

MAHMOD ALAM KHAN V. AHMED ALAM KHAN

Mahmod Alam Khan
Shareholder and Suspended Director
of M/s. Golconda Textiles Pvt. Ltd.
(Corporate Debtor)

S/o. Mr. Shah Alam Khan
Aged about 62 years,
Office at : A 1-7-140,
Musheerabad, Hyderabad – 500048

.... Appellant

v.

Ahmed Alam Khan
S/o. Mr. Shah Alam Khan
Aged about 62 years,
Office at : A 1-7-140,
Musheerabad, Hyderabad – 500048

**.... 1st Respondent /
Financial Creditor**

Mr. Prasanna Shenoy
Interim Resolution
Professional of
M/s. Golconda Textiles Pvt. Ltd.
Office at : 102, Sai Ameya Arc-1,
Bejai Kapikad Road,
Mangaluru – 575006

.... 2nd Respondent / IRP

For Appellant : Mr. P.H. Arvinth Pandian, Senior Advocate

For Ms. Monalisa Kosaria,

Mr. Vivek Menon and

Mr. B. Shравanth Shanker, Advocates

For Respondent No. 1 / : Mr. Satish Parasaran, Senior Advocate

Financial Creditor For Mr. Hirendernath and

Mr. Subhang P. Nair, Advocates

Case No: Company Appeal (AT) (CH) (INS.) No. 30 of 2023

WITH

Mustafa Alam Khan

**Shareholder and Suspended Director
of M/s. Golconda Textiles Pvt. Ltd.
(Corporate Debtor)**

S/o. Mr. Shah Alam Khan

Aged about 61 years,

Office at : A 1-7-140,

Musheerabad, Hyderabad – 500048

.... Appellant

v.

Ahmed Alam Khan

S/o. Mr. Shah Alam Khan

Aged about 62 years,

Office at : A 1-7-140,

Musheerabad, Hyderabad – 500048

**.... 1st Respondent /
Financial Creditor**

Mr. Prasanna Shenoy

Interim Resolution

Professional of

M/s. Golconda Textiles Pvt. Ltd.

Office at : 102, Sai Ameya Arc-1,

Bejai Kapikad Road,
Mangaluru – 575006

.... 2nd Respondent / IRP

For Appellant : Mr. Abhijeet Sinha, Advocate
For Ms. Monalisa Kosaria,
Mr. Vivek Menon and
Mr. B. Shraavanth Shanker, Advocates
For Respondent No. 1 / : Mr. Srinivas Iyengar, Senior Advocate
Financial Creditor For Mr. Hirendernath and
Mr. Subhang P. Nair, Advocates

Case No: Company Appeal (AT) (CH) (INS.) No. 38 of 2023

Date of Judgement: 02.08.2023

Judges:

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

Facts:

Appellant is a shareholder and suspended director of M/s Golconda Textiles Pvt Ltd (corporate debtor), a family business with 3 brothers as equal directors and shareholders. Respondent 1 is also a director and 33.33% shareholder in the corporate debtor company. Respondent 1 had given unsecured loans over years to corporate debtor to help it repay bank loans and meet financial obligations. Total unsecured loans given were Rs 13.84 crores as per audited balance sheets of corporate debtor on 31.3.2020 and 31.3.2021. Respondent 1 issued demand notice on 17.11.2021 seeking repayment of unsecured loans. Corporate debtor did not repay the unsecured loans. Respondent 1 filed section 7 application under IBC for initiation of CIRP against corporate debtor. NCLT Hyderabad admitted the section 7 application vide order dated 24.1.2023.

Appellants have filed appeals against NCLT's order admitting section 7 application

Court's Opinions:

Appellant's plea that section 7 application is not maintainable as no record of default from Information Utility filed, is rejected. Section 7(3)(a) allows financial creditor to provide record of default from Information Utility "or" other evidence. Other evidence has been provided. Money advanced by directors to bail out a financially distressed company are in nature of financial debt under section 5(8) of IBC. Interest free loans also qualify as financial debt. NCLT is only required to check if debt and default have occurred to admit a section 7 application. Questions of claim/counter claim will be decided later. Definition of loan as per Black's Law Dictionary covers the present case. Essence is agreement between parties to repay the money loaned. Corporate debtor's audited balance sheet shows unsecured loans matching the amounts claimed by Respondent 1. Certificate from Auditor also confirms the same. This establishes the debt. Failure to repay upon demand made through notice dated 17.11.2021 establishes the default. Order admitting section 7 application passed by NCLT Hyderabad does not suffer from any legal infirmity. Appellants' appeals fail and are dismissed.

Referred Laws and Sections:

Insolvency and Bankruptcy Code, 2016 Section 3(12) – Definition of Default; Section 5(8) – Definition of Financial Debt; Section 7 – Initiation of CIRP by Financial Creditor; Section 7(3)(a) – Requirements for Section 7 application; Section 61 – Appeals before NCLAT. Companies Act, 2013 Section 134 – Financial Statements; Section 179 – Powers of the Board

Download

Court

Copy:

<https://dreamlaw.in/wp-content/uploads/2023/12/Mahmod-Alam-Khan-v.-Ahmed-Alam-Khan.pdf>

Full Text of Judgment:

Justice M. Venugopal, Member (Judicial):

IA No. 107 of 2023 in Comp. App (AT) (CH) (INS.) No. 30 of 2023:

According to the Petitioner / Appellant, he is a 'Shareholder' and 'Suspended Director' of 'M/s. Golconda Textiles Private Limited' ('Corporate Debtor'), and that the 'Corporate Debtor' / M/s. Golconda Textiles Private Limited', is a family business of the 'Appellant', wherein, three brothers are 'Directors', as well as equal 'Shareholders', in the 'Company'.

2. It is represented on behalf of the Petitioner / Appellant that as per decision of Hon'ble Supreme Court of India, in Innovative Industries Limited v. ICICI Bank, reported in (2018) 1 SCC 407, a 'Promoter' / 'Shareholder' of the 'Corporate Debtor', may prefer an 'Appeal', assailing an 'Order of Admission', into 'Corporate Insolvency Resolution Process'. As such, the 'Petitioner / Appellant', seeks leave, to prefer the instant 'Comp. App (AT) (CH) (INS.) No. 30 of 2023 in IA No. 107 of 2023'.

3. This 'Tribunal', taking note of the fact that the Petitioner / Appellant, being a 'Shareholder and a Suspended Director' of the 'Corporate Debtor' / 'M/s. Golconda Textiles Private Limited', grants permission to him, to prefer the Comp. App (AT) (CH) (INS.) No. 30 of 2023, in respect of the 'Impugned Order', dated 24.01.2023 in CP (IB) No. 94 / 07 / HDB / 2022 (Filed by the '1st Respondent / Financial Creditor'), passed by the 'Adjudicating Authority' ('National Company Law Tribunal', Bench – II, Hyderabad), as an 'Aggrieved Person', in terms of Section 61(1) of the I & B Code, 2016, and 'allows', the 'IA No. 107 of 2023', but, without costs.

IA No. 110 of 2023 in Comp. App (AT) (CH) (INS.) No. 30 of

2023:

4. According to the Petitioner / Appellant, the Copy of the '1st Respondent / Financial Creditor's Ledger Account' (Outstanding Ledger Balance, as on 31.03.2021), True Copies of Corporate Debtor's Balance Sheets for the period from 01.04.2010 to 31.03.2011, 01.04.2011 to 31.03.2012, True Copy of Corporate Debtor's Balance Sheet as on 31.03.2020, True Copy of Corporate Debtor's State Bank of India Bank Account 52117754473 Statement, and the True Copy of Sanctioned Letter dated 24.01.2021, issued by the Adarsh Co-operative Urban Bank Limited, are relevant and material documents for proper adjudication of the 'Appeal'. Hence, the Petitioner / Appellant, prays for permission from this 'Tribunal', to receive these documents in IA No. 110 of 2023, as 'Additional Documents'.

5. Considering the fact that the Additional Documents, sought to be ushered in, by the Petitioner / Appellant are relevant and material for the purpose of adjudicating the controversies, centering around the Comp. App (AT) (CH) (INS.) No. 30 of 2023, this 'Tribunal', 'allows' the 'IA No. 110 of 2023' (to receive the 'Additional Documents'), keeping in mind the decision of the Hon'ble Supreme Court of India, in North Eastern Railway Administration, Gorakhpur v. Bhawan Das, A.I.R. 2008 SC at Page 2139, to secure the ends of justice.

IA No. 133 of 2023 in Comp. App (AT) (CH) (INS.) No. 38 of 2023:

6. According to the Petitioner / Appellant, he is a 'Shareholder' and 'Suspended Director' of 'M/s. Golconda Textiles Private Limited' ('Corporate Debtor'), and that the 'Corporate Debtor' / 'M/s. Golconda Textiles Private Limited', is a family business of the 'Appellant', wherein, three brothers are 'Directors', as well as equal 'Shareholders', in the 'Company'.

7. It is represented on behalf of the Petitioner / Appellant that as per decision of Hon'ble Supreme Court of India, in Innovative Industries Limited v. ICICI Bank, reported in (2018) 1 SCC 407, a 'Promoter' / 'Shareholder' of the 'Corporate Debtor', may prefer an 'Appeal', assailing an 'Order of Admission', into 'Corporate Insolvency Resolution Process'. As such, the 'Petitioner / Appellant', seeks leave to prefer the instant 'Comp. App (AT) (CH) (INS.) No. 38 of 2023 in IA No. 133 of 2023'.

8. This 'Tribunal', taking note of the fact that the Petitioner / Appellant, being a 'Shareholder and Suspended Director' of the

'Corporate Debtor' / 'M/s. Golconda Textiles Private Limited', grants permission to him, to prefer the Comp. App (AT) (CH) (INS.) No. 38 of 2023, in respect of the 'Impugned Order', dated 24.01.2023 in CP (IB) No. 94 / 07 / HDB / 2022 (Filed by the '1st Respondent / Financial Creditor'), passed by the 'Adjudicating Authority' ('National Company Law Tribunal', Bench – II, Hyderabad), as an 'Aggrieved Person', in terms of Section 61(1) of the I & B Code, 2016, and 'allows', the 'IA No.

133 of 2023', but, without costs. IA No. 136 of 2023 in Comp. App (AT) (CH) (INS.) No. 38 of 2023:

9. According to the Petitioner / Appellant, the Copy of the '1st Respondent / Financial Creditor's Ledger Account' (Outstanding Ledger Balance, as on 31.03.2021), True Copies of Corporate Debtor's Balance Sheets for the period from 01.04.2010 to 31.03.2011, 01.04.2011 to 31.03.2012, True Copy of Corporate Debtor's Balance Sheet as on 31.03.2020, True Copy of Corporate Debtor's State Bank of India Bank Account 52117754473 Statement, and the True Copy of the Sanction Letter dated 24.01.2021, issued by the Adarsh Co-operative Urban Bank Limited, are relevant and material documents for proper adjudication of the 'Appeal'. Hence, the 'Petitioner / Appellant', prays for permission from this 'Tribunal', to

receive these documents in IA No. 136 of 2023, as 'Additional Documents'.

10. Considering the fact that the Additional Documents, sought to be ushered in, by the 'Petitioner / Appellant', are relevant and material for the purpose of adjudicating the controversies, centering around the Comp. App (AT) (CH) (INS.) No. 38 of 2023, this 'Tribunal', 'allows', the IA No. 136 of 2023 (to receive the 'Additional Documents'), keeping in mind the decision of the Hon'ble Supreme Court of India, in North Eastern Railway Administration, Gorakhpur v. Bhawan Das, A.I.R. 2008 SC at Page 2139, to secure the ends of justice.

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

Justice M. Venugopal, Member (Judicial):

Background:

Comp. App (AT) (CH) (INS.) No. 30 of 2023:

11. The 'Appellant' / 'Shareholder' / 'Suspended Director' of 'M/s. Golconda Textiles Private Limited' ('Corporate Debtor'), has preferred the instant Comp. App (AT) (CH) (INS.) No. 30 of 2023, as an 'Aggrieved Person', in respect of the 'impugned order', dated 24.01.2023 in CP (IB) No. 94 / 07 / HDB / 2022 (Filed by the '1st Respondent / Financial Creditor', under Section 7 of the I & B Code, 2016), passed by the 'Adjudicating Authority' ('National Company Law Tribunal', Bench – II, Hyderabad).

Comp. App (AT) (CH) (INS.) No. 38 of 2023:

12. The 'Appellant' / 'Shareholder' / 'Suspended Director' of 'M/s. Golconda Textiles Private Limited' ('Corporate Debtor'), has preferred the instant Comp. App (AT) (CH) (INS.) No. 38 of 2023, as an 'Aggrieved Person', in respect of the 'impugned order', dated 24.01.2023 in CP (IB) No. 94 / 07 / HDB / 2022 (Filed by the '1st Respondent / Financial Creditor', under

Section 7 of the I & B Code, 2016), passed by the `Adjudicating Authority' (`National Company Law Tribunal', Bench – II, Hyderabad).

13. Earlier, while passing the `impugned order', dated 24.01.2023 in CP (IB) No. 94 / 07 / HDB / 2022, (Filed by the `1st Respondent / Financial Creditor), under Section 7 of the I & B Code, 2016), passed by the `Adjudicating Authority' (`National Company Law Tribunal', Bench – II, Hyderabad), among other things, at Paragraphs 17 to 25, had observed the following:

17. "At the outset it may be stated that, the plea that the financial creditor having failed to file the 'Record of Default' from Information Utility, in terms of the circular dated 12-05-2020, the present application is liable to be rejected, in our considered view is unsustainable, in as much as Section 7(3) (a) of the IB code, itself states that the Financial Creditor is required to

furnish the record of default recorded with the information utility or such other record or evidence of default. That apart, the very initial order of the NCLT, viz. Order File No.25.02.2020-NCLT dated 12th May 2020 as relied by the Corporate Debtor has been struck down by the Hon'ble High Court of Calcutta in Univalue Projects Private Limited Vs. The Union of India & others

vide order dated 18.08.2020 in W.P. No.5595 (W) with C.A. No.3347 of 2020 and allied matters, as discussed hereinabove. As such the above plea is of no avail to the Corporate debtor.

18. As regards the plea of the corporate debtor that as there was no agreement for payment of interest on the sum said to have been advanced to the corporate debtor by the Financial Creditor, no financial debt of any sum much less a sum over Rupees One Crore due and payable by the Corporate debtor cannot even exist in favour of the financial creditor under law is concerned, we state that the definition of financial debt as contained in 7(8) f IB Code itself does not mandate payment of interest. Hon'ble Supreme Court of India, in Orator

Marketing Private Limited Vs. Samtex Desinz Pvt Ltd., 2021 SCC Online SC 513, held that:

“31. . . . The definition of ‘debt’ is also expansive and the same includes inter alia financial debt. The definition of ‘Financial Debt’ in Section 5(8) of IBC does not expressly exclude an interest free loan. ‘Financial Debt’ would have to be construed to include interest free loans advanced to finance the business operations of a corporate body.”

19. That apart, admittedly, the Corporate Debtor was under immense financial pressure from the Lenders for non-payment of the debt due to the lenders. In this backdrop, on 25-01-2021 the Financial Creditor advanced a sum of Rs.3,97,85,000/- to the Corporate Debtor, which is evident from Annexures 5-11 and the said amount was utilized by the Corporate Debtor to repay the loans taken by the Company from SBI (erstwhile SBH), under the One-Time Settlement (OTS) offered by SBI, and thus prevented the likely coercive action for recovery by the Lender.

20. Hon’ble NCLAT in Mukesh Kumar Aggarwal Vs. Anurag Gupta & Anr Company Appeal (AT) (Insolvency) No.1264 of 2019. In paras 11 & 12 held as follows.

“11.. In the instant case, the Respondent No.1 has advanced various sums to the Corporate Debtor B.K. Educational Society to ease its liquidity crunch, thereby improving its economic prospects and to save the allotments by making direct payment to the GNIDA for the plot allotted in the name of Corporate Debtor. The para 6 of the judgment in Shailesh Sangani (supra) of this Tribunal it is held that the monies advanced by a Director to improve the financial health of the Company would have the commercial effect of borrowing even if no interest is claimed on the same.

12. Thus the amount deposited by the respondent No.1 in the account of GNIDA to save the corporate debtor on account of financial crunch to save the allotment made in the name of corporate debtor falls within the ambit of “financial debt”. Admittedly, the amount has not been paid back, and there is a default. Consequently, the adjudicating authority had admitted

the petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016. In the circumstance, as stated above, we do not find any justification for interfering with the impugned order. Therefore, the Appeal is dismissed. No order as to costs."

21. We find that the ratio of above judgement squarely applies to the facts of the present case.

22. That apart, a bare perusal of the undisputed the Audited Balance Sheet of the corporate debtor for the year ending 31st March 2021 discloses an unsecured loan of Rs.13,84,72,064.00. The undisputed certificate dated 08/05/22 issued by the Auditor of the corporate debtor clearly states that the unsecured loan shown in the balance sheet of the corporate debtor as on 31/03/2021 was advanced by the applicant herein. It is pertinent to note that the balance sheet of the corporate debtor for the year ending 2021 discloses as long-term borrowing. The note below the said entry note stating that the "Company is not expecting" to pay an amount in the next financial year, as rightly submitted by the Ld. Counsel for the Financial Creditor, the same only indicates that the corporate debtor does not expect the amounts to be paid in the next financial year which is only an assumption and cannot bind the Financial Creditor who is not a signatory to the said balance sheet as admittedly the said balance sheet was signed only by the other two Directors of the Corporate Debtor, namely, Mr. Mahmood Alam Khan and Mr. Mustafa

Alam Khan. That apart, the Financial creditor vide letter dated 17.11.2021 (Annexure 9), demanded the Corporate Debtor to pay the amounts now claimed as due and payable, with interest at 12%. The said letter was received by the corporate debtor, however neither the amount was discharged nor the contents were denied by the corporate debtor.

23. As already stated, there cannot be any denial of the fact that the Financial Creditor, had advanced, in all a sum of Rs.13,84,72,064/- (Rupees Thirteen Crores eighty four Lakhs Seventy Two Thousand and Sixty Four only) to the Corporate Debtor, in order to improve the financial health of the

Corporate Debtor. That apart, on 25.01.2021, the applicant advanced a sum of Rs.3,97,85,000/- to the corporate debtor to honour One Time Settlement (OTS) offered to the Corporate Debtor by the lender / State Bank of India. The disbursal of the said amount through various bank transactions has been established vide Annexures-5-11. No Due Certificate issued by the lender / State Bank of India dated 30.01.2021 also has been filed. Thus, the above financial records of the Corporate Debtor as well as that of the applicant establish existence of a financial debt of a sum of over Rupees one crore due and payable by the Corporate Debtor to the applicant. Hon'ble Supreme Court of India, in re, Asset Reconstruction Company (India)Limited Vs. Tulip Star Hotels Limited & Ors. in CIVIL APPEAL NOS. 84-85 OF 2020, relied on by the applicant, held as follows:

"43. In our view, the NCLAT erred in law in holding that the Books of Account of a company could not be treated as acknowledgement of liability in respect of debt payable to a financial creditor."

24. Thus, a financial debt of a sum over Rupees one crore due and payable by the corporate debtor herein stands acknowledged by the corporate debtor. As the said Debt, which we have categorically held to be a financial debt, since not discharged by the corporate debtor, the default starts at the corporate debtor.

25. Therefore, in the light of our discussions as above we are fully satisfied that the applicant has established existence of Financial Debt of a sum over Rupees One Crore due and payable, besides its default by the corporate debtor. We are also satisfied that the present application is complete and that there is no disciplinary proceedings pending against the proposed IRP."

and 'admitted', the main 'Company Petition', declared 'Moratorium', and appointed the 'Interim Resolution Professional', etc.

Appellants' submissions (in Comp. App (AT) (CH) (INS.) Nos. 30 & 38 of 2023:

14. The Learned Counsels for the Appellants, contend that the 'impugned order', dated 24.01.2023, in CP (IB) No. 94 / 07 / HDB / 2022, (Filed by the '1st Respondent / Financial Creditor'), passed by the 'Adjudicating Authority' ('National Company Law Tribunal', Bench – II, Hyderabad), in admitting the 'Section 7 Application', is per se an 'illegal' and an 'invalid' one, because of the fact that 'there is no Privity of Contract', between the 'Corporate Debtor' / 'Golconda Textiles Private Limited' and the '1st Respondent / Financial Creditor / Petitioner'.

15. The Learned Counsels for the Appellants, point out that there is no 'Agreement' or 'Document', proving 'Loan', was taken by the 'Corporate Debtor', from the '1st Respondent / Financial Creditor / Petitioner'.

16. According to the Appellants, the '1st Respondent / Financial Creditor / Petitioner', was wrongly held to be a 'Financial Creditor', which is 'Antithetic', to the concept of 'Jural Relationship' of a 'Creditor' and 'Debtor'. Furthermore, there are no 'external' Financial Creditors of the 'Corporate Debtor', and the 'Appellant', is a 'Director' and a 'Shareholder' of a family run business of M/s. Golconda Textiles Pvt. Ltd. ('Corporate Debtor'), and the purpose of infusion by the 'Directors' / 'Shareholders', were not 'commercial lending'.

17. The stand of the Appellants is that, there is 'no Contract', 'no Term', 'no Rate of Interest' and any infusion of funds by the 'Promoter' / 'Shareholder', cannot be termed as 'Loan', unless, the requirements of the Companies Act, 2013, are satisfied.

18. It is represented on behalf of the Appellants that the 'Application', filed by the '1st Respondent / Financial Creditor / Petitioner', before the 'Adjudicating Authority' /

`Tribunal', is not an `Insolvency Resolution', but, `settling of Shareholders' Disputes', by an `abuse of Process of Law'. Moreover, the ingredients of Section 65 of the I & B Code, 2016, ought to be applied, and prevent the `1st Respondent / Financial Creditor / Petitioner', from taking undue benefit.

19. It is the version of the Appellants that the `Adjudicating Authority' / `Tribunal', had committed an `error', in not appreciating that the `Balance Sheet' of the `Corporate Debtor', does not establish the purported `Financial Debt'.

20. According to the Appellants, the `Adjudicating Authority' / `Tribunal', went wrong, in not considering that the `Loan', was not a `Financial Debt', as the Sums, were not `Money Borrowed by the Corporate Debtor', and further that the `Borrowing', does not constitute a `Financial Debt'.

21. The Learned Counsels for the Appellants, refer to the Balance Sheet of the Corporate Debtor for the year ending, on 31.03.2020, which was signed by all the `three Directors' (including the alleged 1st Respondent / Financial Creditor), and adverts to the Balance Sheet of the `Corporate Debtor', as at 31.03.2020 (Page 104 of Vol. I of the Appellant's Appeal Paper Book at Spl.Pg: 108, wherein at `Note 4.1 to the `Long-term Borrowings', which runs as under:

4.1 "Loans from directors and directors relatives are treated as long term as no terms of repayment are fixed and the Company is not expecting to pay any amounts in the next financial year."

[Emphasis Supplied]

and the very same `Note', was appended for `Long-term Borrowings', in the Balance Sheet, ending on 31.03.2021 (vide Vol. I of the Appellant's Paper Book at Spl. Pg: 147).

22. The Learned Counsels for the Appellants, proceed to point out that the 1st Respondent / Financial Creditor / Petitioner', had secured the `Term Loan', in his `individual capacity', from the Adarsh Co-operative Urban Bank Limited, for INR 4 Crores on 24.01.2021 and the purpose of `Loan', was mentioned at Serial No.4 as "for investment on Group

Businesses and Units' (vide Vol. II of the Appellant's Appeal Paper Book at Page 379), and the same 'Sum', was then transferred to the 'Corporate Debtor', for Investment on 25.01.2021 (vide Vol. I of the Appellant's Paper Book at Pg: 174 at Spl Pg: 181).

23. It is the clear cut stand of the Appellants, that all the 'Amounts', alleged to be 'Debt', by the '1st Respondent / Financial Creditor / Petitioner', are from the 'Family Owned Concerns', and in no way, be called as 'Property of the Appellant'. That apart, an 'argument' is advanced on behalf of the Appellant, that there is 'no Financial Debt', as per Section 5 (8) of the I & B Code, 2016, and in reality, the structure of the Corporate Debtor, makes it clear that it is a 'Family Concern', where the three Brothers, have equal Shareholding each, and all of them infusing 'Capital', in the business of the Company, right from its inception.

24. According to the Appellants, a desperate endeavour was made, to exhibit, that there is a 'consideration', against the 'Money', infused into the Company, through a 'Legal Notice', dated 17.11.2021, by mentioning, as under:

"I suggest that the company allot equity shares in Golconda Textiles Pvt. Ltd. at valuation as per Income Tax Rules in lieu of repayment of unsecured loans brought in by me. The same may be converted to equity shares within 30 days of this notice serving date, by passing the necessary resolutions in the Board."

(Emphasis Supplied)

25. The Learned Counsels for the Appellants, come out with a plea that the 'Long-term Borrowings', shown in the 'Balance Sheet' of the 'Corporate Debtor', were not 'disbursed', by the 1st Respondent / Financial Creditor, against 'interest' or 'consideration', for 'Time Value of Money', and hence, does not amount to 'Financial Debt', under the I & B Code, 2016.

26. The Learned Counsels for the Appellants, submit that there is a significant difference, between 'Borrowed Money' and 'Debt Due', and further, the fact that 'Capital', was infused

by the 1st Respondent / Financial Creditor, was classified as 'Long-term Borrowing', under 'Non- Current Liabilities' of the 'Corporate Debtor' shows that it was not to be repaid in the near future. Moreover, 'the proximity of time', is the essence of such 'Borrowing', as per decision in Aaryan Projects Private Limited

v. Klowin Infrastructure Private Limited, 2018 SCC OnLine Cal 3977 (vide Paragraph 4).

27. The Learned Counsels for the Appellants, contend that there is a clear distinction, between 'Debt' owed and 'Debt' due, as per decision in Kesoram Industries and Cotton Mills Ltd. v. Commissioner of Wealth Tax (Central) 1966 2 SCR at Page 688 (vide Paragraph 20).

28. The Learned Counsels for the Appellants, submit that the 'Balance Sheet' of the 'Corporate Debtor', ending on 31.03.2020, was signed by all the 'Three Directors', including the 'alleged Financial Creditor', and it is acknowledged by the '1st Respondent', that 'no terms of repayment are fixed, for the 'Long-term Borrowings'. As such, the '1st Respondent' / 'Financial Creditor', is estopped from contending that there is a 'Fixed Term of Payment' or that 'Money', was 'due and payable', by the 'Corporate Debtor'.

29. The Learned Counsels for the Appellants, bring it to the notice of this 'Tribunal', that in terms of the ingredients of Section 134 of the Companies Act, 2013, the 'Financial Statements' of a 'Company', are required to be signed by the 'Two Directors', including the 'Managing Director' ('Mahmood Alam Khan', in the instant case), and therefore, the 'Balance Sheet' of the 'Corporate Debtor', ending on 31.03.2021, containing the same 'Note 4.1', regarding the 'no terms of repayment, for 'Long-term Borrowings', is also binding on the '1st Respondent / Financial Creditor / Petitioner'.

30. The Learned Counsels for the Appellants, point out that the 'Claim', made in 'Form I', relating to the interest payable at 14% per annum and the 'Date of Default' i.e., 01.02.2022 are 'imaginary', and based on 'whimsical

calculations', made by the '1st Respondent'. In this connection, the Learned Counsel for the Appellant, points out that the purported 'Debt', which became due, on 01.02.2022, in Form No.I, is contradictory to the 'Notice', dated 17.11.2021, demanding 'Return of Money', forthwith.

31. The Learned Counsels for the Appellants, advance a plea that the main Company Petition in CP (IB) No. 94 / 07 / HDB / 2022 (Filed by the '1st Respondent / Financial Creditor'), does not meet the 'Threshold Limit' of Rs.1 Crore, for initiating 'Corporate Insolvency Resolution Process' proceedings and this aspect was not appreciated, by the 'Adjudicating Authority' / 'Tribunal', in a proper and real perspective, at the time of passing of the 'impugned order'.32. The Learned Counsels for the Appellants, contend that in the absence of 'Board Resolution', as per Section 179 of the Companies Act, 2013, no 'Sanction', can be provided to the alleged 'Loan', by the '1st Respondent / Financial Creditor / Petitioner', and further, the 'Sum of Money', received from the '1st Respondent / Financial Creditor's Accounts', were not against consideration for the 'Time Value of Money', and does not have the 'Commercial effect of a Borrowing'.

33. The Learned Counsels for the Appellants, rely upon the Judgment of this 'Tribunal', dated 19.10.2020 in Comp. App (AT) (INS.) No.02 of 2020 in Volkswagen Finance Private Limited v. Shree Balaji Printopack Private Limited, wherein, it is held that non-compliance of the provisions of the Act, has ramifications, under the 'Code'.

34. The Learned Counsels for the Appellants, advert to the decision of the Hon'ble Supreme Court of India in Asha John Divianathan v. Vikram Malhotra, reported in (2021) SCC OnLine SC 147, for the proposition that 'where a contract, express or implied, is expressly or by implication is forbidden by Statute, no Court will lend its assistance to be given effect to'.

35. The Learned Counsels for the Appellants, therefore, pray for 'allowing', the instant 'Appeals', by this 'Tribunal', in

as much as, the `Adjudicating Authority' / `Tribunal', had committed an `error', in passing the `impugned order', dated 24.01.2023, in CP (IB) No. 94 / 07 / HDB / 2022 (Filed by the `1st Respondent / Financial Creditor'), holding that `there is a `Financial Debt', which has not been, discharged by the `Corporate Debtor'.

1st Respondent's Contentions (in Comp. App (AT) (CH) (INS.) Nos. 30 & 38 of 2023):

36. According to the 1st Respondent / Financial Creditor / Petitioner, the `Corporate Debtor', was under an `immense financial pressure', and on 25.01.2021, the 1st Respondent / Financial Creditor, had advanced a Sum of Rs.3,97,85,000/- to the `Corporate Debtor', and this `Sum', was utilised by the `Corporate Debtor', to `Repay the Loans', taken by the `Company', from State Bank of India (Erstwhile State Bank of Hyderabad), under the `One Time Settlement Scheme', offered by the `Bank', to save the `Corporate Debtor', from the `Liquidation' and `Attachment'.

37. The Learned Counsel for the 1st Respondent / Financial Creditor, contends that the `1st Respondent / Financial Creditor', who is also a `Director', in the `Corporate Debtor' / `Company', had advanced a Sum of Rs.13,84,72,064/-, to pay back `Dues', to the `Banks', and further the said Loan(s), are admitted reflected in the `Balance Sheet' of the `Corporate Debtor' / `Company', as on 31.03.2021 (vide Page 143 of the Vol. I of the Appeal Paper Book).

38. The Learned Counsel for the 1st Respondent / Financial Creditor / Petitioner, points out that the I & B Code, 2016, mentions that the `Financial Creditor', is required to furnish the `Record of Default', recorded with the `Information Utility' or `such other record' or `Evidence of Default'.

39. The Learned Counsel for the 1st Respondent / Financial Creditor, submits that the `Corporate Debtor', had not replied to the `Demand Letter', dated 17.11.2021 for `Repayment of the Loan', but, in the `Counter', dated 18.04.2022, the `Corporate

Debtor', at Paragraph 7, had referred to the Letter, but, only mentioned that the same is not 'proof of existence of Debt', and had not denied the 'receipt' of the 'Letter'.

40. The Learned Counsel for the 1st Respondent / Financial Creditor, points out that the 'Proof of Debt', is clear from the 'Balance Sheet', and the 'Certificate', issued by the 'Statutory Auditor' of the 'Corporate Debtor' / 'Company' (Vide Page 247 – Certificate dated 08.05.2022), Issued and signed, by the Partner of Narasimha Rao & Associates (J. Narasimha Rao, Chartered Accountants FRN 2336S), and further that the 'Default', is established by the 'Corporate Debtor's admitted failure to repay upon the demand, made by the '1st Respondent / Financial Creditor'.

41. The Learned Counsel for the 1st Respondent / Financial Creditor, forcefully takes a stand that the 'Appellants' (in Comp. App (AT) (CH) (INS.) Nos. 30 and 38 of 2023), have suppressed the fact that the Company's operations were stopped, almost a year ago and the other 'Directors', were bleeding the 'Company', by blatantly taking away money, unauthorisedly selling 'Assets' of the 'Company', after 'filing' of the 'Application', before the 'Adjudicating Authority' / 'Tribunal'.

42. The Learned Counsel for the 1st Respondent / Financial Creditor, points out that the '1st Respondent', had infused a Sum of

Rs.13,84,72,064/- Viz. a Sum exceeding Rs.1 Crore and the said Sum cannot be treated as a 'Largesse', but has to be repaid, on demand', as pointed out in the 'Judgment' of this 'Tribunal', dated 30.01.2019, in Shailesh Sangani v. Joel Cardoso & Anr. (vide Company App (AT)(INS.) No. 616 of 2018), wherein, at Paragraphs 3 & 9, it is observed as under:

3. "Learned counsel for the Appellant submits that the learned Adjudicating Authority landed in error in holding that the amount claimed by Respondent No.1 for triggering Corporate Insolvency Resolution Process, in respect whereof default on the part of Corporate Debtor was alleged, was not a 'Financial Debt' as defined under Section 5(8) of the I&B Code despite

the admitted position that there was no consideration for the time value of money in the transaction. It is further submitted that learned Adjudicating Authority failed to notice that no interest was ever claimed by the Respondent No.1 or paid by the Corporate Debtor to Respondent No.1, that no TDS amount was ever deducted in respect of the part payments made, that there was no tenure for the repayment of amounts granted by Respondent No.1 to Corporate Debtor and that there was no time value of money in the transaction and no consideration for the time value of the money was agreed between the parties at the time of disbursement of moneys by Respondent No.1.

9. The balance sheet as on 31st March, 2017 at page 83 of the reply affidavit filed by Respondent No.1, inter alia, reflects a non-current liability of Rs.4,72,76,182/- treated as 'long term borrowings' and not treated as shareholder's funds. Same factual position is reflected in the communication made by the Company Auditor 'Ganesh Mehta', Partner 'Ganesh and Rajendra Associates' addressed to Respondent No.1 in his communication dated 5th December, 2017 forming Annexure D to the reply affidavit of Respondent no.1 which is reproduced hereinbelow:-

.... This communication reflects total unsecured loan of Rs.4,72,76,182/- against the Corporate Debtor in the books of the Company as on 31st March, 2017, the breakup showing the loan amount of Rs.1,45,36,475/- in the name of Respondent No.1. In the face of this documentary evidence it is abundantly clear that the amount disbursed by Respondent No.1 to the Corporate Debtor was in the nature of debt treated as long term loan and not as an investment in the nature of share capital or equity. Such disbursement cannot either be treated as largesse. We are

convinced that the aforesaid amount outstanding as against Corporate Debtor default whereof is not in issue, has all the trappings of a 'financial debt' and falls within the purview of Section 5(8)(f) of the I&B Code and Respondent No.1 is covered by the definition of 'Financial Creditor'.'

43. The Learned Counsel for the 1st Respondent / Financial

Creditor, points out that, it is not the case of the `Corporate Debtor' / `Company' that the money equally pumped in, by all the `Directors', in a family run Company, were not `Repayable', as they had `no tenure'.

44. According to the 1st Respondent / Financial Creditor, the Hon'ble Supreme Court of India in Orator Marketing Private Limited v. Samtex Desinz Private Limited, reported in 2021 SCC OnLine 513 at Paragraphs 22, 23 & 31, held that the Definition of `Financial Debt', under Section 5(8) of the I & B Code, 2016, does not `expressly exclude an Interest Free Loan'.

45. The Learned Counsel for the 1st Respondent / Financial Creditor, submits that in the Judgment of this `Tribunal', dated 08.06.2020, in Comp. App (AT) (INS.) No. 1264 of 2019, between Mukesh Kumar Aggarwal v. Anurag Gupta & Anr., wherein, at Paragraphs 11 and 12, had observed the following:

11. *"..... In the instant case, the Respondent No.1 has advanced various sums to the Corporate Debtor B.K. Educational Society to ease its liquidity crunch, thereby improving its economic prospects and to save the allotments by making direct payment to the GNIDA for the plot allotted in the name of Corporate Debtor. The para 6 of the judgment in Shailesh Sangani (supra) of this Tribunal it is held that the monies advanced by a Director to improve the financial health of the Company would have the commercial effect of borrowing even if no interest is claimed on the same.*

12. *Thus the amount deposited by the respondent No.1 in the account of GNIDA to save the corporate debtor on account of financial crunch to save the allotment made in the name of corporate debtor falls within the ambit of financial debt. Admittedly, the amount has not been paid back, and there is a default. Consequently, the adjudicating authority had admitted the petition*

filed under Section 7 of the Insolvency & Bankruptcy Code, 2016. In the circumstance, as stated above, we do not find any justification for interfering with the impugned order. Therefore the Appeal is dismissed. No order as to costs.'

46. The Learned Counsel for the 1st Respondent / Financial Creditor, projects an argument that the `Corporate Debtor`, had not discharged the amount, and not denied the `context of the Letter`, dated 17.11.2021, received by it and till such time, `Payment is effected`, the `Default` continues, and therefore prays for `dismissing`, the Comp. App (AT) (CH) (INS.) No. 30 of 2023 and Comp. App (AT) (CH) (INS.) No. 38 of 2023, preferred by the respective `Appellants`.

Loan & Debt:

47. A `Loan`, creates a `Debt`, but there may a `Debt`, `without contracting a `Loan`. In a `Loan`, there will be a `Lender`, a `Borrower`, a thing `Loaned for use`, there being a `Contract`, between the `Parties`, for `return of thing Loaned`.

48. The `Loan` of `Money`, means, `the delivery of one person and the receipt by the other of a given `Sum`, based on an `Agreement`, `express or implied`, to `repay`, the `Sum Loaned`, with or without `Interest`. 49. In the decision in Commissioner of Income Tax v. Srinivasan. K., reported in (1963) 1 MLJ at Page 305, it is observed that "the term Loan and Advance, in the Section, have been used only intended to cover cases, where the Company's Funds are utilised on behalf of or for the benefit of Shareholders, with the right in the Company, to be reimbursed to such Sum".

Loan & Deposit:

50. The term `Loan` and `Deposit`, are not `mutually exclusive`. In act, the test is whether, on the `admitted facts of the case`, there was an `Obligation`, on the `Debtor`, to `seek out` the `Creditor`, to `repay him`, or whether, he was to `keep money`, till the `Creditor`, asks for the same.

Feature of Deposit:

51. The salient feature of `Deposit`, is something more than a

`mere Loan of Money', whether `Transaction', is clothed with a character of `Deposit of Money', will depend on the facts of a given case.

52. Undoubtedly, the `Deposit', becomes `repayable', on `demand', being made and the `Limitation', does not begin to run, unless the `demand', was made. No wonder, the character of `Deposit', will not change, even if it be for a `fixed term'.

53. In `Deposit', it is the duty of the `Depositor', to go after the `Money' to the `Banker' and make a `demand' for it.

Evaluation (in both `Appeals'):

54. Before the `Adjudicating Authority' / `Tribunal', the `1st Respondent / Financial Creditor / Petitioner', in CP (IB) No. 94 / 07 / HDB / 2022 (Filed under Section 7 of the I & B Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, under Part II Column, had mentioned the name of the `Corporate Debtor' as `M/s. Maruti Rich Ventures Limited', and later, amended the name of the `Corporate Debtor', as `M/s. Golconda Textiles

Private Limited' (as per Order dated 28.04.2022 in IA No. 418 of 2022), passed by the `Adjudicating Authority' / `Tribunal' (vide Page 241 of Vol. II of Appeal Paper Book in Comp. App (AT) (CH) (INS.) No. 30 of 2023 dated 01.02.2023 – Diary No. 109).

55. According to the `1st Respondent / Financial Creditor / Petitioner', the `Total Amount of Debt', granted was Rs.13,84,72,064/-, vide Part -IV of the Section 7 Application (Amended fair copy). The amount Claimed to be in `Default' was Rs.18,28,95,628/-, out of which, Rs.13,84,72,064/-, was towards `Principal Sum', disbursed by the `1st Respondent / Petitioner', whereas the `Balance of Rs.4,44,23,565/-', was towards `Interest' at 14% per annum, from the respective `Date of Disbursal' of

the `Amounts', to the `Corporate Debtor', till 21.02.2022. Also, the `1st Respondent / Financial Creditor / Petitioner',

had averred that, it was entitled to 'Future Interest', from the 'Date of Filing of the main Petition', till the 'Date of Actual Payment'.

56. In the Section 7 Application, filed by the '1st Respondent / Financial Creditor / Petitioner', under Part – IV ('Particulars of Financial Debt' – vide Page 243 of Vol. II of Appeal Paper Book), it was averred that the 'Corporate Debtor', was 'struggling financially', and was 'indebted to various Banks / Financial Institutions' and there was no access to Funds. Also that, at the request of other 'Directors', and to 'Bail out', the Corporate Debtor, the '1st Respondent / Financial Creditor / Petitioner', had 'Lent', a Sum of Rs.9,15,78,532/- from time to time, as 'Financial Loans'.

57. Moreover, according to the '1st Respondent / Financial Creditor / Petitioner', the 'Loan Sum', issued was Rs.13,84,72,064/- and that he is entitled to the 'Interest' at 14% per annum, and that apart, the 'Corporate Debtor', was requested by the '1st Respondent / Financial Creditor', to return the amount, without any success, and that a Letter dated 17.11.2021, was issued to the 'Corporate Debtor'.

58. The Corporate Debtor / Golconda Textiles Private Limited, in its 'Counter', to the main Petition, before the 'Adjudicating Authority', among other things, had averred that the 'nature of family run business', was evident from the fact that even the 'Annual Returns', filed by the 'Financial Creditor', does not specifically show that the 'Financial Creditor', had given the 'Unsecured Loan', and that the instant 'Transaction', would not have the effect of 'commercial effect' of 'Borrowing'.

59. Further, the 'Corporate Debtor' took a stand that the 'Time Value of Money', would mean 'Compensation' for the price paid for the length of time, for which, the 'Money', was 'Disbursed'. That apart, in the present case, there was no 'Resolution', accepting 'Payment of Interest', to the 'Financial Creditor', much less any 'Resolution', accepting

any `Loan`, from the `Financial Creditor`. The `1st Respondent / Financial Creditor / Petitioner`, before the `Adjudicating Authority` in `Rejoinder`,
had averred at Paragraph 7, as under:

S.No	Particulars	Amount
1	Ahmed Alam Khan Loan	A/c 13,84,72,064.00
2	Deccan Safety Match Industries	9,62,930.00
3	Elegant Packaging Industries	-5,13,290.00
4	GB Bakers Industries Pvt. Ltd.	4,20,07,147.00
5	Golconda Match Industries	-19,20,000.00
6	Mahmood Alam Khan Loan A/c	-50,39,760.00
7	Mustafa Alam Khan Loan A/c	1,68,06,163.00
8	Super Dairy Farm	-2,43,28,205.00
	TOTAL	16,64,47,049.00

60. According to the 1st Respondent / Financial Creditor / Petitioner, he is a `Shareholder`, holding 33.33% of Shares in the Equity of the Company and the Act of Advancing the `Unsecured Loans`, to the `Company` protects and enhances the `Value off his Shareholding`, which would be the consideration for the `Loans`, advanced. Besides this, even an `Interest Free Term Loan`, constitutes a `Financial Debt`, under the I

& B Code, 2016.

61. The 1st Respondent / Financial Creditor / Petitioner, in its 'Rejoinder' (before the 'Adjudicating Authority' / 'Tribunal'), had pointed out that he demanded 'Interest' on the 'Unsecured Loans', and the 'Loans', advanced are in the 'nature of commercial borrowing', by the 'Corporate Debtor', and it is consideration of the 'Time Value of Money' and hence, qualifies as a 'Financial Debt', as per Section 5 (8) of the I & B Code, 2016.

62. Dealing with the plea of the 'Appellants', that 'no record of Default', from 'Information Utility', was filed by the '1st Respondent / Financial Creditor / Petitioner', this 'Tribunal', poignantly points out that the ingredients of Section 7(3)(a) of the 'Code', latently and patently specify that the 'Financial Creditor', is required to furnish the 'record of Default', recorded with an 'Information Utility' or 'such other record' or 'Evidence of Default'. Viewed in that perspective, the contra plea taken on behalf of the 'Appellants', is 'not acceded to', by this 'Tribunal'.

63. In the present case, it transpires that the '1st Respondent / Financial Creditor / Petitioner', had issued a 'Letter' dated 17.11.2021, to all the 'Board of Directors' of the 'Corporate Debtor' / 'Golconda Textiles Private Limited', stating that he had infused 'Funds', in to the 'Company', for the past few years, and these monies were brought in as 'Unsecured Loans', to save the 'Company', from its 'Repayment Obligations', and also meet the 'Obligations', towards 'One Time Settlement', entered into the 'State Bank of India', and further he had infused 'Funds', to meet the 'Operational Losses' of the 'Company', at various times.

64. Added further, the '1st Respondent / Financial Creditor / Petitioner', had averred in the said Letter dated 17.11.2021 that the Company, makes arrangement to compensate him for the monies brought in at various times and suggested that the Company may allot 'Equity Shares', in the 'Corporate Debtor' /

`Golconda Textiles Private Limited', at `Valuation', as per `I.T. Rules', in lieu of repayment of `Unsecured Loans', brought in by him, and the same may be converted into `Equity Shares', within 30

days of this `Notice' serving date, by passing the necessary `Resolutions', in the `Board'.

65. In the present case, the Sum of Rs.13,84,72,064/- infused by the `1st Respondent / Financial Creditor / Petitioner', is to be `repaid to him', and Section 5(8) of the I & B Code, 2016, defines `Financial Debt', meaning a `debt', along with Interest, if any, which is disbursed against the consideration for the `Time Value of Money', and by `Commercial Practice', any `Loan', Long-term or otherwise, in the absence of any Agreement for Repayment', falls due and payable `on demand', made by the `Creditor', in the considered opinion of this `Tribunal'.

66. For the `Notice / Letter', dated 17.11.2021, issued by the `1st Respondent / Financial Creditor / Petitioner', to all the Directors of the Corporate Debtor, there was no `Reply', from the `Appellants, and there is `non-payment of Debt', by the `Appellants', and they have committed `Default', coming within the purview of Section 3(12) of the I & B Code, 2016, as held by this `Tribunal'.

67. There is no embargo in Law', for a `Director of a Company', to infuse the `Funds', into the `Company', with a view to rescue a Company from `Financial Distress / Crisis', and the monies advanced clearly come within the umbrage of Section 5(8) of the `Code'.

68. In the present case on hand, the `1st Respondent / Financial Creditor / Petitioner', in its `Application', under Section 7 of the I & B Code, 2016 in CP (IB) No. 94 / 07 / HDB / 2022, is to prove the `Existence of Debt', which is due from the Corporate Debtor. No doubt, the `Corporate Debtor' or its `Directors', can point out that the `Debt', is not `Payable', by the `Corporate Debtor', in `Law', and also in `Fact'.

69. In a Section 7 Application of the `Code', an `Adjudicating

Authority' / `Tribunal', is not required to go into the `Claim' or `Counter Claim', made by the `Parties', except to find out, whether or not, `record is complete', and whether or not, `there is Debt and Default', committed by the `Corporate Debtor'.

70. In `Law', an `Application', under Section 7 of the Code, deserves to be `admitted', where the `Sum', is more than Rs.1 Lakh (now Rs.1 Crore) and `Default' of the `Corporate Debtor', was established.

71. It cannot be gainsaid that a `Financial Debt', is to be understood to include `Interest Free Loans, given to a `Company' / `Entity', for its `Business purpose' / `Operations', as the case may be.

72. One cannot ignore a vital fact that the `Auditor' of the `Corporate Debtor' / `Golconda Textiles Private Limited', had issued a `Certificate', dated 08.05.2022, stating that an `Unsecured Loan', was shown, in the `Balance Sheet' of the `Corporate Debtor', as on 31.03.2021, which was advanced, by the `1st Respondent / Financial Creditor'.

73. It is brought to the fore on behalf of the `1st Respondent / Financial Creditor / Petitioner', that a Sum of Rs.3,97,85,000/-, was advanced to the `Corporate Debtor', by the `1st Respondent / Financial Creditor / Petitioner', and the same was used by the `Corporate Debtor', to `repay the Loans', taken by the `Corporate Debtor / Company', from the `State Bank of India' (earlier State Bank of Hyderabad), under the `One Time Settlement Scheme', provided by the `Bank', to save the `Corporate Debtor', from `distress'.

74. In reality, the `State Bank of India / Lender', had issued a `No Due Certificate', dated 30.01.2021. Suffice it for this `Tribunal', to point out that a Sum of Rs.3,97,85,000/- advanced to the `Corporate Debtor', by the `1st Respondent / Financial Creditor / Petitioner', was through numerous Bank Transactions and all these, would unerringly prove the `Existence of a `Financial Debt' of an `Amount of Rs.1 Crore', `Due and Payable', by the `Corporate Debtor', to the `1st

Respondent / Financial Creditor / Petitioner'.

75. Besides the above, the 1st Respondent / Financial Creditor / Petitioner's Bank Statement, from the Year 2017 – 2018, shows that the `1st Respondent / Financial Creditor', had given various `Monies / Loans', to the Corporate Debtor', other than the one, claimed in the main Petition (vide CP (IB) No. 94 / 07 / HDB / 2022).

76. To put it succinctly, it is not the plea of the `Corporate Debtor', before the `Adjudicating Authority', that the `Directors' of the `Company', who had infused money to the `Corporate Debtor' (whenever required), the said `Money', was not be `repaid' because of the fact that it had no `fixed period / term'.

77. According to the `Black's Law Dictionary', the term `Loan', means `Lending', delivery by one party to and receipt by another party of a `Sum of Money', upon a `Agreement', express or implied to repay it with or without interest.

78. It is to be remembered that the essential requirement of `Loan', is `advancement of money' (or some `Article'), upon an `Undertaking', that it shall be returned and it may or may not carry any `Interest'.

79. Where a `Loan', was shown as `Debt', in the `report' of the `Directors to the Shareholders', while submitting the `Auditing

Accounts', it is held that even though, the managing `Agent', had acted beyond its `Powers', while contracting `Loan', if there was a ratification of `Loan', by the `Directors', it will bind the `Company'.

80. Where the `Articles of a Company', contain a provision, conferring `Power to the Board', to make `Loans', the `Board', shall exercise this `Power', by means of `passing a Resolution', at the `Meeting of the Board of Directors'. However, if the `Articles', contain any `Special Provisions', restricting the `Board's Powers', in this regard, such restrictions, must be complied with, before making `Loans', on behalf of the `Company'.

81. Where the 'Borrowing Powers' of 'Directors', are limited to certain 'Sums', they cannot 'Borrow', beyond the 'amount', so as to bind the 'Company'. Where the 'Borrowing of Money', is not in excess of the 'Powers of a Company', it may be ratified in 'General Meeting', by an 'Ordinary Resolution', as per decision Grant v. U.K. Switchback Railway Co. (1888) 40 ChD. 135. 82. At this stage, this 'Tribunal', aptly points out the decision in Badger Mansell v. Coblan, reported in (1905) 1 Ch 568, wherein, it is held that a 'Trading' or 'Commercial Company', but not a 'Literary' or 'Scientific Society', has implied, 'Power' to 'Borrow', and to 'Mortgage' or 'Charge', all over or any part of its 'Property'.

83. In a case, where the 'Articles of a Company', permitted its 'Directors', to 'Borrow' monies from time to time, in the name of

'Company' of prescribed Sums, by 'Bonds', 'Debentures' or 'Promissory Notes' or in such other manner as they deem best, it is held that the general words or 'in such other manner', as they 'deem best', cover the 'Power' of the 'Board', to borrow money, on 'Bills of Exchange', as per decision Re new Fleming Spg V. WVG Company Limited reported in 1879 / LR 3 Bom 439.

84. If the Articles, have a provision which 'prohibited the Directors', from 'delegating their power', to 'Borrow Monies', does not prevent them from 'empowering one of the Directors', to execute a 'Mortgage Deed'.

85. It is not necessary that while specifying the 'Borrowing Powers' of a 'Company', the 'Articles', should state the manner, in which, the 'Borrowing', is made.

86. It may not be out of place for this 'Tribunal', to make a pertinent mention that in the 'Order', dated 05.09.2018 of this 'Tribunal', between O.A.A. Ananthapadmanabhan Chettiar v. Sri Mahalakshmi Textiles (vide Comp. App (AT) (INS.) No. 520 of 2018), wherein, at Paragraphs 6 to 9, it is observed as under:

6. *"The 'Agreement for Conversion' dated 3rd August, 2006 shows that the manner in which the conversion of cotton and or*

other fibers will be made by delivering the Converter from time to time on payment of conversion charges subject to the clauses mentioned therein.

7. The agreement between the parties shows that the said arrangement made to make the 'Corporate Debtor' a 'Start-up' w.e.f. 9th August, 2006. The Respondent- (Converter) in its term is entitled to receive and take delivery of the yarn by making their own arrangements for transport to any of their destinations. All those provisions show that there is 'disbursement' of money

by the Respondent for which the 'consideration is time value of money' which the Respondent is entitled to as a Converter by receiving the yarn.

8. In view of the aforesaid specific provision, we hold that the Respondent comes within the meaning of 'Financial Creditor' and the Adjudicating Authority has rightly admitted the application under Section 7.

9. Learned counsel for the Appellant submitted that pursuant to agreement dated 3rd August, 2006, a letter of exchange for appointment of Arbitrator of Respondent was issued on 5th February, 2008, but such ground cannot be taken in a defeating an application under Section 7 of the 'I&B Code' though it is permissible to take such ground to get an application under Section 9 of the 'I&B Code' rejected.'

87. It is true that Section 7 Application of the 'Code', is 'maintainable', only by a 'Financial Creditor', and in fact, an 'Adjudicating Authority', is not to decide the exact 'Sum of Default'.

88. The question of whether, there is a 'Debt and Default', can be looked into, only, if the 'Corporate Debtor', disputes the 'Debt' or takes a stand that 'there is no Default', although, there is 'Debt'.

89. An 'Adjudicating Authority', this 'Tribunal', pertinently points out is to see the 'Records of Information Utility' or 'other evidence', produced by a 'Financial Creditor', to satisfy itself, that a 'Default', has occurred. The other

factors, such as, the 'Existence of a Dispute' or 'Discrepancy', are not 'Germane', as long as, it has not been 'Disputed', that the same 'Debt', is 'Due' and is 'Payable', to the 'Financial Creditor', and the 'Corporate Debtor', has 'Defaulted'.

90. It transpires that the total 'Unsecured Loans', provided by the '1st Respondent / Financial Creditor / Petitioner', to the 'Corporate Debtor', duly 'acknowledged', in the 'Audited Balance Sheet', as on 31.03.2020 and on 31.03.2021, is as under:

Year ending	Total Unsecured Loans as per Audited Balance Sheet (Rs)	Loan advanced by the Financial Creditor, as disclosed in the Audited Balance Sheet (Rs.)
Financial year 19-20	12,50,34,119/-	9,37,87,064/-
Financial year 20-21	16,64,47,049/-	13,84,72,064/-

91. In regard to the Appellant's plea, that the 'Long-term Borrowings', shown in the 'Balance Sheet' of the 'Corporate Debtor', were not 'disbursed', by the '1st Respondent / Financial Creditor / Petitioner', against 'Interest' or 'Consideration', for 'Time Value of Money', and therefore, does not amount to a 'Financial Debt', as per the I & B Code, 2016, it is relevantly pointed out by this 'Tribunal', the 'Sum Loaned', by a 'Director' of a 'Company' / 'Corporate Debtor', on account

of

`Financial Crisis / Distress', to tied over the situation, is a clear cut case

of a `Financial Debt', as per Section 5 (8) of the `Code', as such, the

`contra plea', taken on behalf of the `Appellant', is negatived, by this

`Tribunal'.

92. As far as the present case is concerned, considering the fact that the `Corporate Debtor's Audited Balance Sheet', in respect of the Year ending 31.03.2021, exhibits an `Unsecured Loan' of Rs.13,84,72,064/- and even the `Certificate of the Auditor', dated 08.05.2022, also mentions the `Unsecured Loan', described in the Balance Sheet of the Corporate Debtor as advanced / given by the `1st Respondent / Financial Creditor', and also this `Tribunal', bearing in mind, yet another fact that the 1st

Respondent / Financial Creditor / Petitioner, on 25.01.2021, had advanced a Sum of Rs.3,97,85,000/-, to the `Corporate Debtor', for the purpose of satisfying `One Time Settlement Offer', given to the `Corporate Debtor', by the `State Bank of India', and the said amount was disbursed through Banking Transactions, all these would go to establish in a crystalline manner that there is a `Financial Debt' of `more than Rs.1 Crore', `Due and Payable', by the `Corporate Debtor', to and in favour of the `1st Respondent / Financial Creditor / Petitioner'.

93. In the light of foregoing detailed discussions, this `Tribunal', taking note of the contentions, advanced on respective sides, considering the surrounding facts and circumstances of the instant case, in a holistic manner, comes to an `irresistible' and `inescapable' conclusion that the `aspect of `Debt and Default', committed by the `Corporate Debtor', were established by the `1st Respondent / Financial Creditor / Petitioner', to the subjective satisfaction of this `Tribunal'. Viewed in that perspective, the main CP (IB) No.

94 / 07 / HDB / 2022, (Filed by the `1st Respondent / Financial Creditor / Petitioner`, before the `Adjudicating Authority`, `National Company Law Tribunal`, Bench – II, Hyderabad), was complete, in terms of the I & B Code, 2016, and resultantly, the `Admission` of the main CP (IB) No. 94 / 07 / HDB / 2022, through an `Order`, dated 24.01.2023, passed by the `Adjudicating Authority` / `Tribunal`, is free from any `Legal Flaws`. Accordingly, the instant `Appeals`, fail.

Disposition:

In fine, the instant Comp. App (AT) (CH) (INS.) No. 30 of 2023 and Comp. App (AT) (CH) (INS.) No. 38 of 2023, are `Dismissed`. No costs. The connected pending IA Nos. 108 & 109 of 2023 (`For Exemption`) and IA No.111 of 2023 (`For Stay`) in Comp. App (AT) (CH) (INS.) No. 30 of 2023, are `Closed`.

Likewise, the connected pending IA Nos. 134 & 135 of 2023 (`For Exemption`) and IA No.137 of 2023 (`For Stay`) in Comp. App (AT) (CH) (INS.) No. 38 of 2023, are `Closed`.