CIN : L02710CT1989PLC010052
GST : 22AAACN0407F1ZA

NOVA
IRON & STEEL LTD.

Regd. Office : Bilha Road, Dagori,
Tahsil – Bilha, Distt. – Bilaspur, 495224 (C.G.)
Mob. 9109107310
Email : novaironsteel@gmail.com

ONLINE PORTAL

Ref: NISL/Listing/2026-27
Dated 12.08.2026

The Secretary
Bombay Stock Exchange Limited
Phiroz Jeejeebhoy Towers,
25th Floor, Dalal Street,
Mumbai - 400001

Subject: Material Events - Dismissal of Application filed against the Company under Section 7 of the IBC, 2016
Ref.: Regulation 30 read with Schedule III of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Dear Sir,

Pursuant to Regulation 30 read with Schedule III of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended, we wish to inform you that the Hon'ble National Company Law Tribunal, Cuttack Bench, vide its Order dated 05/08/2026, has dismissed the application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by Bhushan Power and Steel Limited against Nova Iron and Steel Limited, bearing CP (IB) No. 34/CB/2024.

A copy of the said Order dated 05/08/2026 is enclosed herewith for your information and record..

Thanking you
Yours faithfully
For Nova Iron and Steel Limited

NOVA IRON & STEEL LTD.

(Dheeraj Kumar)
Company Secretary
Encl: a/a

NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

CP (IB) No. 34/CB/2024

(Under Section 7 of the Insolvency and Bankruptcy Code,2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016)

In the Matter of:

BHUSHAN POWER & STEEL LTD.
Having Its Registered Office At:
4th Floor, A-2,
Nth Complex, Shaheed Jeet Singh Marg,
Uso Road, Qutab Institutional Area,
New Delhi -110067

...... **Applicant/Financial Creditor**

Versus

NOVA IRON & STEEL LTD.
Having Its Registered Office At:
Village - Dagori,
Tehsil - Belha, Bilaspur,
Chhattisgarh - 495224

.... **Respondent/Corporate Debtor**

Order pronounced on: 05.08.2026

CORAM: CHEEKATI RADHA KRISHNA, MEMBER(J)

BANWARI LAL MEENA, MEMBER(T)

APPEARANCE:

FOR APPLICANT:	**MR. RATNANKO BANERJEE, SENIOR ADV.**
	MR. SATYA SMRUTI MOHANTY, ADV.
	MR. HIMANSHU GUPTA, ADV.
	MR. SASWAT KUMAR ACHARYA, ADV
	MR. ROHAN S. NANDY, ADV.
	MS. GYANINEE NAYAK, ADV.
FOR RESPONDENT:	**DR. U.K. CHOUDHURY, SENIOR ADV.**
	MR. SAHASRANSU SOURAV, ADV

Sd

Sd

ORDER

PER: BANWARI LAL MEENA. MEMBER (TECHNICAL)

A. The instant application has been filed by **Bhushan Power & Steel Limited** (hereinafter referred to as the "**Applicant/Financial Creditor**") under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "**Code**") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as the "**Adjudicating Authority Rules**") seeking initiation of the Corporate Insolvency Resolution Process ("**CIRP**") against **Nova Iron & Steel Limited** (hereinafter referred to as the "**Respondent/Corporate Debtor**") in respect of a financial debt arising out of the **Unsecured Loan Agreement dated 20.07.2011**. The Applicant has claimed a default amount of **Rs.306,52,18,109/-** (Rupees Three Hundred Six Crores Fifty-Two Lakhs Eighteen Thousand One Hundred and Nine only), comprising principal outstanding of **Rs.125,83,88,946/-** and interest amounting to **Rs.180,68,29,163/-** as on **01.02.2024**. It has further been stated that, in terms of the Loan Agreement, the Applicant is also entitled to recover **penal interest at the rate of 1% per annum** from the date of default till the date of actual payment. The Applicant has averred that the Corporate Debtor committed default upon its failure to honour the repayment demands made under the notices dated **18.02.2020, 11.03.2020 and 26.04.2021**, the last default having arisen pursuant to the notice dated **26.04.2021**, despite repeated demands for repayment.

B. The averments made by the Financial Creditor/Applicant in its application and as argued by the learned counsel are summarized as under:

Sd

Sd

a. The Applicant, **Bhushan Power & Steel Limited**, is a company incorporated under the provisions of the Companies Act and is a **Financial Creditor** within the meaning of Section 5(7) of the Insolvency and Bankruptcy Code, 2016. The Respondent, **Nova Iron & Steel Limited**, is a company incorporated under the provisions of the Companies Act and is the **Corporate Debtor** within the meaning of Section 3(8) of the Code.

b. The Applicant submitted that the Corporate Debtor had approached it seeking financial assistance to meet its business and operational requirements. Pursuant thereto, the parties entered into an **Unsecured Loan Agreement dated 20.07.2011**, whereby the Applicant agreed to extend financial assistance to the Corporate Debtor by way of unsecured loans. In terms of the said Loan Agreement, the Applicant advanced an aggregate sum of **Rs.153,57,19,529/- (Rupees One Hundred Fifty-Three Crores Fifty-Seven Lakhs Nineteen Thousand Five Hundred and Twenty-Nine only)** to the Corporate Debtor.

c. It is stated that, pursuant to the Loan Agreement, the Applicant initially disbursed a sum of **Rs.69,85,00,000/-** to the Corporate Debtor on **30.07.2011**. Thereafter, during the Financial Year **2014-2015**, the Applicant advanced a further sum of **Rs.83,72,19,529/-** to the Corporate Debtor in accordance with the terms of the Loan Agreement. The Applicant has relied upon the relevant bank statements evidencing the aforesaid disbursements.

d. The Applicant further submitted that under **Clause 7 of the Loan Agreement**, the loan amount together with the agreed interest became repayable on demand upon issuance of a notice of repayment by the Applicant. In accordance with the contractual terms, the Applicant issued repayment notices

Sd

Sd

dated **18.02.2020**, **11.03.2020**, and **26.04.2021**, calling upon the Corporate Debtor to repay the outstanding dues. However, despite receipt of the said notices, the Corporate Debtor failed and neglected to discharge its repayment obligations, thereby committing default under the Loan Agreement.

e. It is further averred that the Applicant thereafter issued a **legal notice dated 02.08.2023** through its counsel demanding payment of the outstanding dues. Despite service of the said legal notice, the Corporate Debtor failed to liquidate the outstanding liability. Although the Corporate Debtor issued replies dated **18.03.2020, 22.05.2021, 17.08.2023, and 30.08.2023**, the Applicant contends that the replies did not disclose any valid or legally sustainable defence against repayment and, on the contrary, acknowledged the existence of the Loan Agreement while raising baseless and untenable assertions.

f. The Applicant has claimed that, as on **01.02.2024**, a sum of **Rs.306,52,18,109/- (Rupees Three Hundred Six Crores Fifty-Two Lakhs Eighteen Thousand One Hundred and Nine only)** was due and payable by the Corporate Debtor, comprising **principal outstanding of Rs.125,83,88,946/-** and **interest of Rs.180,68,29,163/-**. It is further contended that, under the terms of the Loan Agreement, the Applicant is also entitled to **penal interest at the rate of 1%** from the date of default until realization of the outstanding dues.

g. The Applicant has further pleaded that the present application is **well within the period of limitation**. It is submitted that the last demand notice was issued on **26.04.2021**, pursuant to which the Corporate Debtor failed to repay the outstanding amount, giving rise to the cause of action. The Applicant has also relied upon the orders passed

Sd

Sd

by the Hon'ble Supreme Court extending the period of limitation on account of the COVID-19 pandemic, whereby the period from **15.03.2020 to 28.02.2022** stood excluded for the purposes of computation of limitation. Accordingly, the Applicant contends that the present application has been filed within the prescribed period of limitation.

h. The Applicant has placed on record the Loan Agreement, bank statements evidencing disbursement of the loan amounts, computation of the outstanding debt along with the running ledger account, copies of the repayment notices and legal notice issued to the Corporate Debtor, as well as the replies furnished by the Corporate Debtor, in support of the present application under Section 7 of the Code.

C. The submissions by the Corporate Debtor/Respondent as stated in their reply and argued by the learned counsel for the respondent are summarized as under:

a. The Corporate Debtor has contended that the application is liable to be dismissed as being barred by limitation, for absence of any financial debt and default, and for having been initiated with fraudulent and malicious intent, warranting invocation of Section 65 of the Insolvency and Bankruptcy Code, 2016.

b. The Corporate Debtor has raised a preliminary objection regarding the maintainability of the present application on the ground that it is barred by limitation. It has been submitted that the alleged unsecured loan was advanced under the **Loan Agreement dated 20.07.2011**, which expressly provided that the loan was repayable on demand. According to the Corporate Debtor, Article 21 of the Limitation Act, 1963 governs a loan payable on demand and the limitation period commenced from the date of the loan itself, namely 20.07.2011, and expired on 20.07.2014. It has therefore been

Sd

Sd

contended that the present application, instituted in the year 2024, is ex facie barred by limitation and liable to be rejected on this ground.

c. The Corporate Debtor has further submitted that the terms and conditions of the Unsecured Loan Agreement dated 20.07.2011, as relied upon by the Financial Creditor itself, unequivocally demonstrate that the alleged loan was repayable only upon issuance of a demand notice. It has been contended that the agreement stipulates that the loan amount together with interest, if any, shall become payable only upon the Corporate Debtor receiving a notice of demand from the Financial Creditor. The Corporate Debtor has further pointed out that the agreement provided that the loan was to be utilised exclusively for installation of a power plant and other facilities for augmentation of production at its plant situated at Bilaspur, Chhattisgarh, that the loan carried interest at the rate of 13% per annum, and that a penal interest of 1% per annum would become payable only in the event of default in repayment after a demand for repayment had been made by the Financial Creditor. According to the Corporate Debtor, these contractual stipulations are relevant for determining the nature of the transaction as well as the issue of limitation.

d. The Corporate Debtor has further submitted that, commencing from the year 2007, the Financial Creditor had entered into various Memoranda of Understanding with the Government of Chhattisgarh for establishment of an integrated steel plant with an annual production capacity of 1.2 million tonnes, together with a 300 MW captive power plant and a 1000 MW power plant. It has been contended that the alleged financial assistance extended by the Financial Creditor cannot be viewed in isolation but formed part of a

Sd

Sd

broader commercial arrangement and strategic business relationship between the parties.

e. The Corporate Debtor has further averred that, in the year 2011, the Financial Creditor, with a view to augmenting its own business interests and as part of its strategic investment plans, acquired a substantial stake in the Corporate Debtor. It was submitted by the Respondent that Financial Creditor and Corporate Debtor had entered into a larger arrangement to implement all the 3 MOUs in the State of Chhattisgarh, Financial Creditor was to provide assistance, supply and support Corporate Debtor with raw material manpower and other required services to assist Corporate Debtor with the said project. This understanding was reduced in writing by way of various other agreements, purchase orders and other such documents. Financial Creditor had committed to make huge financial investments in Corporate Debtor. According to the Corporate Debtor, the financial transactions between the parties arose in the backdrop of the said strategic investment and commercial association and were intrinsically connected with the overall business arrangement existing between them.

f. The Corporate Debtor has further contended that the Financial Creditor has relied upon the Balance Sheet of the Corporate Debtor as on 31.03.2019 as constituting the last acknowledgement of the alleged debt. It has been submitted that, even assuming without admitting that the Balance Sheet dated 31.03.2019 amounts to a valid acknowledgement under Section 18 of the Limitation Act, the present application, having been filed beyond a period of three years therefrom, is nevertheless barred by limitation. The Corporate Debtor has further submitted that its subsequent statutory filings and annual returns for the last three consecutive financial years specifically disputed the alleged liability claimed by the

Sd

Sd

Financial Creditor and, therefore, no fresh acknowledgement capable of extending the period of limitation exists in favour of the Financial Creditor.

g. The Corporate Debtor has further submitted that the Financial Creditor itself has pleaded that the unsecured loan was repayable only upon issuance of a demand notice and that the Corporate Debtor had been making payments of interest and principal from the Financial Years 2012-13 to 2017-18. According to the Corporate Debtor, the Financial Creditor has admitted receipt of interest payments aggregating to Rs.2,88,13,426/- during FY 2012-13, Rs.7,54,38,000/- during FY 2013-14, Rs.8,17,24,500/- during FY 2014-15, Rs.18,07,10,855/- together with principal of Rs.53,79,547/- during FY 2015-16, Rs.17,93,24,531/- together with principal of Rs.27,19,51,036/- during FY 2016-17 and Rs.2,75,00,000/- during FY 2017-18. It has been contended that notwithstanding these payments, the Financial Creditor has failed to establish as to when the alleged loan became due and payable under the Loan Agreement.

h. The Corporate Debtor has further contended that even if the alleged acknowledgement contained in its Balance Sheet as on 31.03.2019 is accepted, the present application would nevertheless remain barred by limitation as it has not been instituted within three years thereof. It has been submitted that the subsequent Annual Returns and financial statements of the Corporate Debtor have consistently disputed the alleged liability and, therefore, no valid acknowledgement under Section 18 of the Limitation Act can be inferred. Reliance has also been placed upon the judgment of the Hon'ble Supreme Court in ***Reliance Asset Reconstruction Co. Ltd. v. Hotel Poonja International Pvt. Ltd.***, to contend that an entry in

Sd

Sd

the balance sheet does not invariably constitute an acknowledgement of liability.

i. It has further been submitted that the computation annexed by the Financial Creditor itself discloses that penal/default interest has been charged from the Financial Year 2018-19 onwards. According to the Corporate Debtor, this itself establishes that the alleged default, if any, occurred in FY 2018-19 and not on the date sought to be projected by the Financial Creditor. Consequently, even on the Financial Creditor's own computation, the present application is barred by limitation.

j. The Corporate Debtor has also contended that pursuant to the approval of the Resolution Plan in the CIRP of the Financial Creditor, demand notices dated 18.02.2020 and 11.03.2020 were issued by the Monitoring Committee calling upon the Corporate Debtor to repay the alleged outstanding dues. It has been submitted that the Corporate Debtor, by its reply dated 18.03.2020, categorically disputed the alleged liability and denied that any amount was payable. It has therefore been contended that the Financial Creditor was fully aware of the dispute much prior to filing the present application.

k. The Corporate Debtor has further submitted that the Financial Creditor has erroneously relied upon the orders passed by the Hon'ble Supreme Court extending limitation during the COVID-19 pandemic. According to the Corporate Debtor, even after granting the benefit of the extension directed by the Hon'ble Supreme Court, the present application remains barred by limitation and cannot be entertained under Section 7 of the Code.

l. The Corporate Debtor has further contended that the books of account and audited financial statements of the Financial

Sd

Sd

Creditor themselves completely negate the case sought to be made in the present application. It has been submitted that the Financial Creditor's Annual Reports for the Financial Years ending 31.03.2018, 31.03.2019 and 31.03.2020 consistently record that the unsecured loan advanced to the Corporate Debtor was in the nature of "**Project Funding**", that no schedule for repayment had been stipulated, that no interest had been accrued after invocation of CIRP against the Corporate Debtor, that there had been no realization of principal or interest since 21.07.2017, that the outstanding amount appeared doubtful of recovery, and that no provision had been made for interest recoverable. It has also been pointed out that the Financial Creditor's own auditors recorded that the Corporate Debtor had disputed the demand notices issued by the Financial Creditor. According to the Corporate Debtor, these admissions demonstrate that no debt was due and payable as on the date of filing of the present application.

m. It has further been contended that the Code is intended for resolution of genuine cases involving admitted and payable debts and cannot be invoked where the alleged liability itself is disputed. The Corporate Debtor has accordingly submitted that the present proceedings do not satisfy the requirements of Section 7 of the Code. Reliance has also been placed upon the judgment of the Hon'ble Supreme Court in ***Vidarbha Industries Power Limited v. Axis Bank Limited*** to contend that the Adjudicating Authority is required to consider all surrounding facts and circumstances before admitting an application under Section 7 of the Code. It has further been submitted that the Corporate Debtor is a listed company having a sound business reputation and, therefore, initiation of CIRP would be wholly unwarranted.

Sd

Sd

n. The Corporate Debtor has also disputed the alleged disbursement of the loan amount. It has been submitted that although the Financial Creditor has pleaded that the first disbursement was made on 30.07.2011, the bank statement annexed with the application does not contain any entry evidencing such disbursement. According to the Corporate Debtor, the very factum of disbursement is therefore under serious dispute.

o. The Corporate Debtor has further submitted that the alleged loan agreement constituted only one component of a much larger commercial arrangement entered into between the parties. It has been contended that beginning from the year 2007, the Financial Creditor had entered into several Memoranda of Understanding with the Government of Chhattisgarh for establishment of integrated steel and power projects. In order to implement those projects and further its own commercial interests, the Financial Creditor acquired substantial shareholding in the Corporate Debtor in the year 2011, thereby becoming its promoter shareholder. According to the Corporate Debtor, following such acquisition, the parties entered into several agreements relating to supply of raw materials, manpower, trading arrangements, purchase orders and project funding, of which the unsecured loan agreement dated 20.07.2011 formed only a fractional component.

p. It has further been contended that the strategic nature of the investment is evident from the Letter of Offer submitted by the Financial Creditor before SEBI under the Takeover Code as well as from its Directors' Report for FY 2012-13, wherein the acquisition of substantial stake in the Corporate Debtor was described as being for synergic business interests and implementation of the projects envisaged under the

Sd

Sd

Memoranda of Understanding executed with the Government of Chhattisgarh. According to the Corporate Debtor, these documents establish that the monies advanced by the Financial Creditor were part of a broader investment and project implementation strategy and not a simple commercial loan transaction.

q. The Corporate Debtor has further submitted that the Financial Creditor failed to fulfil its reciprocal obligations under the larger commercial arrangement. It has been contended that despite repeatedly representing before the Government of Chhattisgarh that it had made strategic investments in the Corporate Debtor, the Financial Creditor failed to provide the committed financial assistance, technical support, raw materials, manpower and other assistance necessary for implementation of the projects, thereby causing severe financial and operational prejudice to the Corporate Debtor. It has been submitted that, in view of such failure, the Financial Creditor is not entitled to claim any amount under the alleged loan agreement. Reliance has also been placed upon Sections 51, 53 and 54 of the Indian Contract Act, 1872 relating to reciprocal promises to contend that a party which has failed to perform its reciprocal obligations cannot enforce performance against the other contracting party.

r. The Corporate Debtor has also contended that there existed several reciprocal business transactions between the parties giving rise to independent claims in favour of the Corporate Debtor against the Financial Creditor. According to the Corporate Debtor, the present proceedings have been initiated only as a means of overcoming the Financial Creditor's own defaults and of exerting pressure upon the Corporate Debtor. It has therefore been alleged that the application has been

Sd

Sd

filed with fraudulent and malicious intent and constitutes an abuse of the insolvency process.

s. The Corporate Debtor has further contended that the Financial Creditor is a related party of the Corporate Debtor within the meaning of Section 5(24) of the Code, having acquired 39.48% shareholding in the year 2011 and continuing to hold 25.65% shareholding as on 31.03.2022. It has been submitted that, being a related party, the Financial Creditor is disentitled from participating in the Committee of Creditors under Section 21 of the Code and ought not to be permitted to invoke the insolvency process for collateral purposes. It has also been contended that, being an unsecured financial creditor, its claim would rank lower under the waterfall mechanism prescribed under Section 53 of the Code and that the present proceedings have been initiated solely with an ulterior motive.

t. Lastly, the Corporate Debtor has reiterated that the Financial Creditor has failed to establish that any amount under the alleged Loan Agreement is presently due and payable. It has been submitted that in view of the failure of the Financial Creditor to perform its obligations under the larger commercial arrangement, no financial debt or default exists within the meaning of the Code. The Corporate Debtor has therefore prayed that the present application be dismissed with appropriate orders, while reserving liberty to rely upon such additional documents as may be necessary during the course of the proceedings.

D. The Corporate Debtor, in its Additional Affidavit filed subsequent to the Reply, has, inter alia, made the following submissions:

a. The Corporate Debtor has reiterated the contents and averments contained in its Reply dated 18.07.2024 and has submitted that

Sd

Sd

the same shall be read as an integral part of the present Additional Affidavit. It has been contended that the Additional Affidavit has been filed seeking dismissal of the present application on the ground that the mandatory requirements prescribed under Section 7(3) of the Insolvency and Bankruptcy Code, 2016 have not been complied with by the Financial Creditor.

b. The Corporate Debtor has submitted that Section 7(3) of the Code casts a mandatory obligation upon a Financial Creditor to furnish, along with an application under Section 7, a record of default recorded with an Information Utility or such other evidence of default as may be specified. According to the Corporate Debtor, the use of the expression "shall" in Section 7(3) makes compliance with the said provision mandatory and not merely directory. It has therefore been contended that an application under Section 7 which fails to satisfy the statutory requirement regarding proof of default is liable to be dismissed at the threshold.

c. The Corporate Debtor has further placed reliance upon the Record of Default issued by the National E-Governance Services Limited (NeSL), which has been filed by the Financial Creditor itself as Exhibit-13 to the present petition. It has been submitted that the said Record of Default specifically records, at page 757 of the petition, the remark **"No debt owed to BPSL & No default by NOVA."** According to the Corporate Debtor, the said record constitutes a categorical admission that no financial debt was due and payable by the Corporate Debtor to the Financial Creditor and that no default had occurred within the meaning of the Code.

d. The Corporate Debtor has further submitted that the aforesaid Record of Default was generated and registered with NeSL on **01.02.2024**, i.e., prior to the filing of the present application. It

Sd

Sd

has been contended that the position reflected in the Information Utility as on the relevant date clearly establishes that there existed neither any outstanding financial debt nor any default on the part of the Corporate Debtor. According to the Corporate Debtor, the Financial Creditor cannot rely upon the very same document while simultaneously ignoring the contents thereof, which negate the existence of any default.

e. The Corporate Debtor has also relied upon the audited financial statements and Annual Reports of the Financial Creditor for the Financial Years **2022-23 and 2023-24**. It has been submitted that the Balance Sheet of the Financial Creditor as on **31.03.2023** records **'Receivables' as Nil** and also reflects **'Unsecured Loans' as Nil**. Similarly, the Balance Sheet as on **31.03.2024** records **'Receivables' as Nil** and does not disclose any schedule of loans whatsoever. According to the Corporate Debtor, the Financial Creditor's own audited financial statements unequivocally establish that no amount was shown as receivable from the Corporate Debtor on the date of institution of the present proceedings. It has therefore been contended that the Financial Creditor's own books of account belie the allegations made in the petition regarding the existence of an outstanding financial debt.

f. The Corporate Debtor has further reiterated that the Record of Default obtained from NeSL itself conclusively demonstrates the absence of any debt or default and, consequently, the present application under Section 7 is not maintainable. According to the Corporate Debtor, once the statutory record maintained by the Information Utility does not disclose any debt or default, the very foundation of the proceedings under Section 7 ceases to exist.

g. The Corporate Debtor has also contended that the Financial Creditor has failed to satisfy the mandatory statutory requirements prescribed under Section 7(3) of the Code. It has been submitted that the legislature has consciously employed the

Sd

Sd

expression "**shall**" while prescribing the documents required to accompany an application under Section 7, thereby making such compliance mandatory. According to the Corporate Debtor, failure to establish a valid record of default in terms of Section 7(3) renders the application liable to dismissal.

h. The Corporate Debtor has further submitted that the alleged default relied upon by the Financial Creditor falls within the period covered by **Section 10A of the Insolvency and Bankruptcy Code, 2016**, during which initiation of Corporate Insolvency Resolution Process stood suspended. It has been contended that no application under Section 7 can be maintained in respect of a default occurring during the period protected under Section 10A. According to the Corporate Debtor, since the alleged default falls within the period envisaged under the said provision, the present application is barred in law and is liable to be rejected on this ground alone.

i. Lastly, the Corporate Debtor has submitted that, in view of the foregoing circumstances, the present application has been maliciously instituted despite the absence of any legally enforceable debt or default. It has therefore prayed that the application be dismissed with exemplary costs for wrongful invocation of the insolvency process under the Insolvency and Bankruptcy Code, 2016.

E. The Applicant, in its rejoinder to the reply affidavit and additional affidavit filed by the Corporate Debtor ("CD"), has, inter alia, made the following averments:

a. The Applicant has denied all the averments, allegations and contentions raised by the Corporate Debtor in its Reply and the Additional Affidavit except those specifically admitted. It has been submitted that the Corporate Debtor has sought to resist the present application by raising false, misleading and legally untenable objections, unsupported by any documentary

-Sd- Sd

evidence, and has deliberately suppressed material facts relating to the admitted financial debt and default. The Applicant has reiterated the contents of the Section 7 application and has prayed that the same be read as forming part of the present rejoinder.

b. The Applicant has primarily controverted the objection regarding limitation raised by the Corporate Debtor. It has been submitted that the Corporate Debtor has erroneously relied upon Article 21 of the Limitation Act, 1963 by contending that limitation commenced from the date of advancement of the loan. According to the Applicant, the law is well settled that applications under Section 7 of the Insolvency and Bankruptcy Code are governed by Article 137 of the Limitation Act and limitation commences only upon the occurrence of default. Reliance has been placed upon the judgments of the Hon'ble Supreme Court in *B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates* and the decision of the Mumbai Bench of the Adjudicating Authority in *Awaita Properties Private Limited v. Tarapur Textiles Park Limited* to contend that Article 21 has no application to proceedings under Section 7 of the Code.

c. The Applicant has further submitted that the Corporate Debtor had continuously acknowledged its liability in its books of account from Financial Year 2011-12 till Financial Year 2018-19 without any qualification. According to the Applicant, each such acknowledgement extended the period of limitation in terms of Section 18 of the Limitation Act. It has further been contended that since the loan was repayable on demand, limitation commenced only upon the failure of the Corporate Debtor to honour the repayment demands issued by the Applicant, the first default having occurred on 12.03.2020, followed by defaults on 31.03.2020 and 10.05.2021. The Applicant has further submitted that after excluding the period

Sd

Sd

from 15.03.2020 to 28.02.2022 in accordance with the orders passed by the Hon'ble Supreme Court during the COVID-19 pandemic, the present application filed on 25.04.2024 is well within the prescribed period of limitation. It has also been contended that even reckoning limitation from the last default dated 10.05.2021, the application remains within limitation irrespective of the COVID exclusion.

d. The Applicant has further denied the Corporate Debtor's reliance upon the Applicant's own financial statements to contend that no debt remained due and payable. It has been submitted that the observations contained in the financial statements merely record the continued default committed by the Corporate Debtor and cannot be construed as a waiver or extinguishment of the outstanding liability. According to the Applicant, writing off a debt in the books of account is merely an accounting treatment adopted in accordance with accounting standards and does not affect the creditor's substantive legal right to recover the outstanding dues from the debtor. It has therefore been contended that the Corporate Debtor has deliberately misinterpreted the financial statements in order to create a false defence.

e. The Applicant has further relied upon the investigation conducted by the Serious Fraud Investigation Office (SFIO) under Section 212 of the Companies Act, 2013. It has been submitted that the SFIO Investigation Report dated 06.05.2022 has specifically recognised the disbursement made under the Unsecured Loan Agreement and has identified the transaction as part of a larger scheme of siphoning of funds by the erstwhile management of the Applicant in connivance with the Corporate Debtor and other related entities. According to the Applicant, the investigation records that substantial unsecured loans had been advanced to the Corporate Debtor

Sd

Sd

without repayment, ultimately resulting in financial loss to the Applicant and its admission into Corporate Insolvency Resolution Process. The Applicant has accordingly contended that the findings of the SFIO lend independent corroboration to the existence of the financial debt and the default committed by the Corporate Debtor.

f. The Applicant has also controverted the submissions relating to the record of default. It has been submitted that the Corporate Debtor has misconstrued the entries contained therein by contending that the same constitute an admission on the part of the Applicant that no debt or default exists. According to the Applicant, the record of default merely reflects that the Corporate Debtor itself disputed the liability and cannot override the documentary evidence comprising the Loan Agreement, the admitted disbursements and the acknowledgements recorded in the books of account of the Corporate Debtor. It has further been contended that under Section 7 of the Code, the Adjudicating Authority is required to examine the existence of a financial debt and default on the basis of the entire material placed on record and not merely the record of default in isolation.

g. The Applicant has further denied the allegation that the present proceedings have been initiated with fraudulent intent merely because the Applicant had earlier held shareholding in the Corporate Debtor. It has been submitted that the mere existence of a relationship between the parties does not affect the maintainability of an application under Section 7 nor does it establish any mala fide motive. According to the Applicant, the Corporate Debtor has relied only upon conjectures and surmises without placing any material whatsoever to substantiate its allegations of fraud or abuse of process.

Sd

Sd

h. The Applicant has also submitted that the Reply and the Additional Affidavit are replete with vague assertions, selective reading of documents and unsubstantiated allegations. It has been contended that although the Corporate Debtor has repeatedly referred to several Memoranda of Understanding, reciprocal arrangements and other commercial agreements allegedly governing the relationship between the parties, no such agreement has been produced before this Adjudicating Authority. The Applicant has further submitted that the Corporate Debtor has failed to identify any contractual obligation allegedly breached by the Applicant or to furnish any evidence in support of its assertions. The Applicant has additionally contended that Section 10A of the Code has no application to the present case since the first default occurred on 12.03.2020, i.e., prior to 25.03.2020, and therefore the Corporate Debtor's reliance upon the said provision is wholly misconceived.

i. The Applicant has further denied the Corporate Debtor's allegations that the Petition is barred by limitation, that there exists no financial debt or default, that the Applicant has approached this Adjudicating Authority with unclean hands, or that the Applicant's annual reports establish waiver of the outstanding dues. According to the Applicant, the Corporate Debtor has repeatedly acknowledged the debt in its books of account from Financial Year 2011-12 till Financial Year 2018-19, thereby conclusively admitting the liability. It has further been submitted that the Corporate Debtor has consistently failed to produce any documentary material in support of its contention that the debt stood extinguished or that the Applicant had relinquished its right to recover the outstanding amount.

Sd Sd

j. The Applicant has also specifically denied the Corporate Debtor's contention that the loan transaction formed part of a larger commercial arrangement involving strategic investments, business expansion, Memoranda of Understanding, reciprocal obligations and project implementation. It has been submitted that no agreement other than the Loan Agreement dated 20.07.2011 governed the relationship between the parties and that the Corporate Debtor has failed to produce any documentary evidence supporting its plea of wider commercial arrangements. According to the Applicant, the understanding between the parties stood exhaustively recorded under the Loan Agreement, which independently established the financial debt and repayment obligations of the Corporate Debtor. It has further been contended that even assuming the existence of any other commercial arrangement, the same would not dilute or extinguish the Corporate Debtor's independent liability arising under the Loan Agreement.

k. The Applicant has further denied the allegations that the Loan Agreement was executed for implementation of industrial projects or that the parties had entered into reciprocal contractual arrangements. It has been submitted that there was no agreement requiring the Applicant to provide financial assistance, technical support or other commercial benefits beyond those expressly recorded under the Loan Agreement. According to the Applicant, the repeated references made by the Corporate Debtor to Memoranda of Understanding and reciprocal obligations are entirely unsupported by evidence and constitute mere afterthoughts devised to evade repayment of the admitted financial debt. The Applicant has also denied that any alleged accounting treatment adopted in its books of account or observations made by its auditors

Sd

Sd

could absolve the Corporate Debtor of its repayment obligations.

l. The Applicant has also controverted the allegations that the present proceedings have been initiated fraudulently or with any ulterior motive. It has been submitted that the Corporate Debtor has failed to establish any reciprocal arrangement, business transaction or independent claim against the Applicant and has produced no evidence in support of such allegations. According to the Applicant, the repeated allegations of fraud, abuse of process and mala fides are wholly baseless and have been raised only to defeat a legitimate claim founded upon an admitted financial debt.

m. The Applicant has further denied the Corporate Debtor's contention that the Applicant, being a related party or an unsecured financial creditor, is precluded from initiating proceedings under Section 7 of the Code. It has been submitted that neither the provisions relating to the Committee of Creditors under Section 21 nor the waterfall mechanism under Section 53 have any bearing upon the maintainability of the present application. According to the Applicant, the Code does not prohibit a related party financial creditor from initiating CIRP, and the admitted debt and default alone are relevant considerations for admission of an application under Section 7. The Applicant has reiterated that the Corporate Debtor has acknowledged its liability in its books of account and has failed to discharge its repayment obligations despite repeated demands.

n. Lastly, the Applicant has denied the maintainability of the Additional Affidavit filed by the Corporate Debtor on the ground that no liberty had been granted by this Adjudicating Authority to file any supplementary pleadings. It has nevertheless traversed the additional grounds raised therein

Sd

Sd

and reiterated that the Corporate Debtor has failed to produce any material in support of its objections. The Applicant has therefore prayed that the Reply and Additional Affidavit be rejected, that the application under Section 7 be admitted, and that Corporate Insolvency Resolution Process be initiated against the Corporate Debtor.

F. The Corporate Debtor, by way of a Memo dated 17.05.2025, has further brought on record the following submissions:

a. The Corporate Debtor has submitted that during the pendency of the present proceedings, the Hon'ble Supreme Court, by judgment dated **02.05.2025** passed in **Kalyani Transco v. Bhushan Power and Steel Limited & ORs., Civil Appeal No. 1808 of 2020** and connected matters, set aside the Resolution Plan of **JSW Steel Limited** approved in the Corporate Insolvency Resolution Process of the Financial Creditor and directed initiation of liquidation proceedings against the Financial Creditor. According to the Corporate Debtor, the said judgment has a direct bearing on the maintainability of the present application and has therefore been brought to the notice of this Adjudicating Authority by way of the present Memo.

b. The Corporate Debtor has further submitted that the Resolution Plan of JSW Steel Limited had earlier been approved by the Principal Bench of the National Company Law Tribunal on **05.09.2019**, pursuant to which the management of the Financial Creditor stood vested in the Successful Resolution Applicant. It has been contended that it was only after the said change in management that the present application under Section 7 of the Code came to be instituted on **22.04.2024** against the Corporate Debtor.

Sd Sd

c. The Corporate Debtor has further contended that the then management of the Financial Creditor, constituted pursuant to the approved Resolution Plan, had passed a Board Resolution dated **18.03.2024** authorising **Mr. Rakesh Kumar Pujari, General Manager (Legal)** to institute the present proceedings under Section 7 of the Code. It has also been submitted that the said authorised representative had executed the Vakalatnama dated **22.04.2024** in favour of the advocates representing the Financial Creditor before this Adjudicating Authority.

d. The Corporate Debtor has further submitted that in view of the judgment dated **02.05.2025**, whereby the Hon'ble Supreme Court set aside the approval of the Resolution Plan and restored the position as it existed prior to **05.09.2019**, the authority of the management constituted pursuant to the Resolution Plan stood retrospectively nullified. According to the Corporate Debtor, the Board Resolution dated **18.03.2024** authorising institution of the present proceedings consequently ceased to have any legal effect.

e. It has further been contended that all actions undertaken by **JSW Steel Limited** in its capacity as the Successful Resolution Applicant, including the decision to institute the present Company Petition under Section 7 of the Code, stood rendered null and void upon retrospective invalidation of the Resolution Plan by the Hon'ble Supreme Court. According to the Corporate Debtor, the present proceedings therefore lack valid authorisation and cannot be continued in law.

f. The Corporate Debtor has also submitted that, consequent upon the aforesaid judgment, neither **Mr. Rakesh Kumar Pujari**, who had instituted the petition on behalf of the Financial Creditor, nor the advocates engaged pursuant to the Vakalatnama executed by him, continue to possess the

Sd

Sd

authority or locus standi to prosecute the present proceedings. It has therefore been contended that the present application has become **non est** in the eyes of law for want of valid authorisation.

g. Lastly, the Corporate Debtor has prayed that, in view of the judgment of the Hon'ble Supreme Court dated **02.05.2025**, the present application be held to have become infructuous and non est in law and be dismissed accordingly. The Corporate Debtor has also requested that the judgment of the Hon'ble Supreme Court be taken on record and considered while adjudicating the present proceedings.

G. The Applicant/Financial Creditor, in its Written Submissions and oral arguments advanced through its learned Senior Counsel, has, inter alia, made the following submissions:

a. The Applicant has reiterated the averments made in the application under Section 7 of the Insolvency and Bankruptcy Code, 2016, the Rejoinder and other pleadings filed in the present proceedings and has submitted that the Corporate Debtor has admittedly availed financial assistance under the Unsecured Loan Agreement dated 20.07.2011 but has failed to discharge its repayment obligations despite repeated demands. It has been contended that the defence raised by the Corporate Debtor is contrary to the contractual terms, documentary evidence and settled principles governing initiation of proceedings under Section 7 of the Code.

b. The Applicant has submitted that under Clause 7 of the Loan Agreement dated 20.07.2011, the loan amount together with interest became payable only upon issuance of a demand notice by the Financial Creditor. It has been contended that in accordance with the said contractual stipulation, demand notices were issued on **18.02.2020**, **11.03.2020** and **26.04.2021**, followed by an

Sd

Sd

email dated **10.05.2021**, calling upon the Corporate Debtor to liquidate the outstanding dues. According to the Applicant, the Corporate Debtor, by its replies dated **18.03.2020**, **22.05.2021**, **17.08.2023** and **30.08.2023**, did not dispute the execution of the Loan Agreement but merely denied its liability to repay the outstanding dues. It has therefore been contended that the correspondence exchanged between the parties clearly establishes the demand raised by the Financial Creditor and the consequent default committed by the Corporate Debtor.

c. The Applicant has further submitted that the default committed by the Corporate Debtor was duly reported before the National e-Governance Services Limited (NeSL) by way of a Record of Default. It has been contended that although the Corporate Debtor disputed the default before the Information Utility, such unilateral dispute cannot override the documentary evidence establishing the financial debt and default. According to the Applicant, the Record of Default produced before the Adjudicating Authority itself reflects that the Corporate Debtor merely disputed the liability, which does not detract from the existence of the financial debt or the occurrence of default.

d. The Applicant has primarily controverted the objection regarding limitation raised by the Corporate Debtor. It has been submitted that the Corporate Debtor has erroneously invoked Article 21 of the Limitation Act, 1963 by contending that limitation commenced from the date of advancement of the loan. According to the Applicant, the present proceedings are governed by Article 137 of the Limitation Act, as consistently held by the Hon'ble Supreme Court in **B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates**, and not by Article 21. It has further been submitted that Clause 7 of the Loan Agreement expressly stipulates that repayment becomes due only upon issuance of a demand notice and, therefore, the cause of action arises only upon failure to

Sd

Sd

comply with such demand notice. It has been contended that Article 21 applies only where the loan is immediately payable without any requirement of demand, which is not the case under the present Loan Agreement.

e. The Applicant has further relied upon the judgment of the Hon'ble Supreme Court in **Syndicate Bank v. Channaveerappa Beleri, (2006) 11 SCC 506**, to contend that where repayment becomes due only upon issuance of a demand notice, Article 21 of the Limitation Act has no application. According to the Applicant, the Hon'ble Supreme Court has categorically held that where demand is a condition precedent to repayment, limitation commences only upon breach of the contractual obligation to repay after such demand. It has also relied upon the judgment of the Hon'ble NCLAT in **Arunkumar Jayantilal Muchhala v. Awaita Properties Private Limited & ORs.**, wherein it has been held that Article 137 governs applications under Section 7 of the Code even where the financial debt is described as "payable on demand".

f. The Applicant has further submitted that in the present case the first demand notice dated 18.02.2020 required repayment within fourteen working days, which expired on **12.03.2020**. According to the Applicant, the Corporate Debtor committed default on **12.03.2020** by failing to comply with the demand notice. It has been contended that after excluding the period from **15.03.2020 to 28.02.2022** in accordance with the orders passed by the Hon'ble Supreme Court extending limitation on account of the COVID-19 pandemic, the present application filed on **25.04.2024** is well within the prescribed period of limitation. It has been submitted that the petition was instituted on the **787th day** after exclusion of the COVID period and is therefore within the period prescribed under Article 137 of the Limitation Act.

g. Without prejudice to the aforesaid submissions, the Applicant has further contended that even assuming Article 21 of the Limitation

Sd

Sd

Act to be applicable, the present application would nevertheless remain within limitation by virtue of the acknowledgements of liability made by the Corporate Debtor in its audited financial statements. It has been submitted that the Balance Sheet of the Corporate Debtor for the Financial Year **2018-19**, signed on **28.05.2019**, specifically acknowledged the outstanding loan liability owed to the Applicant, thereby extending limitation under Section 18 of the Limitation Act. According to the Applicant, after excluding the COVID period, the present application remains well within limitation even on such computation.

h. The Applicant has further submitted that the reliance placed by the Corporate Debtor upon the judgment of the Hon'ble Supreme Court in **Radha Exports (India) Private Limited v. K.P. Jayaram & Another** is wholly misplaced. It has been contended that the said judgment dealt with a contract which did not prescribe any agreed mechanism or date for repayment, whereas the Loan Agreement in the present case specifically provides that repayment becomes due only after issuance of a demand notice. According to the Applicant, the factual matrix in the present case is entirely distinguishable and the said decision has no application.

i. The Applicant has also submitted that the audited financial statements of the Corporate Debtor consistently acknowledge the outstanding loan liability in favour of the Applicant from the Financial Year **2011-12 till 2018-19**. It has been pointed out that the Corporate Debtor repeatedly disclosed the outstanding loan under the heads **"Loans and Advances from Related Parties"**, **"Loans from Corporates"** and **"Loans from Related Parties"**, while simultaneously recording the interest accrued, loan repayments wherever made and the closing outstanding balance in favour of the Applicant. According to the Applicant, the Balance Sheets for successive financial years demonstrate uninterrupted acknowledgement of the outstanding financial debt and

Sd

Sd

conclusively establish both the existence of the loan transaction and the subsisting liability of the Corporate Debtor.

j. The Applicant has further contended that the Corporate Debtor continued to acknowledge the outstanding loan even subsequent to Financial Year 2018-19. It has been submitted that the disclosures made by the Corporate Debtor before the **Bombay Stock Exchange** under the head **"Related Party Transactions"** for the quarter ending **March 2024** specifically disclose an opening as well as closing balance of **Rs.1515.879 million** payable to the Applicant. It has therefore been contended that even the statutory disclosures made by the Corporate Debtor before the stock exchange unequivocally acknowledge the continued existence of the financial debt.

k. The Applicant has also relied upon the communication dated **09.05.2019** addressed by the Corporate Debtor to the **Serious Fraud Investigation Office (SFIO)** under Section 217(2) of the Companies Act, 2013. According to the Applicant, the Corporate Debtor, while making the said statement on oath before the SFIO, expressly admitted an outstanding liability of **Rs.151,58,79,348/-** payable to the Applicant for the Financial Year 2017-18. It has therefore been contended that the said statement constitutes a clear admission of liability by the Corporate Debtor before a statutory investigating authority and further corroborates the acknowledgements reflected in its audited financial statements.

l. The Applicant has further controverted the reliance placed by the Corporate Debtor upon the Applicant's own financial statements to contend that the loan had ceased to exist. It has been submitted that the financial statements of the Applicant for the Financial Years **2017-18**, **2018-19** and **2019-20** consistently reflected the loan advanced to the Corporate Debtor under the head **"Loans to Related Parties"**. According to the Applicant, the absence of the said entry in the financial statements for the Financial Year **2020-**

Sd

Sd

21 was solely on account of the accounting treatment mandated by **Indian Accounting Standard (Ind AS) 103** following the reverse acquisition undergone by the Applicant. It has been submitted that since the recoverability of the loan had become doubtful owing to the Corporate Debtor's persistent default, the asset was not reflected at fair value in accordance with the accounting standard. The Applicant has therefore contended that such accounting treatment or provisioning for doubtful recovery does not extinguish or waive the legally enforceable debt owed by the Corporate Debtor and cannot defeat the present proceedings under Section 7 of the Code.

m. Lastly, the Applicant has submitted that all other objections raised by the Corporate Debtor, including those pertaining to the allegations of fraudulent initiation of proceedings under Section 65 of the Code, have been separately dealt with in the written submissions filed in the connected interlocutory applications. It has therefore been prayed that the present application under Section 7 be admitted and that the Corporate Insolvency Resolution Process be initiated against the Corporate Debtor in accordance with law.

H. The Corporate Debtor, in its Written Submissions and oral arguments advanced through its learned counsel, has, inter alia, made the following submissions:

a. The Corporate Debtor has reiterated the averments made in its Reply and Additional Affidavit and has submitted that the present application is liable to be dismissed as being barred by limitation, devoid of any legally enforceable financial debt and default, and as having been initiated with a fraudulent and malicious intent. It has been contended that the Financial Creditor has deliberately suppressed material facts and has attempted to invoke the provisions of the Insolvency and

Sd

Sd

Bankruptcy Code, 2016 as a debt recovery mechanism despite the absence of the statutory requirements under Section 7 of the Code.

b. The Corporate Debtor has submitted that the alleged unsecured loan formed part of a larger commercial arrangement between the parties and cannot be viewed as an independent financial transaction. According to the Corporate Debtor, the Financial Creditor had acquired substantial shareholding in the Corporate Debtor pursuant to various Memoranda of Understanding executed with the Government of Chhattisgarh for implementation of integrated steel and power projects. It has been contended that the monies advanced under the Unsecured Loan Agreement constituted only one component of the overall business arrangement involving strategic investment, project implementation, supply arrangements and reciprocal commercial obligations. The Corporate Debtor has therefore submitted that the transaction lacked the essential commercial character of a financial debt within the meaning of Section 5(8) of the Code.

c. The Corporate Debtor has further submitted that the Financial Creditor itself has admitted, in its Rejoinder, that the impugned transaction has been examined by the Serious Fraud Investigation Office (SFIO), which has alleged that the transaction formed part of a collusive arrangement involving diversion and siphoning of funds by the erstwhile management of the Financial Creditor in connivance with the Corporate Debtor and other related entities. According to the Corporate Debtor, once the Financial Creditor itself relies upon the findings of the SFIO to support its case, it cannot simultaneously contend that the same transaction constitutes a genuine financial debt under the Code.

Sd

Sd

d. The Corporate Debtor has further relied upon the judgment of the Hon'ble Supreme Court in **Phoenix ARC Private Limited v. Spade Financial Services Limited** to contend that collusive commercial arrangements do not constitute financial debt within the meaning of Section 5(8) of the Code. It has been submitted that if the transaction itself is alleged by the Financial Creditor to be a colourable and collusive arrangement, the Applicant cannot seek initiation of CIRP on the basis of such transaction. According to the Corporate Debtor, the present proceedings are therefore malicious in nature and are liable to be rejected under Section 65 of the Code.

e. The Corporate Debtor has also relied upon the judgment of the Hon'ble NCLAT in **Mr. Suresh Kumar & Anr. v. Central Bank of India** to contend that a financial debt can arise only where there exists a legally enforceable right to payment. According to the Corporate Debtor, in the absence of a subsisting right to recover any amount from the Corporate Debtor, there can neither be a "claim" nor a "financial debt" within the meaning of the Code.

f. The Corporate Debtor has reiterated its objection that the present application is hopelessly barred by limitation. It has been submitted that Clause 7 of the Unsecured Loan Agreement specifically provides that the loan was payable on demand and, consequently, Article 21 of the Limitation Act, 1963 governs the present transaction. According to the Corporate Debtor, Article 21 expressly stipulates that limitation for recovery of money lent under an agreement providing that it is payable on demand commences from the date on which the loan is made. Since the alleged disbursements were made on **30.07.2011** and during the

Sd

Sd

Financial Year **2014-15**, the period of limitation expired long before institution of the present application.

g. The Corporate Debtor has further submitted that although the Financial Creditor has relied upon the judgment of the Hon'ble Supreme Court in **B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates** to contend that Article 137 of the Limitation Act governs proceedings under Section 7 of the Code, the said reliance is misplaced. It has been contended that the judgment in *B.K. Educational Services* merely lays down that applications under the Code are governed by Article 137 and that the right to sue arises upon occurrence of default. According to the Corporate Debtor, the Hon'ble Supreme Court subsequently clarified in **Radha Exports (India) Private Limited v. K.P. Jayaram** that, in respect of loans payable on demand, limitation begins from the date on which the money is advanced and not from subsequent demands raised by the creditor.

h. The Corporate Debtor has further submitted that the repeated demand notices issued by the Financial Creditor in the years 2020 and 2021 cannot revive or extend the limitation period. Reliance has been placed upon the judgments of the Hon'ble Allahabad High Court in **Jagannath Prasad & ORs. v. Mst. Ram Dularey & ORs.**, wherein it has been held that in the case of a loan payable on demand, limitation commences immediately upon advancement of the loan, and upon the decision of the Hon'ble Calcutta High Court in **National and Grindlays Bank Ltd. v. Tikam Chand Daga**, wherein it has been held that successive demand notices cannot extend the limitation period available to a creditor. According to the Corporate Debtor, the Financial Creditor cannot circumvent the law of limitation merely by issuing repeated repayment notices.

Sd

Sd

i. The Corporate Debtor has also reiterated that the present application is not maintainable in view of non-compliance with Section 7(3) of the Code. It has been submitted that Section 7(3) mandates production of a valid Record of Default from an Information Utility along with the application. According to the Corporate Debtor, the Record of Default issued by National e-Governance Services Limited (NeSL), which has itself been relied upon by the Financial Creditor, specifically records that **"the debt is disputed"** and consequently does not establish any default. It has further been contended that the Record of Default stood registered on **01.02.2024**, prior to filing of the present application, and therefore the statutory record itself demonstrates that no debt was due and payable on the date of institution of the proceedings.

j. The Corporate Debtor has further contended that Part IV of Form-1 accompanying the present application is incomplete and defective. It has been submitted that while the Financial Creditor has claimed to have disbursed a sum of **Rs.69.85 Crores** on **30.07.2011** under the Unsecured Loan Agreement, the bank statement annexed as Exhibit-4 to the application does not contain any corresponding entry evidencing such disbursement. According to the Corporate Debtor, the Financial Creditor itself has admitted in paragraph 59 of its Rejoinder that no such entry is reflected in the bank statement. It has therefore been contended that the very factum of disbursement remains unsubstantiated, thereby rendering the application defective and liable to be rejected.

k. Lastly, the Corporate Debtor has reiterated that the Financial Creditor has failed to establish the existence of a legally enforceable financial debt or a default within the meaning of Sections 5(8) and 7 of the Code. It has been submitted that the proceedings have been instituted with an ulterior motive

Sd

Sd

despite the transaction being part of a larger commercial arrangement and despite the statutory Record of Default not disclosing any default. The Corporate Debtor has accordingly prayed that the present application be dismissed with exemplary costs and that appropriate action be taken against the Financial Creditor under Section 65 of the Insolvency and Bankruptcy Code, 2016 for malicious initiation of insolvency proceedings.

ANALYSIS & FINDINGS

1. Bhushan Power and Steel Limited (FC) has filed the captioned petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of the corporate insolvency resolution process (CIRP) against Nova Iron and Steel Limited (CD) for its default on repayment of financial debt amounting to **Rs. 306,52,18,109** as of 1 February 2024 [Principal – Rs. 125,83,88,946 plus interest – Rs. 180,68,29,163] claimed to be Default Amount. This petition was filed under section 7 of the IBC on 25th April, 2024 before this Hon'ble Tribunal.
2. The CD and FC entered into an Unsecured Loan Agreement dated 20th July 2011 whereby the FC agreed to advance an "unsecured loan" of an amount not exceeding Rs. 150 Crores and stated the end use of funds for installation of a 12 MW Waste Heat Recovery Based Power Plant and Induction Furnace and other facilities (WHRB Plant). The terms of the Loan Agreement included; (a) Clause 4- the loan will carry interest @13% p.a.; (b) Clause 7- the loan amount and interest, if any, will be payable on demand on issue of demand notice; and (c) Clause 11- in the event of default, provides for penal interest of 1% leviable from the date of default till actual payment. The CD has not disputed the existence of the Loan Agreement or the receipt of the Loan Amount in its pleadings in the Section 7 Petition.

Sd Sd

3. The FC contends that the CD has acknowledged and admitted its liability under the Loan Agreement in its; (a) Statutory financial statements; (b) Disclosures with the Bombay Stock Exchange and also; (c) in its correspondence with the Serious Fraud Investigation office (SFIO). In this regard the FC has placed reliance on the following judicial decisions:

i) The Hon'ble NCLAT in ***Mohd. Shadab v. Colorcity Home Private Limited 2023 SCC OnLine NCLAT 200 (Para 1, 3)*** while dismissing an appeal challenging admission of a Section 7 application held that acknowledgement of a "**loan**" in balance sheets is sufficient to demonstrate an admitted financial debt. The Hon'ble Supreme Court in the case of ***Asset Reconstruction Company (India) Limited v. Bishal Jaiswal and Another (2021) 6 SCC 366 (Para 16, 17)*** held that "entries made in the books of accounts, including balance sheet, can amount to acknowledgement of liability within the meaning of Section 18 of the Limitation Act."

ii) The Hon'ble Supreme Court in ***Innoventive Industries Ltd v. ICICI Bank and Aur, (2018) 1 SCC 407 (Para 30)*** inter alia held that at the stage of admission of an application under Section 7 of the IBC, the scope of the Adjudicating Authority's enquiry is limited to ascertaining whether a "financial debt" exists and whether a "default" has occurred. Further, the Hon'ble Supreme Court in the case of ***M. Suresh Kumar Reddy v. Canara Bank and Other (2023) 8 SCC 387 (Para 11)*** inter alia held that even non-payment of a part of debt, when it becomes due and payable, will amount to default for the purpose of admission under Section 7 IBC".

4. The FC contends that as per Clause 7 of the Loan Agreement, the Loan Amount along with interest was payable on demand upon issue of demand notice by the FC. In this context, the FC has relied on various correspondence between FC and CD as per pleadings. The FC reported

Sd Sd

the default with the National e-Governance Services Limited (NeSL). However, the CD, has disputed the said default as recorded in the 'record of default' made available by NeSL.

5. The Corporate Debtor i.e., Nova Iron and Steel Limited (NISL) has filed an Application being IA (IB)/240/2024 under Section 65 of the Code, challenging the maintainability of section 7 petition filed by Bushan Power & Steel Ltd. In this application NISL is seeking urgent interim reliefs, in the nature of, inter alia, dismissal of the captioned petition, on the ground that the same has been filed with fraudulent and mala fide intention, solely for the fulfilment of dishonest hidden personal, rather than for the resolution of the Applicant.

6. In support of its petition challenging the CP (IB) No. 34/CB/2024, the CD inter alia has taken mainly the following grounds;

> a. "*Financial Creditor being a related party to the Applicant herein, will neither have a seat in the Committee of Creditors (CoC) nor will be a decision maker in the Corporate Insolvency Resolution Process (CIRP) process. Consequently, there is no substantial benefit for the Financial Creditor in filing the captioned insolvency petition, further highlighting their malicious intent;*
>
> *b. Financial Creditor has filed the captioned petition on the premise of alleged unsecured debt of roughly Rs. 150 Crores, which will be in any manner, whatsoever, less than 60% share in the CoC and hence, does not have the requisite majority to approve a Resolution Plan;*
>
> *c. Further, generally related parties are not even paid any amounts in the Resolution Plan and therefore, financial creditor has no genuine reason to initiate the insolvency proceedings other than to cause unnecessary harassment and pressure on the Applicant;*
>
> *d. An unsecured loan comes at a later priority under the waterfall mechanism as per Section 53 of the Code and the alleged Financial*

Sd

Sd

Creditor herein will not be benefited at the time of distribution under the plan or liquidation. Hence, there is no significant benefit for the Financial Creditor in filing the captioned insolvency petition, further indicating malicious intent;

e. The captioned petition is a weak effort to arm twist the Applicant Company in guise of a non-existent claim that was previously written off by the alleged Financial Creditor, as clearly indicated in their respective financial records. No amount is due or payable between the parties, therefore, the Application is being deceitfully manipulated by the alleged Financial Creditor for ulterior motives; and

f. The Financial Creditor has concealed the true facts in the captioned petition, as there were several Memorandum of Understanding (MOUs) signed between the parties for a larger arrangement and the alleged unsecured loan agreement, impugned in the captioned petition, was one of its small fractions."

7. The above factual & technical grounds taken by the applicant in its demurrer application are of such nature which overlaps with the contentions and pleas raised by the respondent in the Main CP and doesn't challenge the maintainability of the Main CP, hence it is deemed fit to consider the contentions raised in the demurrer application i.e., IA (IB) No. 240/CB/2024 and CP (IB) No. 34/CB/2024 together and decide them on merits.

8. After taking into consideration the prayer made in the main CP filed by the Financial Creditor and the prayer made in the Demurrer Application filed by the Corporate Debtor, the following issues emerge for determination by this Adjudicating Authority:

a) "Whether the amount of Rs. 150 crore (one hundred fifty crores) advanced to Corporate Debtor (CD) by the Financial Creditor (FC) vide Loan Agreement dated 20th July, 2011 represents 'Loan' OR 'Investment'

Sd

Sd

in view of the MoUs entered between the Financial Creditor and Corporate Debtor with Chhattisgarh Government?"

b) "Whether there exists 'Financial Debt' due and payable within the meaning of Section 5(8) and there exists 'default' within the meaning of Section 3(12) of Insolvency & Bankruptcy Code, 2016, once the entire Debt amount has been unilaterally written off/obliterated by the Financial Creditor in its Books of Account?"

ISSUE - I (a)

a. ***"Whether the amount of Rs. 150 crore (one hundred fifty crores) advanced to Corporate Debtor (CD) by the Financial Creditor (FC) vide Loan Agreement dated 20th July, 2011 represents loan OR 'Investment' in view of the MoUs entered between the Financial Creditor and Corporate Debtor with Chhattisgarh Government."***

9. The Ld. Counsel for BPSL argued that BPSL had paid Rs. 150 crores to the NOVA and the NOVA have not disputed this loan. The Respondent CD had acknowledged the debt in its Balance-Sheet under the head "borrowings" and repaid partially till 2017 along with interest. It is further argued that the loan and the MoUs are independent of each other than integral to each other. The Learned Senior Counsel for the Respondent CD making counter submissions contended that the loan and MoUs were not independent agreements but inter-dependent agreements. It was highlighted that MoUs dated 10.01.2007, 04.05.2007, 08.08.2008 and 20.07.2011 were collaborative agreements towards achieving the common synergic business goal under large arrangement. It was further submitted by Counsel for CD that while the MoUs were already in existence, the loan was signed subsequently on 20.07.2011 between them by virtue of which the BPSL had provided Rs.150 crore to the NOVA to take forward the MoUs entered with Government of Chhattisgarh both by

Sd

Sd

BPSL and its subsidiary NOVA. In view thereof, the Counsel for the CD contented that, the financial assistance of Rs. 150 crores by BPSL to the NOVA for which the LOAN Agreement dated 20.07.2011 entered into was in the nature of making an investment for profit and therefore not a financial debt. The Ld. Counsel for the CD in this regard has relied on the subsequent communications dated 30.11.2012 & 26.12.2012 addressed by BPSL to State Industrial Promotion Board (SIPB), Government of Chhattisgarh.

10. The Ld. Counsel for the CD contends that the Petition has been filed by suppressing material facts including MoUs executed by BPSL which tantamount a fraud upon this Hon'ble Tribunal.

11. The CD alleged that BPSL has concealed the MOUs executed by BPSL with Government of Chhattisgarh in the year 2007, in compliance of which BPSL (i) On 22.06.2011, first invested in the shares of the Corporate Debtor and took direct and indirect control of 61.93% of NOVA and intimated to the Government of Chhattisgarh as is evident from Auditor's Certificate annexed at page 8-9 of additional affidavit on behalf of NOVA dated 15.01.2026 and (ii) Thereafter, on 20.07.2011, made investment in Project Funding to comply with its own MOU with the Government of Chhattisgarh through NOVA.

12. It is also the contention of CD that despite the fact that these MoUs form part of the approved Resolution Plan submitted by the Successful Resolution Applicant in the CIRP of BPSL, BPSL in Reply to the aforesaid I.A. 240/2024 at para 11 has categorically denied the existence of the said MoUs. BPSL deliberately suppressed the MoUs before this Hon'ble Tribunal and denied the existence of the MoUs, thereby playing fraud upon this Hon'ble Tribunal. In support of its contentions CD relies on the decision of Hon'ble Supreme Court ***S.P. Chengalvaraya Naidu v. Jagannath (1994) 1 SCC 1.***

13. Thus, based on the MoUs between FC and Chhattishgarh Government, CD contends that there is no financial debt in terms of Section 5 (8) of the IBC since the same is not even a debt but

Sd

Sd

investment / project funding for BPSL's own compliance of MOUs with the Government of Chhattisgarh

14. The Ld. Senior Counsel for CD vehemently contended that the amount that was invested in Project Funding cannot be termed as financial debt. In support of their contention, the Learned Senior Counsel for the Respondent CD has placed reliance on the judgment of Hon'ble NCLAT in the matter of ***Mukesh N Desai v. Piyush Patel & ORs. in CA (AT) (Ins.) No.789 of 2020***, wherein it has been held that any amount invested in the purchase of land cannot be said to be a financial debt under Section 5(8) of the IBC. Further, reference was also made to the decision of this Tribunal in ***Samyak Projects Pvt. Ltd. v. Ansal Housing Ltd. in Company Appeal (AT) (Ins.) No.384 of 2022*** where it has been clearly held that the Joint Development Agreement between the two parties shows that it was a case of sharing revenue profit by both the parties and hence initiation of CIRP proceedings under Section 9 by a JV partner was not maintainable. Reliance has also been placed on the decision of this Tribunal in ***Jagbasera Infratech Pvt. Ltd. v. Rawal Variety Construction Ltd.*** in 2022 SCC OnLine NCLAT wherein it has been held that an amount invested in the joint venture project by any party in their capacity as a promoter/investor does not fall within the ambit of definition of Section 5(8) of the Code. It was further contended that NCLAT in ***Vipul Ltd. v. Solitaire Buildmart Pvt. Ltd. in 2020 SCC OnLine NCLAT 620*** has held that a Joint Development Agreement is a contract of reciprocal rights and obligations and for any breach of terms of contract, Section 7 is not maintainable as the amount cannot be construed as financial debt.

15. The Ld. Counsel appearing for the applicant in his submissions has contended that the Applicant and the Respondent have entered into unsecured Loan Agreement on 20.07.2011 pursuant to which the Applicant (BPSL) had advanced a sum of RS. 150,00,00,000/- (One hundred & fifty crores) to the Respondent (NOVA) as a loan which is a

Sd Sd

financial debt within the meaning of section 5(8) of IBC and since the Respondent (NOVA) has defaulted in repayment of loan amount on demand, there exist 'Debt and Default', CD therefore should be admitted into CIRP.

16. Contrary to this, the Learned Counsel for the Respondent making his submissions pleaded that the Applicant and the Respondent have entered into a larger arrangement for which separate Memorandum of Understanding (MoUs) dated 10-01-2007 and dated MoU 04-05-2007 were executed between Government of Chhattisgarh and Bhusan Power and Steel Ltd. Subsequently, an MoU was also entered between Government of Chhattisgarh and NOVA Iron & Steel Ltd. on 08-08-2008. Based on the terms of the above referred MoUs read with the terms of subsequent Loan Agreement dated 20-07-20011, the Ld. Counsel for the Respondent argues that the amount in question advanced by the Applicants to Respondents was for the purpose of 'Project Funding' and not a financial debt within the meaning of section 5(8) of IBC. The Respondent thus contends that both the Applicant and the Respondent are engaged in the same business of manufacturing & trading of iron and steel products and have entered into larger arrangement for expansion of their mutual business.

17. The contention of CD is that the Loan Amount is an investment by FC and therefore the S.7 Petition is not maintainable. The CD has contended that the Loan Agreement was nothing but a fractional part of a 'larger arrangement' between the FC and the CD since the FC was making strategic investments in CD as indicated by (i) MoU dated 10 January 2007 between FC and Government of Chhattisgarh (ii) MoU dated 04 May 2007 between FC and Government of Chhattisgarh (iii) MoU dated 08 August 2007 between CD and Government of Chhattisgarh and the letters dated 30 November 2012 and 26 December 2012 issued by FC to the State Government.

18. On the other hand, the FC placed its reliance on the Loan Agreement dated 20th July, 2011, reiterating that the Loan Agreement, on its

Sd

Sd

plain terms, unequivocally establishes the existence of a financial debt and the CD's corresponding obligation to repay the same. Further that the Loan Agreement is self-contained and does not advert to, incorporate, or depend upon any alleged "larger arrangement" or extraneous MOUs, rather, the repayment obligation thereunder is clear, absolute, and independent of any collateral consideration or external understanding. Consequently, any reference to MOUs is irrelevant for the purpose of the S.7 Petition which only requires a **"debt"** and **"default"** to be made out.

19. The FC submits that in the facts of the present case, the Loan Agreement and the purported MOUs are completely independent of each other and relate to different projects. None of the three purported MOUs or the alleged Letters annexed by the CD pertains to setting up of WHRB Plant i.e., 12 MW waste heat recovery-based power plant for which the Loan Agreement was executed.

20. The FC pleads that ex facie the MOU's relied upon by the CD appear to be non-binding arrangements. Moreover, no details whatsoever have been provided by the CD to establish that the funds disbursed under the Loan Agreement were in fact utilized for the purpose of the MOUs or that there is any nexus between the MOU's and the Loan Agreement.

21. The FC further pleads that the Loan Agreement between the parties is interest bearing and does not require the FC to participate in the execution of any project. In fact, though the Loan Agreement mentions about the end use of the funds, the FC cannot be said to have any control over the actual use of the funds. All these factors, according to FC, cumulatively are indicative that the Loan Agreement between the parties was a financial debt and not an investment since the FC was not in any manner involved in the execution of the project for which the funds were disbursed nor had any control over the end use of the funds.

Sd

Sd

22. In this regard, FC has placed reliance on the decision of the ***Hon'ble Appellate Tribunal, in Adhunik Corporation Limited v. Shivam India Limited 2025 SCC OnLine NCLAT 408***. The FC has further submitted that the CD's reliance on ***Jagbasera Infratech Private Limited v. Rawal Variety Construction Limited 2022 SCC Online NCLAT 167 (Para 8, 9)*** is misplaced and distinguishable from the facts of present case.

23. In rebuttal, the CD contends that every amount reflected in the Balance Sheet is not a financial debt. BPSL invested the money in NOVA to use NOVA as a vessel subsidiary company and to comply and fulfil its own obligations through the MoUs executed with the Government of Chhattisgarh both by BPSL and NOVA.

24. The Ld. Counsel for the CD submitted that on 20.07.2011, BPSL invested in Project Funding to comply with its own MOUs and the MOU of NOVA, with the Government of Chhattisgarh through NOVA. Recital Para E of the agreement explicitly states that:

"The First Party is also engaged in related business activities and believes that to give unsecured loan provides significant synergistic benefits".

25. The Ld. Counsel for the CD further argues that there being explicit admission of seeking "synergistic benefits" clearly shows that this was not a loan extended for interest but for investment. It was a strategic investment where BPSL stood to derive direct commercial and operational benefits from the joint project. Synergistic partnership refers to the interaction of two or more elements working together to produce a combined effect that is greater than the sum of their individual parts. It means when things act synergistically, they accomplish more co- operatively than they could independently.

26. As of 31.03.2012, BPSL had made investments in Nova for purchase of shares and other investments as is evident from

Sd

Sd

Auditor's Certificate annexed at page 8-9 of additional affidavit dated 15.01.2026 filed on behalf of NOVA as under:

"That it has been specifically pleaded that the Financial Creditor strategically invested monies in the Corporate Debtor in order to fulfil its own obligations under the MoUs executed with the Government of Chhattisgarh, and for the purposes of acquiring land, setting up infrastructure, and implementing integrated projects through the Corporate Debtor and the same is not a financial debt."

"The said alleged debt is not a 'financial debt' in terms of the Section 5 (8) of the Code. It is evident from the Financial Creditor's letter dated 30.11.2012 and 26.12.2012 annexed as Annexure A-4 and Annexure A-5 of the Rejoinder to IA 240 of 2024 addressed to the Convenor/Secretary (Industries), State Investment Promotion Board, Chhattisgarh, while updating the progress in respect of the MoUs."

TO WHOM IT MAY CONCERN

"Certified that M/s Bhushan Power & Steel Limited (having its Registered Office at 4th Floor, Tolstoy House, Tolstoy Marg, Connaught Place, New Delhi) has Invested in 1,70,59,000 Shares amounting to Rs. 22.18 Crores Nova Iron and Steel Ltd. (having its Registered Office at Village Dogri, Tehsil Belha, Dist. Bilaspur, Chhattisgarh) from 1st April, 2021 to 5th May, 2021."

FOR AMIT K. ARORA & CO.,

CHARTERED ACCOUNTANT

27. It is evident from the letter dated 30.11.2012 written by BPSL to State Investment Promotion Board (SIPB), that BPSL decided to execute MoUs of BPSL and NOVA after making NOVA its own subsidiary. As

Sd

Sd

on June 2024, BPSL holds 25.65% shareholding in NOVA and qualifies to be a related party under the definition as per IBC.

28. On the other hand, the counsel for the CD argued that It clearly transpires from the letter dated 30.11.2012 written by BPSL to State Investment Promotion Board (SIPB) of Government of Chhattisgarh, that BPSL has shown its commitment to execute MoUs of BPSL and NOVA after making NOVA its own subsidiary. The relevant portion of this letter written by BPSL to SIPB is reproduced herewith for better appreciation of facts:

> *"With reference to your letter dated 6th Nov, 2011 regarding submission of Progress Report with respect to our MOU, we hereby submit the MOU Progress Report jointly for both BPSL & NISL duly filled in the prescribed format alongwith the relevant enclosures.*
>
> *Further, we invite your kind attention to our letter dated 30.06.2012 (copy enclosed) wherein we had explained in detail that we were implementing the MOUs signed separately by Nova Iron & Steel Ltd. and Bhushan Power & Steel Ltd. at one place in Village: Dagori, Tahsil: Belha, Distt: Bilaspur (CG). We had also submitted in detail the effective steps taken by us for implementation of both the MOUs.*
>
> *Further, vide our letter dated 8.10.2012 we had again submitted a letter confirming further progress made by us towards effective implementation of both the MOUs signed separately by Bhushan Power & Steel Ltd. and Nova Iron & Steel Ltd."*

29. The above communication dated 30.11.2012 from BPSL to SIPB refers to a joint Progress Report with reference to MOU with SIPB for both BPSL & NOVA which indicates joint Venture akin to larger arrangement pleaded by the Ld. Counsel for the

sd

sd

Respondent. In the aforementioned communication, BPSL has shown its commitment to implement the MOUs signed separately by Nova Iron & Steel Ltd. and Bhushan Power & Steel Ltd. at one place in Village: Dagori, Tahsil: Belha, District: Bilaspur (CG).

30. It is evident from the letter dated 26.12.2012 written by BPSL to SIPB that in order to execute its own MoU through its subsidiary, i.e. NOVA, BPSL invested monies in NOVA for execution of the MoU by both the Companies. The relevant portion of this letter written by BPSL to SIPB is reproduced herewith for better appreciation of facts:

> *"1. Under cover of our letter dated 30.11.12, we have already submitted all the relevant documents to your kind office Although, we hereby again resubmit the same for your ready reference."*
>
> *"2. We enclose herewith the detailed list of 255.17 acres land purchased by Nova Iron and Steel from the period August 2011 to March 2012 and further from April 2012 to date we have purchased approximately another 100 acres of land adjoining the premises of Nova Iron and Steel Limited at Village Dagori, Tehsil Belha, Dist Bilaspur (C.G.)*
>
> *ii. The plant Nova Iron and Steel Limited started its Commercial Production in 1993-94; The copy of current excise returns for the month of November 2012 is enclosed herewith.*
>
> *iii. We also enclose herewith the copy of consent to operate valid for the period from 1st October 2012 to 30th September 2013 received from Chhattisgarh Environment Conservation Board, Raipur.*

Sd

Sd

iv. The company Bhushan Power and Steel Limited / Nova Iron and Steel Limited does not have any Prospecting or Mining lease for any mineral any where in Chhattisgarh.

v. Copy of certificates from Chartered Accountant confirming an investment of Rs 206.10 crores made by BPSL in NISL during the period April 2011 to March 2012.

vi. The land losers who had given their land for setting up of Nova Iron and Steel Limited in 1993-94 have already been given employment in the plant.

vii. Copy of Board Resolution dated 28th September 2011 from Board of Bhushan Power and Steel Limited informing that Nova Iron and Steel Limited has become the subsidiary company of Bhushan Power and Steel Limited."

"3. In response to the minutes of MOU review meeting held on 1st and 2nd May 2012, we had under cover of our letter dated 30th June 2012 submitted to your good office a detailed presentation informing the effective steps and action that had been taken by us for implementation of both the MOU's simultaneously at one place at Village Dagori, Tehsil Belha, Dist: Bilaspur (C.G.). Copy of the said letter along with the salient features of the presentation is being again forwarded here with for your kind perusal please."

31. The above communication by BPSL to State Investment Promotion Board ("SIPB") of Government of Chhattisgarh subsequent to amount advanced to NOVA reveals that both BPSL and its subsidiary NISL (NOVA) are working for a common business synergic goal to achieve. The above communication of BPSL to SIPB clearly indicates that NOVA has purchased 255.17 acres of land between the period August 2011 to March 2012 and

Sd

Sd

thereafter April 2012 onwards and BPSL has also purchased another 100 acres of land adjoining to the premises of Nova Iron and Steel Limited at Village Dagori, Tehsil Belha, Dist Bilaspur (C.G.) for installation of its plant for which necessary approvals have been obtained from Chhattisgarh Environment Conservation Board, Raipur. The certificates from Chartered Accountant enclosed with the said letter also confirm that an investment of Rs 206.10 crores was made by BPSL in NISL during the period April 2011 to March 2012. The said communication was also annexed with a Board Resolution of BPSL dated 28th September 2011, informing the SIPB that Nova Iron and Steel Limited has become the subsidiary company of Bhushan Power and Steel Limited.

32. Before we proceed to answer the question as delineated above, a glance at the definition clauses in the context of 'Financial Debt' and 'Financial Creditor' which finds place in Section 5 under Part II Chapter I Preliminary the IBC would be constructive:

> *"5(7) "financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;*
>
> *5(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 de-materialised equivalent;*

Sd

Sd

(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 nonrecourse 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;

Sd

Sd

(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;"

33. In the light of above statutory definitions of 'financial creditor' and 'financial debt', it may now be useful to peruse the salient terms of the MoUs entered into between the parties for better appreciation of the affiliation between the Applicant and the Respondent as it would be relevant in deciding the issue before us. The relevant extracts of the MoUs are reproduced below:

A. MoU dated 10.01.2007 entered between BPSL and Government of Chhattisgarh.

This MoU was entered between BPSL and Government of Chhattisgarh with proposed investment of Rs. 4000.00 Crores for setting up a 1000-MW Thermal Power Project. As per this MoU dated 10.01.2007 entered between the Government of Chhattisgarh and Chhattisgarh State Electricity Board and BPSL, It is agreed by the parties that BPSL will set up the project in the State of Chhattisgarh and identify a suitable site to carry out the necessary survey for availability of land for the power station, town ship and ash bund, source of call feasibility for moment of all, water availability, power evacuation etc. as per the terms of the MoU mentioned therein. The relevant portion of the said MoU entered for the purpose of investment by the BPSL is reproduced below:

"WHEREAS the Government is desirous of facilitating private investments in power generation projects in the State of Chhattisgarh and providing assistance for the development of

Sd

Sd

power generation projects and in consideration, being entitled to a certain share of the power generated from such projects."

"AND WHEREAS, the Company is desirous of establishing and operating 1000 MW Coal based thermal power station in the State of Chhattisgarh with the proposed investment of approximately Rs. 4,000 (Rupees Four thousand only) Crores."

B. MoU dated on 04.05.2007 between BPSL and Government of Chhattisgarh.

BPSL entered into an MoU with the Government of Chhattisgarh with proposed investment of Rs. 5500.00 Crores for setting up manufacturing facilities including Steel Making, Captive Power Plant 300 MW, Wire Drawing, Galvanized Wire, Steel Casting, Forging, Alloy Steel, Seamless Pipes, Slag Cement Plant etc. The relevant portion of MoU dated 04.05.2007 entered between BPSL and Government of Chhattisgarh is reproduced below:

"2.1 BPSL will set up the aforesaid projects in the State of Chhattisgarh either by itself and/or any one or more companies promoted by or belonging to Bhushan Group of Companies and the State Government and its agencies will extend all necessary assistance and cooperation for successful implementation of the projects."

"2.2 BPSL will earmark separate funds for environmental upgradation and social upliftment of surrounding areas/villages etc., to maintain the ecological balance."

"3.1 The State Government will facilitate, through Chhattisgarh State Industrial Development Corporation Limited (CSIDC) all necessary assistance in procuring optimum land free from all encumbrances as required for implementation of the projects mentioned herein above."

Sd

Sd

"3.2 The State Government through the State Investment Promotion Board will facilitate expeditious grant of approvals under the purview of the State Government for speedy implementation of the project."

C. MoU dated 08.08.2008 between NOVA and Government of Chhattisgarh.

On 08.08.2008, NOVA also entered into an MoU with the Government of Chhattisgarh with proposed investment of Rs. 600 Crores for setting up a 6 MTPA Sponge Iron Plant, 40 MW Captive Power Plant and another 24 MW Captive Power Plant. This Memorandum of Understanding was entered on 8th day of August, 2008 at Raipur between the Government of Chhattisgarh and M/s Nova Iron and Steel Limited. As per this MoU, the Government of Chhattisgarh had agreed to provide all the help, prevailing incentives and facilitate clearances necessary for the proposed projects in the State of Chhattisgarh through the intervention of the State Investment Promotion Board. The relevant terms of the said agreement are reproduced below for better appreciation of facts:

"AND WHEREAS "NISL "having its Sponge Iron Plant at Village-Dagori, Tehsil-Belha, District-Bilaspur has a production capacity of 0.15 mTPA as per the records of District Trade & Industry Centre, Bilaspur."

"AND WHEREAS "NISL" is desirous of setting up the following manufacturing facilities under its expansion programme in the State of Chhattisgarh with proposed Investment of Rs. 606.00 Crore."

Sd

Sd

Sr.No	Plant / Facility	Addl. Annual Capacity / Unit	Project Cost (Rs. Crore)
1.	Sponge Iron Plant	0.6 mTPA	320.00
2.	Captive Power Plant (WHRB)	40 MW	286.00
3.	Captive Power Plant (Coal Middlings)	24 MW	
Total			606.00

"AND WHEREAS, the Government of Chhattisgarh agrees to provide all help, prevailing incentives and facilitate clearances necessary for the aforesaid projects in the State of Chhattisgarh through the intervention of the STATE INVESTMENT PROMOTION BOARD constituted under the Chhattisgarh Audyogik Nivesh Protsahan Adhiniyam 2002.

34. It is observed that the Balance-Sheet of BPSL, for the period March 2017 till March 2019, records the amount against NOVA as Project Funding in its own books. It is seen from the entry made in the Balance-sheet for the Financial Year ending as on March, 2018 as appearing vide Note 57 that the amount of Loan of Rs. 15158.79(000) has been reflected as Project Funding. Similarly in the Balance-sheets for the Financial Year ending as on March, 2019 and March, 2020 also the said amount of Rs. 15158.79(000) as appearing vide Note 51 and 52 respectively has been reflected as Project Funding as per the Additional Documents filed on behalf of BPSL vide Affidavit dated 25.11.2025. However, in the Balance-Sheet for the subsequent Year, this Loan amount disappears from the Balance-Sheet of BPSL and no Provision of loan amount/interest has been made in its books by BPSL as is evident from the qualification recorded by the Auditor's in the Balance-Sheet of BPSL for the financial year 31st March, 2020 as below:

"...Moreover, since no provision for interest recoverable has been made for the year the entire amount appears to be doubtful of recovery for which no provision has been made."

Sd

Sd

*"...In note 51, the purpose of loan given to NOVA has been mentioned as "**Project funding....**"*

35. After June 2017, when BPSL went into CIRP w.e.f. 05.09.2019, the Project was abandoned and there is no funding of the Project. Pertinently, BPSL has written off the amounts from its own books during the Financial Year 2019-20 as can be seen from the Balance-Sheet of BPSL as on 31st March, 2020, wherein the said amount does not find place as the amount in question has been written off and NO provision either for principal or interest amount has been made in the books and a finding to that effect has also been recorded by the Auditors in their Audit Report for the financial year ending as on 31st March, 2020. BPSL, in its Rejoinder to the company petition at para 16 of the Rejoinder in CP has admitted that 'BPSL has merely written off the loan amount from its books of account.

36. It is pertinent to mention that even as per the Resolution Plan of the Successful Resolution Applicant (SRA) of BPSL, which was approved by the NCLT on 05.09.2019, all previous arrangements and agreements with Nova stood terminated under the said Resolution Plan. The relevant portion of the Resolution Plan is reproduced hereunder:

"........ Any agreement between the Company and any other shareholder of Nova Iron & Steel limited shall stand terminated without any further deed or action upon approval of this Resolution Plan by NCLT."

(b) ..... all the Identified Contracts and all other contracts entered into by the Company with any counterparty shall be deemed to be terminated (unless following the Effective Date, the Company notifies the counterparty to any such contract that such contract will continue to operate on the terms of such contract) within 45 days from (but excluding) the Effective Date,"

Sd

Sd

"Accordingly, upon approval of this Resolution Plan by NCLT, the indirect acquisition of Nova Iron & Steel Limited by the Resolution Applicant, pursuant to the implementation of the Resolution Plan shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 in accordance with Regulation 10(1)(da) of SEBI SAST Regulations. It is hereby confirmed that there are no other documents in relation to the indirect acquisition of Nova Iron & Steel Limited by the Resolution Applicant other than the terms contained in this Resolution Plan. Any agreement between the Company and any other shareholder of Nova Iron & Steel Limited shall stand terminated without any further deed or action upon approval of this Resolution Plan by NCLT. The Resolution Applicant shall file a report with the stock exchanges where the shares of the Nova Iron & Steel Company are listed, in such form as may be specified not later than four working days from the acquisition."

37. It clearly transpires from the books of BPSL that post F.Y. 2019-20, BPSL is not a creditor of Nova in its book since the contract with NOVA stands rescinded by SRA of BPSL after it was admitted into CIRP w.e.f. 05.09.2019. it is seen from the Resolution plan submitted by JSW Steel Limited under the relevant provisions of Insolvency and Bankruptcy Code, 2016 that agreement between the BPSL and any other shareholder of Nova Iron & Steel Limited would be terminated w.e.f approval of resolution plan by NCLT.

38. We observed that for the purpose of fulfilment of ancillary conditions of the MoU, BPSL utilized the credentials of commercial production of NOVA, compensatory employment given by NOVA to land losers to its credit. Thus, the amount claimed by creates reciprocal arrangement for joint development of the project for the benefit of BPSL.

sd

sd

39. In support of its contentions that the Investment was made by BPSL for its own benefit under a project funding & joint venture is not a financial debt, the CD has placed reliance on the following Judicial decisions:

i. **Jagbasera Infratech Pvt. Ltd. vs. Rawal Variety Construction Ltd. | Company Appeal (AT) (Ins.) No.150 of 2019 [Para 9]** - The Hon'ble NCLAT has said that "the amount invested in the 'Joint Venture Project' in the capacity as a 'Promotor' and 'Investor' does not fall within the ambit of the definition of 'Financial Debt' as defined under Section 5(8) of the Code."

ii. **The Hon'ble SC has upheld the Jagbasera Judgment of the Hon'ble NCLAT vide order dated 13.02.2023 in Civil Appeal Diary No. 33978/2022.**

iii. **Ansal Housing Limited Vs Samyak Projects Private Limited CA (AT) (INS) No. 542 of 2023 [Para 24]** - The Hon'ble NCLAT observed that where parties are joint venture partners with shared roles, obligations, and profit-sharing, any funds provided for project execution are treated as an investment in the venture and not a loan; hence, such transactions do not constitute financial debt under Section 5(8) of the IBC.

iv. **Modern Solar Private Ltd vs Claro Energy Pvt. Ltd. I.A. (Co. Act) No. 49/ND/2024** - The Hon'ble NCLT Bench at New Delhi has observed that when there is an investment in a project with residual gain upon success, then the same is not a financial debt.

v. **Deccan Charters Pvt. Ltd. vs. GSEC Monarch and Deccan Aviation Pvt. Ltd. | CP(IB) No. 100/NCLT/AHM/2022 [Para 18 & 19]** - The Hon'ble NCLT Bench at Ahmedabad has observed that the amount invested in a JV project of a promoter and investor is not a financial debt.

Sd

Sd

vi. **Chiragsala sales Pvt. Ltd. vs Vaishno devi Traders Pvt. Ltd. CP (IB)/GB/2022 [12 & 13]-** The Hon'ble NCLT Bench at Guwahati has held that suppressed MoUs reveal that the transaction is investment and not towards loans and hence not a financial debt.

40. The MoUs entered between the parties create reciprocal rights and obligations. Therefore, no amount is owed to either of the parties.

i. ***Mukesh N. Desai Vs. Piyush Patel | Company Appeal (AT) (Ins.) No. 780 of 2020 [Para 16]-*** The Hon'ble NCLAT was of the view that "parties being 'Joint Development Partners' who entered into a consortium of sorts for developing the subject land and for any breach of terms of the contract, Section 7 Application filed under the Code would not be maintainable as the amount cannot be construed as 'Financial Debt'."

41. Now, it is equally significant that we embark upon outlining the salient terms of Loan Agreement dated 20-07-2011 entered between BPSL and NOVA wherein the BPSL is described as the 'Lender' and NOVA as the 'Borrower' respectively. The relevant excerpts of agreement dated 20th July, 2011 are reproduced below for better understanding:

The relevant portion of the Loan Agreement dated 20.07.2011 is reproduced below:

Whereas:-

(a) The First party is engaged in carrying out the business of manufacturing, trading of Iron and Steel Products.

(b) The Second Party is engaged in carrying out the business of manufacturing, trading of Iron and Steel Products.

(c) The Second Party has approached the first party for obtaining unsecured loan or Inter Corporate Deposit for) for the purpose of installation of 12MW Waste Heat Recovery Based (WHRB) Power

Sd

Sd

Plant and Induction Furnace and other facilities to increase the production at its plant at Bilaspur, Chhattisgarh.

(d) The Second Party requires funds for achieving the object of its business activities.

(e) The First Party is also engaged in related business activities and believes that to give unsecure loan provides significant synergistic benefits.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE AGREED TO SET AND SUBSRIBED THEIR RESPECTIVE HANDS AND SEALS ON THE DAY AND YEAR FIRST HEREIN ABOVE WRITTEN

1. That the recitals set out hereinabove from an integral and operative part of this Agreement and shall be read accordingly.

2. The First party has on the request of the Second Party agreed to grant to the Second Party an advance of an amount not exceeding Rs. 150,00,00,000/- (Rupees One Hundred fifty Crore only) as unsecured loan.

3. That the unsecured loan shall be utilized for the purpose of Installation of 12MW Waste Heat Recovery Based (WHRB) Power Plant and Induction Furnace and other facilities to increase the production at its plant at Bilaspur, Chhattisgarh.

4. That the unsecured loan will carry an interest rate of 13% p.a. or not less than Bank Rate.

5. That the loan shall be utilized only for the purpose of Installation of 12MW Waste Heat Recovery Based (WHRB) Power Plant and Induction Furnace and other function to increase the production at its plant at Bilaspur, Chhattisgarh. No amount of loan, in any event, shall be used for any unlawful activity.

Sd

Sd

6. That the interest will be payable by the Borrower to the Lender after deducting the tax applicable under the provisions of the Indian Income Tax Act, 1961.

7. The loan amount and interest, if any, will be payable on demand by the Second Party to the First Party on receiving notice for repayment from the First party. First Party shall have option to convert the loan into securities, if desired and for that purpose, First Party will give notice of two months to Second Party for taking necessary steps under Companies Act 1956 and under applicable regulations of SEBI.

8. That the loan amount may be increased or decreased as mutually agreed in writing between the parties.

9. That the First party confirmed that giving of aforesaid loan is within the law and necessary approval for granting of loan has been authorized by the Board.

10. That the Parties assured and confirmed that it has necessary authorities to execute the agreement.

11. That in the event of default on repayment of loan or interest on demand, the penal interest of 1% shall be levied from the date of default till the actual payment.

12. That the Second party assured and confirmed that it has necessary authority to borrow money and execute the agreement.

13. That the Borrower shall inform the details of bank account wherein the amount of loan shall be remitted in one or more trenches.

14. That the notice shall be given by either Party to other Party on the registered address of the Company of the Party.

15. That no modifications shall be deemed to have been made to this Agreement unless it is in writing and signed by both parties.

Sd

Sd

16. That the agreement shall be governed by the laws of India and jurisdiction will be Courts of New Delhi.

17. That in case any dispute arises between the parties hereto in regard to interpretation of any clauses of this agreement and or any transaction or transactions, the same shall be referred to sole arbitration to be appointed with mutual consent of both the parties and in case of any disagreement shall be referred to Indian Council of Arbitration (ICA), New Delhi and all the provisions of Arbitration and Conciliation Act, 1996 as amended to date shall be fully applicable.

CONCLUSION - ISSUE I (a)

42. We observed that while proceeding to examine whether the mutual arrangement entered between the BPSL and the NOVA on mutually agreeable terms amounts loan or investment. After analyzing the MoUs entered between BPSL and Government of Chhattisgarh, we find that the loan advanced by BPSL to NOVA was more akin to the expansion of scope of business rather than a mere loan as is evident from the terms of the MoUs dated 01-10-2007 and dated 04-05-2007 between BPSL and SIBP and MoU dated 08-08-2008 entered by NOVA with Government of Chhattisgarh which reveals synergic business relationship between the parties. On perusal of the Loan Agreement and the MoUs entered between the parties, coupled with the communications made by BPSL to SIPB in this regard, we find that the contention raised by Applicant that the said MoUs are completely independent of commercial understanding and has no direct or indirect relation with the loan agreement does not carry much substance. In fact, we note that MoUs were executed in the year 2007 and 2008 prior to loan given in the year 2011 when both the BPSL and the NOVA had already collaborated with Chhattisgarh Government for installation & development of various projects in Chhattisgarh which is found

Sd

Sd

in conformity with the communications dated 30th November, 2012 & 26th December, 2012 made in this regard by BPSL with SIPB, Government of Chhattisgarh.

43. On careful examination of the MoUs and the loan agreement between the both entities, it is seen that there are unambiguous signs of reciprocal rights and obligations contained in both the MoUs along with evidences of common participation in Synergic Business Project Development. Therefore, we hold that the MoUs and the loan agreement are interdependent and inter-related and not independent of each other.

44. We noted that both the entities being holding and subsidiary have shown their commitment to execute the MoUs including purchase of land for the purpose of installation and setting up of a joint project, any financial assistance is in the nature of venturing into collaboration. The MoUs and loan agreement laid the foundations of a legal and binding relationship with mutual financial obligations towards each other. In the light of this backdrop, the present transaction is in the nature of investment for enhancing its profits by each entity and does not amount disbursement for time value of money and hence BPSL, does not fall within the canvas of being a Financial Creditor within meaning of section 5(7) of IBC.

45. We further observed that both the BPSL and the NOVA are in the same business and there exists ample evidences in the form of MoUs between the parties duly supported by communications issued by BPSL to SIPB, and subsequent event of writing off of such debt amount unilaterally by BPSL in its books of account as on 31st March, 2020, coupled with the fact that no debt exists in the books of BPSL as on the date of filing of the present petition, is sufficient to establish that the amount in question was advanced by BPSL to its subsidiary for the synergic business purpose with mutual business understanding of both the

Sd

Sd

parties, hence the BPSL in the present facts and circumstances cannot be construed to be a financial Creditor. More so when the amount in question was invested by its subsidiary for the purpose of investment for installation of projects as is emanated from the terms of the MoUs and the communications of BPSL to SIPB as referred above which reveals that the NOVA has purchased land at Chhattisgarh for the said purpose which stands confirmed by BPSL in its communication to SIPB, showing its commitment to SIPB to execute both the MoUs entered by BPSL and NOVA with Government of Chhattisgarh. Therefore, in the given set of facts and circumstances, it is difficult to hold that these MoUs have nothing in common or that these are independent. In our considered opinion, all the three MoUs and loan agreements are linked together for the development of projects, hence the amount in question being a finance towards project funding, the lender falls short on the parameters to be qualified as a Financial Creditor under section 5(7) of IBC.

46. In view of the above factual and legal analytical synthesis, we are of the considered opinion that the said loan Agreement read with other MoUs and ancillary corroborative evidences is found to be in the nature of collaborative project development agreement between the holding and the subsidiary entities entered prior to the period when the Financial Creditor i.e. BPSL went into CIRP in the year 2019, rather than a loan agreement simpliciter. Both parties are more particularly involved in the Synergic Business Project Development which entails the BPSL disqualified to be a Financial Creditor within the meaning of section 5(7) of IBC. In our opinion, the loan agreement cannot be read in isolation and is to be seen in the light of various MoUs and other relevant communications entered between the parties with the motive of Synergic Business Project Development when it is not a case of admitted debt and default.

Sd

Sd

47. Here, it is also significant to mention the primary objective of the IBC is the resolution of the Corporate Debtor and not recovery of a debt of the creditor. The Hon'ble Supreme Court in a catena of judgments have held that the provisions of IBC cannot be utilized by a creditor for recovery of its debt and the primary focus of IBC, as a beneficial legislation, is to ensure revival and continuation of the Corporate Debtor and that the provisions of IBC cannot be abused or misused for recovery of debt and for treating the Adjudicating Authority as a debt recovery forum.

48. For the detailed reasons given above, and considering that the ratio of the decision of Hon'ble NCLAT laid down in the case of ***Ansal Housing Limited Vs Samyak Projects Private Limited CA (AT) (INS) No. 542 of 2023*** wherein Hon'ble NCLAT has also considered the decision of Hon'ble Apex Court rendered in the case of ***Jagbasera Infratech Pvt. Ltd. vs. Rawal Variety Construction Ltd., in Company Appeal (AT) (Ins.) No.150 of 2019,*** we are of the considered view that the amount advanced by the Financial Creditor (FC) to the Corporate Debtor (CD) vide Loan Agreement dated 20th July, 2011 is more akin to 'Investment' in view of the MoUs entered between the Financial Creditor and Corporate Debtor with Chhattisgarh Government read with communications issued by the Financial Creditor (FC) from time to time in this regard to the Government of Chhattisgarh. Hence the loan amount in question being in the nature of investment as a part of larger arrangement, in our view, the Lender does not qualify to be a Financial Creditor under section 5(7) of IBC, 2016. This issue is answered, accordingly.

ISSUE - II

Now, in the interest of justice, we comprehensively delve upon the Issue No. II framed as under:

Sd Sd

b) "Whether there exists 'Financial Debt' due and payable within the meaning of Section 5(8) and there exists 'default' within the meaning of Section 3(12) of Insolvency & Bankruptcy Code-2016, once the entire Debt amount has been unilaterally written off/obliterated by the Financial Creditor in its Books of Account?"

49. The main contention taken by CD in its Demurrer petition is that the FC cannot claim the Default Amount because the debt has been written off/'obliterated' in the FC's own financial statements. The Corporate Debtor (CD) thus has sought to challenge the existence of debt and default, inter alia, on the ground that the Financial Creditor (FC) has written off the outstanding loan amount in its books of account and, therefore, the debt allegedly no longer survives and no default can be said to exist.

50. The Counsel for CD argues that Section 7 (3) of the Code mandates the filing of record of default duly recorded with the information utility, along with the application for initiating insolvency. However, the record of default issued by NeSL, which is annexed at Exhibit 13 at page 757 of the company petition, clearly states that "the debt is disputed". Hence, no default. Furthermore, the Record of Default was filed and registered with NeSL on 01.02.2024. Therefore, as on the date of filing, no debt is due and payable according to the Record of Default submitted by BPSL. Thus, according to counsel, the company petition is not maintainable.

51. In its additional affidavit dated 10 August 2024, the CD has asserted that the IU records reflect "no debt owed to BPSL and no default by Nova," and therefore contends that no amount is due and payable. However, the Financial Creditor contends that NeSL record of default is inconsequential. In rebuttal thereof, the Ld. Senior Counsel for the CD submitted that this submission of FC

Sd

Sd

is not supported with any documentary evidence, hence is devoid of any merit in as much as that NeSL record cannot be discarded unless there exists any evidence on record contrary to it.

52. The CD has contended that FC and CD are related parties therefore FC will not derive any benefit if this S. 7 Petition is allowed, as it will not have participation or voting rights in the CoC. In this regard, the Financial Creditor has relied on decision in the case of ***CG Power and Industrial Solutions Limited v. CG Power Solutions Limited CP(IB) 27/MB/2022.*** Further FC contends that burden of proof has not been discharged by the CD; before the reliefs prayed for under S. 65 are granted, the prima facie existence of fraud must be established on the basis of the material on record to show that the FC has suppressed any fact or has not come with clean hands. [***Amour Infrastructure LLP v. Digital Integrated Technologies (P) Ltd., 2023 SCC OnLine NCLAT 727 (Para 8), Unigreen Global Pvt. Ltd. v. Punjab National Bank, 2017 SCC OnLine NCLAT 566 (Paras 37 and 38)]*** and submits that none of the ingredients of fraud have been established in this case. [***Startree Retailors (P) Ltd. v. Anil Kumar Birla, 2022 SCC OnLine NCLAT 3645 (Paras 84 to 87).***

53. During the course of oral submissions before this Tribunal, the counsel for CD also disputed the existence of a financial debt whilst referring to certain allegations made by the SFIO against the CD. The Financial Creditor contends that the SFIO's allegations against the CD have been merely referred to by the FC, however no reliance has been placed by the FC on such allegations to either establish debt or default for the purpose of the present Section 7 Petition. Financial Creditor submitted that, the CD has neither admitted nor denied such allegations and that, this plea is not taken by CD in its pleadings. Therefore, according to Financial Creditor any adjudication on the aforesaid

Sd

Sd

submission of the CD would be contrary to the principles of natural justice. Here it is pertinent to mention that the Additional Affidavit filed by the CD annexed with relevant documents were allowed by this Adjudicating Authority considering the same as necessary for proper adjudication of the present Application, hence forms the part of pleadings.

54. It is the contention of the Counsel for CD that the financial creditor's book itself negate the claim of the financial creditor, thus the Financial Creditor has not approached this Hon'ble Tribunal with clean hands. The books of the Financial Creditor clearly evidence that (i) they have changed the stances qua the alleged loans advanced to the Corporate Debtor; and (ii) have given up their right of recovery against the alleged loan amount as is evident from the Balance-Sheets of the Financial Creditor.

55. Balance Sheet of the Financial Creditor as on 31.03.2018 states the following:

Note in Auditors Report:

> *"In case of unsecured loan to Nova Iron & Steel Limited aggregating to Rs. 15,158.79 lakhs including interest accrued which is repayable on demand, the schedule of repayment of principal and payment of interest is not stipulated. Therefore, we are unable to comment on regularity of repayment of principal and interest, if amount is overdue and whether reasonable steps have been taken by the company for recovery of the principal and interest."*

Note in Balance Sheet:

> "In note 57, the purpose of loan given to NOVA has been mentioned as "Project funding." Further, it is written under the same note that "the company was in process of

Sd Sd

obtaining NOC from banks/PFI, however CIRP under IBC has been invoked w.e.f. 26.07.2017."

56. **Balance Sheet of the Financial Creditor as on 31.03.2019 states the following:**

Note in Auditors Report:

"(p) With respect to loan given to Nova Iron & Steel Limited, entry being an associate and covered u/s 189 of the Act:

i.) the company had granted an interest bearing unsecured loans on which no interest has been accrued in the Standalone Financial Statements for the year ended March 31, 2019 (Refer Note No. 51).

ii.) With respect to the aforementioned loan advanced by the company, there has been no realization of interest or principal since 21.07.2017 against an outstanding amount of Rs. 15,158.79 lakhs including interest up to March 31, 2018. Moreover, since no provision for interest recoverable has been made for the year the entire amount appears to be doubtful of recovery for which no provision has been made."

Note in Balance Sheet:

"In note 51, the purpose of loan given to NOVA has been mentioned as "Project funding." Further, it is written under the same note that "the company was in process of obtaining NOC from banks/PFI, however CIRP under IBC has been invoked w.e.f. 26.07.2017. Further, it is mentioned that the company has not accrued interest for the year on the amount advanced to NOVA."

57. **Balance Sheet of the Financial Creditor as on 31.03.2020 states the following:**

Note in Auditors Report

Sd

Sd

"(n) With respect to loan given to Nova Iron & Steel Limited, entry being an associate and covered u/s 189 of the Act and Trade Receivables outstanding:

i) the company had granted an interest-bearing unsecured loan on which no interest has been accrued in the Standalone Financial Statements for the year ended March 31, 2019 & March, 31 2020 (Refer Note No. 52);

ii) with respect to the aforementioned loan advanced by the company, there has been no realization of interest or principal since 21.07.2017 against an outstanding amount of Rs. 15,158.79 lakhs including interest up to March 31, 2020. Moreover, since no accrual for interest recoverable has been made for the year, the entire amount appears to be doubtful of recovery for which no provision has been made;

iii) The Company has demanded the aforesaid amount by issuing demand notice dated 11.03.2020 against which Nova Iron & Steel Limited has disclaimed/disputed the said amount to be payable vide their letter dated 18.03.2020."

Note in Balance Sheet:

i.) In note 52, the purpose of loan given to NOVA has been mentioned as "Project Funding" and disclosed as 'related party' and no provision is made.

ii.) Further, it is written under the same note "that the company was in the process of obtaining NOC from banks/PFI, however, CIRP under IBC has been invoked w.e.f. 26.07.2017." Furthermore, it is mentioned that the company has not accrued interest for the year on the amount advanced to NOVA."

Sd

Sd

58. Thus, the CD pleads that alleged debt claimed is neither due nor payable as BPSL has written off, waived/ given up its right to recovery.

59. The Counsel for the CD further pleads the amount paid by the BPSL was never a debt/ financial debt, even the said amount does not exist in the books of BPSL w.e.f. F.Y. 2020-21 and there is no right to repayment. The financial statements of BPSL from FY 2019-20 to 2023-24 do not show any amount payable by NOVA, and the alleged amount stands obliterated in the books of BPSL. The books of BPSL mention that no provision has been made for the alleged debt. Hence, the same is not due and payable against NOVA.

60. In view of Section 129 of the Companies Act, there is no debt existing today. BPSL today wants to resurrect the extinguished entries in the balance sheet and wants to recast/ re-draw its own books by way of the above Section 7 Petition. However, the only way BPSL could have modified its books was by way of a Petition u/s 130 of the Companies Act. Admittedly, the same was not done.

61. Sections 129-134 of the Companies Act mandates the manner in which the financial statements are to be made.

(i) Section 129 of the Companies Act mandates that the financial statements of a company shall give a true and fair view of the state affairs of the company and shall give the list of all the creditors as per schedule III.

(ii) Section 130 of the Companies Act: Provides for re-opening of books of BPSL. However, no such Petition has been filed by BPSL or pending before this Hon'ble Tribunal.

62. **Mr. Suresh Kumar and Anr. v. Central Bank of India Company Appeal (AT) (Insolvency) No. 1592 of 2024** passed by the Hon'ble NCLAT: The Hon'ble NCLAT in para 14 clearly held that there has

Sd

Sd

to be a right to payment to be a claim for a claim to become a debt. In the absence of a right to payment, there cannot be a financial debt. Therefore once the BPSL has written off the loan amount, its right to payment is waived, hence there exists no claim to become a debt.

63. In rebuttal thereof, the Financial Creditor argues that the disbursal of debt has also been identified and recognized by the SFIO in its investigation. However, the investigation report of SFIO states that the disbursement was part of a larger facade of alleged siphoning of funds from the Financial Creditor conducted by its erstwhile management and related entities.

64. A few indicative extracts from the investigation report of the SFIO are reproduced below:

> *"On investigation, advances to 26 parties were found to be bogus and funds have been siphoned off from the BPSL. These funds were infused as equity capital or unsecured loans in CUIs and other entities namely ... Nova Iron & Steel Ltd.*
>
> *The siphoning of funds from BPSL by the Sanjay Singal in connivance with R.P. Goyal, Alkesh Sharma, H.C. Verma and entry operators to Rs. 228 given unsecured loan to Nova the tune of crore as (Rs.62.79 crore from paper companies managed and controlled by entry operators and Rs. 151 crores from BPSL and Rs. 14.21 crore) had caused loss to BPSL."*

65. Thus, the investigation report of the SFIO also reflects that the Corporate Debtor had secured loans from the Financial Creditor as part of large-scale siphoning of funds and consequently, these amounts have not been repaid. Even if, the contention of the Financial Creditor is accepted for the sake of argument, then also the transaction cannot be a financial debt, it being a collusive transaction. The Hon'ble Supreme Court in Phoenix Arc Private

Sd

Sd

Limited v. Spade Financial Services Limited, Civil Appeal No. 2842 of 2020 held that the commercial arrangements that are collusive in nature do not constitute financial debt. The relevant para of the judgement is reproduced below for ready reference:

"Since the commercial arrangements between Spade and AAA, and the Corporate Debtor were collusive in nature, they would not constitute a 'financial debt'. Hence, Spade and AAA are not financial creditors of the Corporate Debtor."

66. BPSL went into CIRP w.e.f. 05.09.2019 and BPSL has written off the amounts from its own books during the Financial Year 2019-20 as is evident from the Balance-Sheet of BPSL as on 31st March, 2020 wherein the said amount does not find place as the amount in question has been written off during the financial Year 2019-20 and no provision either for principal or interest amount has been made in the books and a finding to that effect has also been recorded by the Auditors in their Audit Report for the financial year ending as on 31st March, 2020. BPSL, in its Rejoinder to the company petition at para 16 has admitted that "BPSL has merely written off the loan amount from its books of accounts".

67. It is pertinent to mention here that even as per the Resolution Plan of the Successful Resolution Applicant (SRA) of BPSL, which was approved by the NCLT on 05.09.2019, all previous arrangements and agreements with Nova stood terminated under the said Resolution Plan. The relevant portion of the Resolution Plan is reproduced hereunder:

> *"........ Any agreement between the Company and any other shareholder of Nova Iron & Steel limited shall stand terminated without any further deed or action upon approval of this Resolution Plan by NCLT."*
>
> *(b) ..... all the Identified Contracts and all other contracts entered into by the Company with any counterparty shall be*

Sd Sd

deemed to be terminated (unless following the Effective Date, the Company notifies the counterparty to any such contract that such contract will continue to operate on the terms of such contract) within 45 days from (but excluding) the Effective Date,"

68. It clearly transpires from the above that with effect from F.Y. 2020-21 BPSL is not a creditor in Nova since the contract with NOVA stands rescinded by SRA of BPSL after it was admitted into CIRP w.e.f. 05.09.2019. it is seen from the Resolution plan submitted by JSW Steel Limited under the relevant provisions of Insolvency and Bankruptcy Code, 2016 that any agreement between the Company and any other shareholder of Nova Iron & Steel Limited shall stand terminated w.e.f approval of resolution plan by NCLT which is evident from the following clause incorporated in the Resolution Plan:

> *"Accordingly, upon approval of this Resolution Plan by NCLT, the indirect acquisition of Nova Iron & Steel Limited by the Resolution Applicant, pursuant to the implementation of the Resolution Plan shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 in accordance with Regulation 10(1)(da) of SEBI SAST Regulations. It is hereby confirmed that there are no other documents in relation to the indirect acquisition of Nova Iron & Steel Limited by the Resolution Applicant other than the terms contained in this Resolution Plan. Any agreement between the Company and any other shareholder of Nova Iron & Steel Limited shall stand terminated without any further deed or action upon approval of this Resolution Plan by NCLT. The Resolution Applicant shall file a report with the stock exchanges where the shares of the Nova Iron & Steel*

Sd

Sd

Company are listed, in such form as may be specified not later than four working days from the acquisition."

69. In this regard, the Financial Creditor contends that the unsecured loan extended to the CD was not reflected in the FC's financial statement for FY 2020-21 onwards pursuant to Indian Accounting Standard 103 (Ind AS 103) for business combinations. Ind AS 103 requires a company, which has undergone a merger/acquisition, to recognise and measure identifiable assets acquired and liabilities assumed at their acquisition-date, at fair value. In the present case, the FC had undergone a reverse acquisition in or around 01 April 2020, and since the recovery from the CD was disputed, it was not reflected in the financial statement to represent assets of the FC at fair value. It may be noted that, provisioning for disputed/ doubtful recoveries in the financial statement of the FC, as an accounting requirement, does not extinguish a legally enforceable claim against the CD.

70. The Financial Creditor further contends that Provisioning under IND AS 103, is an internal accounting treatment undertaken for financial reporting purposes; it does not amount to a waiver, release or abandonment of an otherwise legally enforceable claim, nor does it extinguish the CD's legal obligation to repay the amounts admittedly disbursed under the Loan Agreement. It is also pleaded by the Financial Creditor that, a mere reflection of a claim in the financial statement of the FC would not have created a legally enforceable debt against the CD in the absence of an underlying transaction between the parties and; similarly, deletion of an entry in the financial statement of the FC pursuant to internal accounting requirements, cannot extinguish a legally enforceable claim which the FC may have against the CD.

Sd

Sd

71. Thus, the Financial Creditor pleads that, legal rights to claim, abandon, waive or terminate legal obligations can only flow from contract between the parties and the enforceability of contracts is governed by law. In the absence of termination or modification or abandonment of rights under the Loan Agreement, any legally enforceable claims emerging from the Loan Agreement or the legal remedies available to the FC, cannot be deemed to be extinguished by virtue of any internal accounting treatment undertaken by the FC. It is submitted that, it is not even the CD's case that the terms of the Loan Agreement stand modified by virtue of the accounting treatment adopted by the FC.

72. In this regard, the Financial Creditor has made a Reference to Clause 7 & 15 of the Loan Agreement which provides that "The loan amount and interest, if any, will be payable on demand by the Second Party to the First Party on receiving notice for repayment from the First Party". Further, Clause 15 of the Loan Agreements provides "That no modification shall be deemed to have been made to this Agreement unless it is in writing and signed by both parties" Thus, Financial Creditor submitted that, in the absence of a signed agreement between the parties, the terms of the Loan Agreement or its enforceability cannot be modified and the contract between the parties is enforceable de-hors the accounting treatment adopted by each party in their respective financial statements. The Financial Creditor thus concludes that, financial statements of the parties can be an aid in demonstrating the debt and default, but cannot be construed to modify the terms of the underlying binding agreement since financial reporting is an internal process of the company. The underlying binding agreement i.e. Loan Agreement can only be altered by an express agreement for the same.

73. In this context the Financial Creditor has placed reliance on Para 9 & 17 of the decision of the Hon'ble Supreme Court in ***Salim***

Sd

Sd

Akbarali Nanji v. UOI, (2006) 5 SCC 302). The Hon'ble Delhi High Court in ***Taqa India Power Ventures Private Limited and ORs. v. NCC Infrastructure Holdings Limited MANU/DE/7592/2023.***

74. The counsel for CD argued that the Judgment in the matter of Salim Akbar Ali relied upon by BPSL is not applicable in the facts of the present Case. The judgment by the Hon'ble Supreme Court in the matter of ***Civil Appeal No. 6715/2004 Salim Akbar Ali Nanji vs. Union of India & ORs. 2006 (5) SCC 302*** was passed in the year 2006 prior to IBC and in respect of recoveries by Banks after writing off the NPAs.

75. Further that the judgment of Salim Akbar Ali Nanji in para 17 clearly mentions that the issue was seen in the eyes of the guidelines issued by RBI. The Judgment in para 26 clearly mentions that the judgment was passed only in respect of the Banks. Hence, the Judgment in the matter of Salim Akbar Ali, in view of the promulgated Sections 129-134 of the Companies Act, 2013, is not applicable to the facts of the present case in much as that the present Company BPSL is a Public Limited Company and not a Banking Company and is not Governed by RBI Regulations Act, 1934 and Banking Regulations Act, 1949.

76. In rebuttal the Financial Creditor contends that through the present proceedings, the FC is seeking to circumvent the procedure prescribed under Sections 128-131 of the Companies Act, 2013 - which (allegedly) requires the FC to re-open and re-cast its financial statements. Financial Creditor contend that it is not mandatory for a creditor to reflect a debt in its own financial statements as a necessary pre-condition to initiate recourse under the IBC or even under ordinary civil law. The provisions relied upon by the CD also do not provide so. Further, as stated above, non-reflection of a claim in one's own financial statements

Sd

Sd

is an internal process and does not extinguish or excuse the borrower of its liability to repay a financial debt.

77. Financial Creditor further pleads that assuming that the FC has breached or circumvented any obligation under Sections 128-131 of the Companies Act, 2013, separate statutory consequences may follow against the FC but the same cannot be made a ground to foreclose the FC's right to its financial claim under the Loan Agreement or its legal remedy under IBC.

CONCLUSION - ISSUE II (b)

78. On careful examination of the counter arguments, the pleadings and the material on record, we find that since the BPSL went into CIRP w.e.f. 05.09.2019, BPSL has written off the amounts from its own books of account during the Financial Year 2019-20 itself and NO provision either for principal or interest amount has been made in the books therefore, no debt as such exists post financial year 2019-20 and the debt in question last appeared in the Balance-Sheet as on 31st March, 2019. This fact is verifiable from the Balance-Sheet of Financial Creditor as on 31st March, 2020 and also from the qualification recorded by the Auditors to this effect in the notes forming part to the Balance sheet of Financial Creditor as on 31st March, 2019 and 31st March, 2020 which are re-produced in foregoing para no. 56 & 57 above.

79. We also observed that even as per the Resolution Plan of the Successful Resolution Applicant (SRA) of BPSL which was approved by the NCLT on 05.09.2019, all previous arrangements and agreements with Nova stood terminated under the said Resolution Plan which is evident from the relevant portion of Resolution Plan re-produced in fore-going para no. 67 & 68 above.

80. Further that the contention of the Financial Creditor as regards to provisioning of amount written off/obliterated raised in para

Sd

Sd

69 & 70 above does not hold good in as much as that no such provision has been made by the Financial Creditor in respect of the loan amount in its books of account during the Financial Year 2019-20 ending as on 31st March, 2020 and the loan amount in question has been unilaterally written off/obliterated and this loan amount does not figure in the Balance sheet of Financial Creditor as on 31st March, 2020 and for the subsequent period. This fact is evident from the Balance-Sheet of Financial Creditor as on 31st March, 2020 and also from the qualification recorded by the Auditors in the notes to the Balance sheet of Financial Creditor as on 31st March, 2019 and 31st March, 2020 as can be seen from foregoing para no. 56 & 57 above.

81. As regards to the decision in the case of Slim Akabar Ali Nanji on which the Financial Creditor has placed its reliance, We are of the view that the facts & circumstances of the case in hand are different and distinguishable both on facts and legality from the decision in the case of Slim Akabar Ali, therefore, the ratio laid down by the Hon'ble Apex Court in that case is not mutates-mutanda applicable to the facts of the present case. Firstly; that the judgment by the Hon'ble Supreme Court in the matter of Salim Akbar Ali Nanji vs. Union of India & ORs. was passed in the year 2006 prior to IBC was introduced and in respect of recoveries by Banks after writing off the NPAs. Secondly; that the judgment of Salim Akbar Ali Nanji was seen in the eyes of the guidelines issued by RBI and the said Judgment as mentioned in para 26 of SC order was passed only in respect of the Banks. In view thereof, the contention raised by the Senior Counsel for CD that "the Judgment in the matter of Salim Akbar Ali, in view of the promulgated Sections 129-134 of the Companies Act, 2013, is not applicable to the facts of the present case in much as that the present Company BPSL is a Public Limited Company and not a Banking Company and is not Governed by RBI Regulations Act,

Sd

Sd

1934 and Banking Regulations Act, 1949" carries substantial force in the facts and circumstances of the present case.

82. The investigation report of the SFIO also cannot be ignored and has to be considered. The SFIO Report as reproduced in para 24 above mentions that pursuant to investigation, the advances to 26 parties were found to be bogus and funds have been siphoned off from the BPSL. These funds were allegedly infused as equity capital or unsecured loans in CUIs and other entities namely ... Nova Iron & Steel Ltd. This report also confirms the figures of loan amount of Rs 151 crore allegedly siphoned of by BPSL to NOVA. Thus, it being a collusive transaction, the ratio laid down by Hon'ble Apex Court in ***Phoenix Arc Private Limited v. Spade Financial Services Limited, Civil Appeal No. 2842 of 2020*** holding that 'the commercial arrangements that are collusive in nature do not constitute financial debt' is applicable to the facts of the present case.

83. We further observed that as on the date of filing the petition no debt exists in the books of the Lender. The writing off the debt by the lender in its books of account during the financial year 2019-20 and waiving of its right of recovery by the SRA in the resolution Plan which was approved on 05-09-2019 by NCLT, Mumbai cannot be a coincidence but indicate close correlation between writing of such loan and waiver of its right to recovery by the SRA as is manifest from the Resolution Plan. Therefore, the amount once written off by the lender in its books during the financial year 2019-20, the right to recover such amount written off stands waived unless the provisions of write back of such debts as envisaged under section 129 to 134 of the Companies Act, 2013 are complied with wherein; it provides for re-opening of the accounts of the Company with the approval of the NCLT, and without taking recourse to that the amount once written off could

Sd

Sd

neither be written back nor such amount becomes recoverable by the Company.

84. It is thus seen that as per section 129 there exists no debt as on 31st march, 2020 and as on the date of filing of the petition. Section 129 of the Companies Act mandates that the financial statements of a company shall give a true and fair view of the state of affairs of the company and shall give the list of all the creditors as per schedule III which is not complied with in the present case. Section 130 of the Companies Act: Provides for re-opening of books of BPSL. However, no such Petition has been filed by BPSL or pending before this Hon'ble Tribunal. Therefore, decision in the case of ***Suresh Kumar and Anr. v. Central Bank of India Company Appeal (AT) (Insolvency) No. 1592 of 2024*** passed by the Hon'ble NCLAT is applicable. The Hon'ble NCLAT in para 14 held 'that there has to be a right to payment to be a claim for a claim to become a debt. In the absence of a right to payment, there cannot be a financial debt. Therefore, once the BPSL has written off the loan amount, its right to payment is waived, hence there exists no claim to become a debt.'

85. It is a trite law that primary onus to prove the debt & default under IBC lies on the Lender with reference to its financial statements which in the present case, the lender could not prove, hence failed to discharge the onus cast on it. The reliance on the entry in the books of borrower CD becomes relevant only for the purpose of acknowledgement for calculating the limitation under section 18 of Limitation Act, 1963, only when such entry of loan simultaneously also appears in the books of the lender in that relevant financial year. But this is not a case here in the present case as the lender has already written off the debt in question in the financial year 2019-20 and no debt appears in the books of the lender after 31st March, 2020.

Sd

Sd

86. The definitions of **'claim'** and **'debt'** under the Insolvency and Bankruptcy Code require a clear and unequivocal indication of the debt and claim in the financial records of Financial Creditor. Since, books of account of Financial Creditor do not reflect any outstanding dues payable by Corporate Debtor, the foundation of the claim becomes untenable. In such a scenario, no liability can arise, irrespective of the circumstances.

87. The record of default issued by NeSL, which is annexed at Exhibit 13 at page 757 of the company petition, clearly states that "the debt is disputed". Hence, no default. Furthermore, the Record of Default was filed and registered with NeSL on 01.02.2024. Therefore, as on the date of filing, no debt is due and payable according to the Record of Default submitted by the Financial Creditor.

88. In view of the above and after taking into consideration all the cumulative factors and the Judicial decisions, we are of the considered view that **'no debt'** exists in the present case, hence question of default does not arise. Accordingly, the issue No. II (b) framed above is answered in Negative.

89. It is found that the essential ingredients for the admission of the petition u/s 7 of the IBC i.e. existence of a financial debt and occurrence of default has not been established. Accordingly, **CP(IB) No. 34/CB/2024** stands **Dismissed** and **IA(IB)/240/CB/2024** stands **disposed of** in terms of the detailed order passed.

Sd/-

BANWARI LAL MEENA
Member (Technical)

Sd

CHEEKATI RADHA KRISHNA
Member (Judicial)