and

- (ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;”

10. The Hon’ble Supreme Court had occasion to consider Section 5(8) of the IBC and noticed the ingredients which are required to be prove for holding the debt as financial debt. Hon’ble Supreme Court in **“Anuj Jain vs. Axis Bank Limited- (2020) 8 SCC 401”** laid down following:-

“The essentials for financial debt and financial creditor’

“43. Applying the aforementioned fundamental principles to the definition occurring in Section 5(8) of the Code, we have not an iota of doubt that for a debt to become 'financial debt' for the purpose of Part II of the Code, the basic elements are that it ought to be a disbursal against the consideration for time value of money. It may include any of the

*methods for raising money or incurring liability by the modes prescribed in Sub-clauses (a) to (f) of Section 5(8); it may also include any derivative transaction or counter-indemnity obligation as per Sub-clauses (g) and (h) of Section 5(8); and it may also be the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in Sub-clauses (a) to (h). The requirement of existence of a debt, which is disbursed against the consideration for the time value of money, in our view, remains an essential part even in respect of any of the transactions/dealings stated in Sub-clauses (a) to (i) of Section 5(8), even if it is not necessarily stated therein. **In any case, the definition, by its very frame, cannot be read so expansive, rather infinitely wide, that the root requirements of 'disbursement' against 'the consideration for the time value of money' could be forsaken in the manner that any transaction could stand alone to become a financial debt.** In other words, any of the transactions stated in the said Sub-clauses (a) to (i) of Section 5(8) would be falling within the ambit of 'financial debt' only if it carries the essential elements stated in the principal Clause or at least has the features which could be traced to such essential elements in the principal clause. **In yet other words, the essential element of disbursement, and that too against the consideration for time value of money, needs to be found in the genesis of any debt before it may be treated as 'financial debt' within the meaning of Section 5(8) of the Code.***

"This debt may be of any nature but a part of it is always required to be carrying, or corresponding to, or at least having some traces of disbursement against consideration for the time value of money."

(Emphasis Added)"

11. It was held that the requirement of disbursement against the consideration for time value of money remains an essential part. Thus, disbursement against the consideration for time value of money has to be proved for a financial debt.

12. Learned Counsel for the Respondent has referred to the e-mail dated 28.12.2022 sent by the Appellant to the Resolution Professional. In response to the e-mail dated 27.12.2022 by which the Resolution Professional asked the Appellant to give the relevant documents to prove its financial debt. It is useful to notice the e-mail dated 28.12.2022 sent by the Resolution Professional to the Appellant, which is as follows:-

"On Wed. Dec 28, 2022 at 5:34 AM Pratim Bayal <birlatyres.2022@gmail.com> wrote:

Dear Sir,

This email communication is in response to your email dated 27 December 2022.

You are already aware the Hon'ble NCLT replaced the erstwhile IRP, Mr. Seikh Abdul Salam with the undersigned as the Resolution Professional ("RP") of the Corporate Debtor vide order dated 31.10.2022.

Please note that as the RP of the company, it is the prime duty to preserve and protect the assets of the corporate debtor which shall include maintaining an updated list of claims as stated under section 25 of the Insolvency and Bankruptcy Code, 2016 ("Code") In order to fulfil such obligations, I am duty bound to verify or recheck any claim which is not supported by adequate documentation or information. Required clarification and necessary supporting documents can be sought by the Resolution Professional in relation to claims within the tenure of the Corporate Insolvency Resolution Process ("CIRP"), as per the provisions of the Code.

Accordingly, as stated in our email dated 23 December 2022, it has come to our notice that you have submitted only Form C and few other documents which are not sufficient to accept and substantiate your claim.

The evidence of your claim is more important as the corporate debtor was a business division only of your company even till a recent period

In order to accept your claim as a financial claim and verify the amount of your claim that was duly admitted by the erstwhile RP, we would request you once again to please provide the following additional information/ documents.

- 1. Copy of the signed Loan Agreement,*
- 2. Copy of your bank statement reflecting the disbursement and repayment of loan*
- 3. Date/s of payment of the Loan and the related repayments*
- 4. The details of the bank account of the Corporate Debtor where the loan was disbursed to.*
- 5. Computation of interest claimed by you along with the interest rate charged as per the ICD agreement*

We request you to kindly cooperate with us and provide us with the above mentioned documents by 30th December 2022

Regards,

Pratim Bayal

RP-M/s Birla Tyres Limited (under CIRP)

E-mail ID for communication: birlatyres.2022gmail.com

Registered email ID: pratimbayal@gmail.com

Regn No.: IBBI/IPA-003/IP-N00213/2018-2019/12385

AFA Valid till 6th December 2023”

13. The Appellant submitted its reply by e-mail dated 28.12.2022, which stated as follows:-

“Apropos your small dated 28 December 2022 herein below, kindly note provisions of Section 2512)(e) of 18C requiring the RP to maintain an updated list of claims do not authorize the RP to recheck and/or reverify and/or relook into an admitted claim. RP can merely revise the amount of admitted claim pursuant to powers derived from Regulation 14(2) on the basis of additional information warranting such revision and not otherwise

The authority of RP towards the duty cast on him under Section 20(1) of the IBC on protecting and preserving the value of the property of the corporate debtor and managing the operations of the corporate

debtor as a going concern are spelt out in Section 20(2) of IBC and the same too do not empower the RP to recheck and/or reverify and/or relook into an admitted claim

Our admitted claim is reflected in the books of accounts of the corporate debtor as also confirmed by the corporate debtor. Plus the fact that you admit the corporate debtor was a business division of our company in itself is testimony to the fact that there could not have been a loan agreement or disbursement to the corporate debtor, and that your instant requisition is made mechanically and without application of mind and does not appear to be bona fide. It is also to be noted that the Hon'ble Supreme Court has observed in several cases that the RP has no adjudicating powers and accordingly you cannot seek to embark upon an inquiry which is not permissible in law.

You are accordingly requested not to precipitate the matter any further and continue with the resolution process on the basis of the already admitted claim,

Sincerely.

Kesoram Industries Limited”

14. In the above e-mail, Appellant categorically stated that the ‘Corporate Debtor was a business division of our company in itself is testimony to the fact that there could not have been a loan agreement or disbursement to the corporate debtor’. In the present Appeal filed by the Appellant, Appellant has also reiterated what was stated in the e-mail in paragraph 7(l). In paragraph 7(l), following has been reiterated by the Appellant:-

“The Appellant further stated that since the Respondent admits that the Corporate Debtor was a business division of the Appellant, the same in itself is testimony to the fact that there could not have been a loan agreement or disbursement to the

Corporate Debtor and the requisition had been made by the Respondent mechanically and without application of mind and did not appear to be bona fide.”

15. From the materials brought on the record, it is clearly prove that there is no disbursement by the Appellant to the Corporate Debtor. When there is no disbursement for time value of money essential ingredients to prove a financial debt is missing. As noted above, in Form C which was filed by the Appellant, financial debt was claim on the basis of inter corporate loan given from time to time. It is not the case of the Appellant that any inter corporate loan was given to the Corporate Debtor at any point of time. According to the own case of the Appellant what was claimed in Form C was neither proved nor substantiated. In the application which was filed by the Appellant before the Adjudicating Authority there was no mention of any loan at any point of time given to the Corporate Debtor by the Appellant. Reliance was placed in the application IA No.957 of 2022 before the Adjudicating Authority as well as during the course of submission the Appellant, on the financial statement of the Corporate Debtor ending on 31.03.2022. In paragraph 5 of the application, following was pleaded:-

“5. The audited financial statements of the Corporate Debtor from time to time have also acknowledged financial liability to the Corporate Debtor vis-à-vis the Applicant. In this regard, the last audited balance sheet of the Corporate Debtor for the financial year 2021-22 is attached hereto marked "P-6", and the

debt of the Applicant is recorded in the said balance sheet at internal page no 95 thereof.”

16. Financial Statement on which much reliance has been placed by the Appellant has also been filed along with the Appeal. We need to notice certain parts of the financial statement for the year ended 31.03.2022. Counsel for the Appellant has relied on Note 13 and Note 14 which need to be noted for considering the submission. Note 13 deals with ‘borrowings’. Under the heading ‘borrowings’, there is clause (a) ‘secured’ and clause (b) ‘unsecured’. Clause (b) contains a heading ‘Inter Corporate Deposit’ is of Rs.4,164.57 Lakhs as on 31.03.2022. This ‘Inter Corporate Deposit’ as reflected in the balance sheet does not sync with the claim which was submitted by the Appellant in Form C. Much reliance has been placed on Note 14 which deals with ‘other financial liabilities’. Learned Counsel for the Appellant submits that under Note 14 on “Other Financial Liabilities” under the heading ‘current’, ‘payable to demerged company’ amount of Rs.52,119.06 Lakhs has been mentioned which is a clear acknowledgment of financial liabilities of the Corporate Debtor towards demerged company, Appellant being the demerged company.

17. When we look into the above Note 14, mention of ‘financial liabilities’ of Rs.52,119.06 Lakhs does not lead to prove that the said liability is a financial debt which is owed by the Corporate Debtor to the Appellant. The question which is for consideration is as to whether there was any financial debt owed to the Appellant by the Corporate Debtor for which the claim was filed. It is also relevant to notice that the balance sheet of the Corporate Debtor as well as the Appellant was under the same Chairman Shri

Manjushree Khaitan who was the Chairman of the Corporate Debtor as well as the Appellant. The Balance Sheet even if it is taken on its face value does not in any manner prove that there is any financial debt. The financial debt ought to have reflected under the heading of borrowings and there being no reflection of the claim which is filed in Form C under the heading 'borrowings'. The Submission of the Appellant that the balance sheet supports the claim of the Appellant cannot be accepted. The balance sheet as on 31.03.2022 does not prove that there was any financial debt owed by the Corporate Debtor to the Appellant.

18. Learned Counsel for the Appellant has submitted that the claim once admitted by the earlier Resolution Professional could not have been revised by the subsequent Resolution Professional by e-mail dated 19.04.2023. Appellant themselves has filed an application before the Adjudicating Authority being IA No.957 of 2023 questioning the e-mail dated 19.04.2023 before the Adjudicating Authority and further prayed for direction to the Resolution Professional to restore the claim of the Appellant as Financial Creditor. The Adjudicating Authority proceeded to hear the parties on the said application and having decided the claim of the Appellant on merits, it is not necessary for us to enter into the submission as to whether the e-mail dated 19.04.2023 could have been issued by the Resolution Professional or not. The Adjudicating Authority under sub-section (5) of Section 60 of the Code is fully entitled to decide any question regarding any claim made against the Corporate Debtor. Sub-section (5) of Section 60 reads as follows:-

“60. Adjudicating Authority for corporate persons. *-(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of –*

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.”

19. The Adjudicating Authority in exercise of its jurisdiction under sub-section (5) of Section 60 having adjudicated the claim as submitted by the Appellant, the question to be answered in this Appeal is as to whether the order of the Adjudicating Authority adjudicating the claim of the Appellant is sustainable or not. Adjudicating Authority after noticing the judgment of the Hon’ble Supreme Court in **Anuj Jain vs. Axis Bank Limited- (2020) 8 SCC 401**” has held that the applicant has failed to prove the transaction as a deposit of money or a loan from the applicant’s account to the Corporate Debtor’s account. In paragraph 6.8, following observations has been made by the Adjudicating Authority:-

“6.8. Thus, from the statutory provisions and decisions supra, it is clear that to bring any existence of debt within the ambit of the definition of "Financial Debt",

disbursement of money is sine qua non and in the instant application nothing in record substantiates that the money has been disbursed by the Applicant to Corporate Debtor. We are further of the view that though it is shown as an "Inter-Company Debt", the applicant has failed to prove the transaction as a deposit of money or a loan from the Applicant's account to the Corporate Debtor's Account before the initiation of CIRP as well as a relationship between the parties which proves that it is a mere transaction of money from one account to another account."

20. We, thus, are of the view that the Adjudicating Authority did not commit any error in rejecting IA No.957/KB/2023 filed by the Appellant. There is no merit in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

New Delhi
Anjali