agritech
(India) Limited
(CIN L01110MH1993PLC073268)

17th December 2025

The Manager-Listing
BSE Limited
Phiroze Jeejeebhoy Towers,
Dalal Street,
Mumbai-400001

BSE Code-537292

The Manager- Listing
National Stock Exchange of India Ltd.,
Exchange Plaza, Bandra-Kurla Complex
Bandra (E)
Mumbai-400051

NSE Code-AGRITECH

Subject: Intimation regarding dismissal of Corporate Insolvency Resolution Process (CIRP) against Techindia Nirman Limited.

Dear Sir / Madam,

Pursuant to Regulation 30 read with Schedule III of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, this is to inform you that the Corporate Insolvency Resolution Process (CIRP) initiated against Techindia Nirman Limited by Agri-Tech (India) Limited under the provisions of the Insolvency and Bankruptcy Code, 2016 has been dismissed / set aside by the Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi, vide its Order dated 15 December 2025 passed in Company Appeal (AT) (Insolvency) No. 970 of 2025.

The Copy of order is attached for your reference and record.

Thanking You.

Yours faithfully,
For Agri-Tech (India) Limited,

Rajendra Balmukundji Sharma
Digitally signed by Rajendra Balmukundji Sharma
Date: 2025.12.17 15:41:35 +05'30'

Rajendra Sharma
Chief Financial Officer

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 970 of 2025

[Arising out of the Order dated 25.04.2025, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench) in IA/841/2025 in C.P (IB) No. 787/MB/2024]

IN THE MATTER OF:

Balkishan Shrikisan Baldawa
S/o Shrikisan Shivlalji Baldawa
Plot No. 16, Venkatesh Nagar, Jalna Road,
Opposite SFS, Aurangabad,
Maharashtra – 431001 **...Appellant No.1**

Versus

1. **Agri-Tech (India) Limited**
   Through its Directors
   CIN: LO111OMH1993PLC073268
   Having its registered office at:
   Nath House Nath Road, Aurangabad,
   Aurangabad, Maharashtra,
   India – 431005 **...Respondent No.1**

2. **Techindia Nirman Limited**
   Through its Resolution Professional
   CIN: L45200MH1980PLC023364
   Nath House Nath Road, Aurangabad,
   Aurangabad, Maharashtra,
   India – 431005 **...Respondent No.2**

3. **Vallabh Narayandas Sawana**
   Resolution Professional of Techindia
   Nirman Limited
   IBBI Registration No. IBBI/IPA
   001/IP-P-02652/2022-2023/14114
   Building No. 11, Flat No. 505,
   Regency Sarvam, Ganesh Mandir
   Road, Titwala (East), Kalyan, Thane,
   Maharashtra – 421605 **...Respondent No.3**

Present:

For Appellant : Mr. Amar Dave, Sr. Adv. with Mr. Rohit Gupta, Ms. Aakashi Lodha, Adv.

For Respondent : Mr. Partho Sarkar, Mr. Kanishk Garg, Adv. for R-1.

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

[Per: Arun Baroka, Member (Technical)]

The Appellants herein namely Balkishan Shrikisan Baldawa had filed an IA No. 841 of 2025 in C.P (IB) No. 787/MB/2024 under Section 60(5) read with Section 65 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the code") wherein the highlighted fraud perpetrated by Respondent Companies Respondent No.1[1] – Agri-Tech (India) Limited - Financial Creditor and Corporate Debtor – Respondent No.2[2] - Techindia Nirman Limited. Both of them are related party and it is claimed that in collusion with each other they filed for initiation of Corporate Insolvency Resolution Process (CIRP) proceedings.

2. In February, 2025, the Appellant filed an I.A. No. 841 of 2025 under Section 60(5) read with Section 65 before NCLT seeking recall of CIRP order and for a penalty under Section 65 of the Code on several grounds noted hereinafter by us. The relevant reliefs which were sought by the Appellants in I.A. 841 of 2025 are noted as below (@ 255 APB):

[1] Respondent No.1 – Financial Creditor – Agri-Tech (India) Limited
[2] Respondent No.2 – Corporate Debtor – Techindia Nirman Limited

"i) That this Hon'ble Tribunal be pleased to recall/set aside/vacate the Order dated 02.01.2025 initiating the CIRP against Respondent No. 2;

ii) That this Hon'ble Tribunal stay the implementation of the Order dated 02.01.2025 during the pendency and till the outcome of the present Application

iii) That this Hon'ble Tribunal stay the CIRP initiated against Respondent No. 2 vide Order dated 02.01.2025 during the pendency and till the outcome of the present Application;

iv) This Hon'ble Tribunal be pleased to impose a penalty on the Respondents as prescribed under Section 65 of the Code;

v) This Hon'ble Tribunal be pleased to direct an independent investigation by a reputed Forensic Auditor on determining the genuinity of the Inter Corporate loan granted by Respondent No. 1 to Respondent No. 2 and other connected matters; and

vi) Pass such other order(s) as may be necessary as this Hon'ble Tribunal as it may deem just and proper in the interest of equity and justice."

3. This I.A. No. 841 of 2025 was dismissed vide order of Adjudicating Authority dated 25.04.2025. The Appellant has come in Appeal against this order.

Submissions of the Appellant

4. The Appellant, Balkishan Shrikishan Baldawa, is the shareholder in both Respondent No.1, Agri-Tech (India) Limited (Financial Creditor), and Respondent No.2, Techindia Nirman Limited (Corporate Debtor). The

Appellant holds 63059 Equity Shares in the Respondent No. 1 and 163064 Equity Shares in Respondent No. 2. The Appellant is also supported by other shareholders who executed a power of attorney in his favour, and the Appellant and the other shareholders hold 342880 Equity Shares in Respondent No.1 and 1997711 Equity Shares in Respondent No.2.

5. It was brought to our notice by the Appellant that sometime in August 2024 AGM of both Financial Creditor – Respondent No.1 – Agri-Tech (India) Limited and Corporate Debtor – Respondent No.2 - Techindia Nirman Limited was called vide separate notices dated 19.09.2024 for the CD and 25.09.2024 for Financial Creditor. In the AGM of the Corporate Debtor all the resolutions including relating to appointment of the Promoter / Director / Managing Director, materials relating to related parties' transactions and annual reports and accounts were rejected. It is claimed that the steps of the Corporate Debtor – Respondent No.2 - Techindia Nirman Limited to take control by the promoter were rejected by the shareholder. Immediately, thereafter on 25.09.2024, the AGM of Financial Creditor – Respondent No.1 – Agri-Tech (India) Limited was held wherein similar situation prevailed and the resolution for approval of material for related party transactions were rejected.

6. Appellant claims that sensing that they have lost control of the Corporate Debtor – Respondent No.2 - Techindia Nirman Limited, they have filed a petition under Section 7 of the Code on 17.10.2024 against the Corporate Debtor – Respondent No.2 - Techindia Nirman Limited. In which they claimed a

debt of ₹86 crores i.e. ₹ 65 Crores along with interest as financial debt on the basis of an agreement dated 11.05.2021. Appellant claims that this is contrary to the audited records which show that there was nil rate of interest for something which was an advanced being operational in nature and which was not a financial debt. Furthermore, there was no agreement on the other hand, in the Section 7 petition, 12% interest was asserted by Corporate Debtor – Respondent No.2 - Techindia Nirman Limited. Basis the agreement and which was a non-existent agreement. Appellant claims that he agreement is backdated by three years. Moreover, the payments were already made and the agreement was without proper stamp duty. Appellant also brings to our notice that filing of Section 7 petition is to be disclosed to the stock exchanges as per Regulation 30(2)6) read with Clause 6 Part A Schedule III of the LODR.

7. On 02.01.2025, CIRP was initiated by NCLT. Appellant claims that the order of the Adjudicating Authority does not reflect that the aspect of related parties was considered or placed before the Bench by the Financial Creditor – Respondent No.1 – Agri-Tech (India) Limited. Appellant also brings to our notice that as appearing in the impugned order, the same management proposes a settlement and then rejects it, this is noted in the impugned order at para 9 &10.

> "…
>
> 9. Undisputedly, there is challenge to the jurisdiction of this Tribunal to pass an Order in C.P. (IB) 787/2024. Further, the Code does not contemplate issuance of any notice to any stakeholder in a Petition u/s 7 of the Code while adjudicating the initiation of CIRP proceedings except the Corporate Debtor itself. The Applicant's prayer

for recall is premised on the ground that the Order dated 02.1.2025 was obtained by suppressing that (a) the Respondent No. 1 and Respondent No. 2 are managed by same set of persons controlling the majority of Board of Directors of both the companies; (b) the loan agreement placed before this Bench is a sham agreement to prove existence of financial debt while in fact loan was taken for operational purposes; (c) the Petition was filed to gain control of the Corporate Debtor led by rejection of all resolutions by the shareholders in the Annual General Meeting held on 25.9.2024 whereat all resolution seeking adoption of annual financial statements for the year ended on 31.3.2024, appointment of three directors from Kagliwal Family (relatives of director in control of both the companies), and material related party transaction were rejected by 66.77% vote by the shareholders.

10. On perusal of case records of CP (IB) 787 of 2024, we note that the audited financial statements of the Corporate Debtor and the Respondent No. 1 financial creditor for the year ended 31.3.2022 and 31.3.2023 were placed on record by Respondent No. 1, which clearly reveals the composition of board of both the companies; the relatedness between them; and existence of financial debt. Accordingly, we do not find any substance in the allegation of suppression of any facts to obtain an order of admission u/s 7 of the Code. Nonetheless, it is trite law that (a) a petition u/s 7 or 9 cannot be dismissed merely for the reason that it is filed by a related party; (b) interest free loan also constitutes financial debt; and (c) existence of an agreement is not mandatory to prove a financial debt, which can be substantiated by other evidences. Even though, it is considered that the contents of the agreement do not support the accounting entries and statements in the audited financial statements, this aspect may not have much relevance if the amount claimed in default is acknowledged as financial debt in the audited financial statement. The contention that the financial statements acknowledge such advance having been taken for

"operational purpose" does not disqualify it to be held as financial debt, as (i) the working capital finance is also disbursed by lenders for operational purposes, and (ii) an advance can qualify as financial debt under the Code if there is disbursement of such advance for time value of money. The decision in case of Apnaghar Builders Pvt. Ltd. (Supra) is distinguishable as the issue therein was whether this Tribunal or Hon'ble NCLAT has jurisdiction to enquire into allegations of fraud."

8. Appellant also brings to our notice that the rejection of the resolution by shareholder at the AGM including related party transactions were not mentioned in the CIRP order.

9. Appellant also brings to our notice that CIR proceedings are going on and Financial Creditor – Respondent No.1 – Agri-Tech (India) Limited was classified as a related party and is not part of the CoC. CoC does not have any banks or financial institutions. Moreover, Corporate Debtor – Respondent No.2 - Techindia Nirman Limited has no tax dues. CoC has those company whose claim have arisen in last one year and there are IAs challenging the constitution of the CoC which is pending in NCLT. Appellant brings to our notice the constitution of the CoC which is as follows:

S. No.	Name of creditor	Amount of claim admitted	Voting percentage
1.	Gemag Multitrade Private Limited	1,87,57,479.45	37.77%
2.	Jeen Bhavani Metals Private Limited	1,03,22,191.78	20.79%
3.	Paharimata Commodities Private Limited	1,03,09,041.10	20.76%

4.	Maa Pahari Mercantiles Private Limited	1,02,69,589.04	20.68%
	Total	**4,96,58,301.37**	**100%**

10. Appellant also contends that assets worth ₹100 Crore of the Corporate Debtor – Respondent No.2 - Techindia Nirman Limited have not been included in the CIR proceedings and an IA is pending in NCLT were despite multiple opportunity is no reply had been filed by the resolution professional. In the meantime, CoC has approved the resolution plan for ₹25 cores with roughly ₹18 crores only for Financial Creditor – Respondent No.1 – Agri-Tech (India) Limited against debt of ₹86 crores. This implies that a promoter group initiated CIRP against its own company by related company which will have no directs say in CoC and then getting a comparatively meagre amount for their creditor company and keeping out valuable asset of the Corporate Debtor – Respondent No.2 - Techindia Nirman Limited. As a result of CIRP resolution plan, all public shareholders holding 82.44% of the Corporate Debtor – Respondent No.2 - Techindia Nirman Limited will be reduced to 5%.

11. It is brought to our notice that the way all the resolutions proposed in the AGM work defeated by the public shareholders. The Financial Creditor – Respondent No.1 – Agri-Tech (India) Limited and Corporate Debtor – Respondent No.2 - Techindia Nirman Limited management relies that they have lost control of the company and to get back the control they put in this scheme in place where an operational advance transaction which was standing in the books of

the company was used as a financial loan and by preparing an agreement on 100 rupees stamp paper filed Section 7 application as if it is a financial debt.

Submissions of Respondent No1-FC

12. The Respondent No.1 claims that its claim in respect of the Financial Claim stands firmly established on the following incontrovertible pillars:

a) Existence of a valid loan agreement: A duly executed Loan Agreement entered into between Respondent No.1 and Respondent No.2, in terms whereof the financial assistance was advanced and the clause of levying the interest @ 12% p.a. on compounding basis, calculated monthly, from the date of disbursement of the loan till the final settlement date, [Pg. 134 APB]. The said agreement was executed with free consent and in sound disposing mind.

b) Respondent No. 1 had duly complied with the mandate of Sec. 186 of Companies Act, in terms of passing Resolution on 30th June 2020, [Pg. 145 & Pg. 146 APB] and the relevant compliances in terms of Form MGT – 14 [@142-144 APB].

c) The Loan Transaction(s) and the consequent default is groundless since above-mentioned features in the Financial Statements of Respondent No. 1, reflecting the Loan given to the Corporate Debtor (Respondent No. 2); and in the Financial Statements of Respondent No. 2 reflecting the Loan received from the Financial Creditor (Respondent No. 1).

13. The Insolvency and Bankruptcy Code, 2016 is a creditor-driven legislation, enacted with the primary objective of safeguarding the interests of creditors and ensuring timely resolution of insolvency. The scheme of the Code, particularly Section 7 read with Section 5(7) and 5(8) of IBC, provides that a "Financial

Creditor" may initiate the corporate insolvency resolution process upon the occurrence of a default in respect of a "financial debt", which includes loans advanced against the consideration for time value of money. In Appellate Tribunal is invited to the authoritative pronouncement by Hon'ble NCLAT in its adjudicatory jurisdiction in the matter of **Park Energy Pvt. Ltd. V/s State Bank of India and Anr.,** ***(2025) ibclaw.in 636 NCLAT,*** on the question of law governing locus of the shareholder to challenge the initiation of CIRP, which is dealt by us taken.

14. In the present case, the genuineness of the loan transaction stands duly established before this Hon'ble Tribunal by way of:

(i) the written loan agreement,
(ii) proof of disbursement via banking records, and corresponding entries in the audited financial statements of the corporate debtor.

These constitute unimpeachable evidence in support of the claim of Respondent No.1 as a financial creditor, as per the mandate of the Code.

15. The allegation of the Appellant branding the loan transactions as "sham and bogus" is nothing but a hollow and self-serving assertion, made in blatant disregard of the unimpeachable evidence placed on record. Respondent No.1 has firmly discharged its duty by establishing its claim on three unassailable pillars, namely:

(i) genuine and duly executed loan agreement evidencing contractual obligation under Section 10 of the Contract Act, 1872,

(ii) proof of disbursement of funds through lawful banking channels, as upheld by the Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. v. Union of India* [(2019) 4 SCC 17], and

(iii) the acknowledgment of such debt in the audited financial statements of the corporate debtor.

16. In the face of such cogent evidence, the Appellant's attempt to dismiss these transactions as sham is itself a sham plea, bereft of merit, unsupported by proof, and contrary to the very scheme of the Insolvency and Bankruptcy Code, 2016, which is a creditor-driven mechanism prioritizing the legitimate rights of creditors. Hence, the Appellant's contention deserves to be rejected at the threshold with the contempt it warrants.

17. The contention of the Appellant that Respondent No.1 and Respondent No.2 are related parties and that this Adjudicating Authority was unaware of such fact is wholly misconceived and misleading. It is ex-facie that the records demonstrate that the NCLT was very well aware that Respondent No.1 and Respondent No.2 had common persons and were therefore related entities within the meaning of Section 5(24) of the Insolvency and Bankruptcy Code, 2016.

18. In fact, it was the Appellant who had earlier filed an Interlocutory Application under Section 60(5) of the Code expressly alleging that the impugned transactions were sham, bogus and fraudulent and the admission of the CIRP

itself should be quashed, and in doing so, the Appellant himself reconfirmed the fact of the parties being related. The NCLT, having duly considered the said application, found no credibility or substance in the submissions of the Appellant, and accordingly disposed of the matter. Hence, the Appellant cannot now be permitted to approbate and reprobate by alleging suppression of facts before this Appellate Tribunal, when the very record shows that the related party status was not only disclosed but also adjudicated upon. Such contradictory pleas are nothing but an abuse of process, designed to mislead the appellate forum and frustrate the object of the Code.

19. The contention of the Appellant that it has been "defrauded" because no decision was taken in the Annual General Meeting held in September 2024 is not only legally untenable but also absurd on the face of it. To suggest that a Section 7 proceeding under the Insolvency and Bankruptcy Code, 2016 which requires no shareholder approval whatsoever could somehow be vitiated for want of an AGM resolution, is nothing short of clutching at straws. The law is settled beyond doubt that shareholder consent is relevant only under Section 10, and not under Section 7, and therefore the Appellant's attempt to import such a requirement is nothing but a frivolous red herring. Indeed, the NCLT, Mumbai, in its order dated 25.04.2025 in I.A. No. 841 of 2025, specifically noted this and rightly brushed aside the Appellant's contention. To now claim that shareholders have been defrauded because no decision was made in the AGM is laughable, presumptuous, and a complete distortion of law. The Appellant's submissions

border on the ridiculous, revealing a desperate attempt to mislead this Hon'ble Tribunal and derail the process, rather than engage with the merits.

20. The Appellant defeats itself, inasmuch as the Appellant has annexed, at pages 94–107 of the present appeal, the financial statements of both Respondent No.1 and Respondent No.2, which unambiguously evidence that a loan was advanced by Respondent No.1 to Respondent No.2, and that the same stands duly acknowledged in the books of Respondent No.2. Thus, the Appellant, by its own documents, has established the very debt and transaction which it now seeks to dispute, thereby fortifying rather than undermining the Respondents' case. When such clear and self-explanatory evidence is on record and within the knowledge of the Appellant, it is incomprehensible as to how and in what capacity the present appeal is at all maintainable. The appeal is nothing but a frivolous exercise, a self-contradictory pleading filed with the sole object of wasting the precious time of this Hon'ble Tribunal, and deserves to be dismissed with the contempt it warrants.

21. It is pertinent to note that the Appellant, in para 7.25 of the appeal, has mischievously and selectively quoted the order dated 25.04.2025 passed by the Hon'ble NCLT, thereby attempting to create an impression wholly contrary to the record. The Learned Bench had observed that *"there may be substance in the contentions made by the Appellant"*, a conditional remark, not an affirmation that there *is* substance. Further, the very same order clarified in unequivocal terms that if the promoters desire to regain control of the Corporate Debtor, their ability

to do so is strictly circumscribed under the Code, and they would have to meet the eligibility requirements laid down therein. Thus, far from supporting the Appellant, the order only reiterates the statutory position under the IBC. The Appellant's act of cherry-picking a phrase while omitting the qualifying context amounts to a deliberate misrepresentation and an attempt to misguide this Hon'ble Tribunal, and such conduct deserves to be deprecated as an abuse of process.

22. The Appellant, being a shareholder and promoter, had every statutory right under the Insolvency and Bankruptcy Code, 2016 to present a resolution plan before the Hon'ble Tribunal, subject of course to the eligibility criteria enshrined in Section 240A; however, the Appellant chose not to exercise this legitimate right. Having failed to avail himself of the remedy available under law, the Appellant now seeks to create a smokescreen by harping incessantly about imaginary rights which do not exist in the Code. This conduct only underscores the lack of substance in the appeal. Despite annexing in this very appeal, the very financials and documents which establish the Respondents' case beyond doubt, the Appellant has produced nothing of probative value to support his allegations and is merely beating around the bush with hollow rhetoric, in a manner that amounts to abuse of the process of this Hon'ble Tribunal.

23. Appellant is completely off track and has deviated from the very purpose of the present appeal, which was filed against the impugned order dated 25.04.2025. A bare perusal of the appeal shows that instead of addressing the

said order, the Appellant has gone on an unwarranted tangent, harping only upon the admission of CIRP. This is despite the fact that all material particulars and documents evidencing the loan transaction are annexed in the appeal itself, leaving no room for doubt. It is, therefore, both surprising and telling that the Appellant has chosen to ramble on irrelevant issues rather than engage with the core findings of the order. The Respondent reiterates that it has placed on record all that is required under the Code, while the Appellant, in sheer desperation, seeks to play the fool by branding genuine transactions as sham an allegation that stands demolished by the very material he has himself produced. The Hon'ble NCLT have relied upon the facts and evidences produced before it, despite this it seems like the Appellant have to say that the order in itself is infirmity in the order.

24. The Appellant's contention that, despite Respondent No.1 and Respondent No.2 being related parties with common management, their stances and decisions vary, is wholly misconceived. Naturally, the decisions of directors must vary depending on the fiduciary duty they owe to the distinct body of shareholders they represent; they are not permitted under law to act on personal whims but are bound to safeguard the interests of the company and its stakeholders. In the present case, the shareholders' interest of Respondent No.1 necessitated the filing of an application under Section 7 of the IBC against Respondent No.2, which was duly done. No resolution was ever passed to file a petition under Section 10, nor was such a course required. Most importantly,

there is no statutory bar under the Code prohibiting a related party from invoking Section 7 to recover a legitimate financial debt. Hence, the Appellant's submission is not only contrary to the settled legal framework but also a futile attempt to cloud the clear position that Respondent No.1, as a financial creditor, is fully entitled to maintain proceedings under Section 7 against Respondent No.2.

25. It is respectfully submitted that the loan advanced by the Financial Creditor under the Loan Agreement, though utilized for operational requirements of the Corporate Debtor, constitutes a *financial debt* within the meaning of Section 5(8) of the Insolvency and Bankruptcy Code, 2016, as it was a disbursal against consideration for the time value of money; the mere fact that the end use was for working capital or operational purposes does not transform it into an "operational debt" under Section 5(21), which is strictly confined to claims in respect of goods, services, employment, or statutory dues, as held in **Dr. B.V.S. Lakshmi v. Geometrix Laser Solutions Pvt. Ltd., Company Appeal (AT) (Ins.) No. 38 of 2017**, **Shailesh Sangani v. Joel Cardoso, Company Appeal (AT) (Insolvency) No. 616 of 2018**. therefore, the debt in question is enforceable only under Section 7 of the Code and not under Section 9.

26. In brief, Respondent vehemently argues the maintainability of the Appeal. The Respondent claims that the Appellant as shareholders do not have any locus to file this appeal and therefore it should be dismissed. Respondent claims that shareholders cannot be an aggrieved person and in

support of that he has produced various judgments which have been dealt by us separately. The judgments relied upon by it are Kanwar Singh, para 23, Orator, para 31, Sandeep Jain, para 21, Ayub Khan, para 9, 10, 11 Park Energy, para 18, SEBI, para, Penunsula, para 36, 37, 38

27. The Respondent relies upon the above-mentioned judgments to bring home the point that the Appellant cannot be aggrieved person in the CIR proceedings. Respondent also claims that it was a financial debt for the operations for the working of the Corporate Debtor – Respondent No.2 - Techindia Nirman Limited, which were provided as a working capital requirements and is a financial debt. Respondent also contends that they have never denied that both Financial Creditor – Respondent No.1 – Agri-Tech (India) Limited and Corporate Debtor – Respondent No.2 - Techindia Nirman Limited are related parties and there is no bar in having business transactions between the related parties. By advancing such a loan they have not committed any fraud.

Submissions of Respondent No. 3 - RP

28. The Petition bearing CP(IB)/787(MB)/2024 filed by Agri-Tech (India) Limited, the Financial Creditor, under Section 7 of the Code for initiating Corporate Insolvency Resolution Process ("CIRP") against Techindia Nirman Limited, the Corporate Debtor was admitted by the Hon'ble NCLT, Mumbai Bench on 02nd January, 2025. Public Announcement through Form A for submission of claims as required under section 15 of the IBC, 2016 and Regulation 6(2) of the IBBI (Insolvency and Resolution Process for Corporate

Persons) Regulations, 2016. The Form A was published on 8th January, 2025 in two different newspapers, one being The Free Press Journal in English and another in Mumbai Nav Shakti in Marathi. After the verification of the claims from the creditors, Committee of Creditors (CoC) was constituted of four unsecured financial creditors. The names of the CoC members are herein given below for clarity:

Sr. No	**Details of Creditors**	**Type of Creditors**	**% of voting rights in COC**
1.	Gemang Multitrade Private Limited	Unsecured Financial Creditor	37.77%
2.	Jeen Bhavani Metals	Unsecured Financial Creditor	20.79%
3.	Paharimata Commodities Private Limited	Unsecured Financial Creditor	20.76%
4.	Maa Pahari Mercentiles Private Limited	Unsecured Financial Creditor	20.68%

29. The AGRITECH INDIA LIMITED has filed the claim with the IRP as per the CIRP admission order along with the documents in FORM C as the financial creditor and had disclosed in the claim that it is a related party to the CD. Accordingly, the claim was admitted but the AGRITECH INDIA LIMITED is not included in the CoC and therefore not included in any decision-making process in the CIRP. The IRP has not received any claims from any Banks and there is no any debt / loan due to any BANKS from CD as per the financials of the CD as made available to the RP. IRP has not received any claims from the Tax

Authorities or any other statutory authorities except the stock exchange(s) for its pending dues as listing fees.

30. In the 1st CoC meeting held on 30.01.2025, with the consent and approval of the CoC members Mr. Vallabh Narayandas Sawana was appointed as the Resolution Professional of the Corporate Debtor. Further, the NCLT, Mumbai Bench in its order dated 04/03/2025 in IA No. 1082 of 2025 allowed the appointment of the Respondent No.3 as RP of Techindia Nirman Limited. Pursuant to Regulation 36A of the IBBI (Insolvency and Resolution Process for Corporate Persons) Regulations, 2016. The Respondent No. 3 has published Form G on 23rd February, 2025 in respective newspapers viz. Free Press Journal (English) and in Navshakti (Marathi). The last date of submission of Expression of Interest was 10th March, 2025. The Respondent submits that after the publication of EOI in Form G, the Respondent was approached by 8 potential Resolution Applicant and had received EoI from all 8 participants as follows, namely;

a) Harshil Agrotech Limited LTD
b) Malay Rohitkumar Bhow
c) New Era Cleantech Solutions Private Limited
d) Varad Ferro-Alloys Private Limited
e) Resurgent India Ltd
f) Consortium of Mr. Pradeep Kumar Kabra and M/s Bhartiya Management Solutions Enterprises.
g) Rooptara Tradecom Private Limited
h) Sawaca Enterprises Ltd

31. The RP had appointed the valuers to ascertain the values of the assets of the corporate debtor and the same was made available to the CoC for their decision making in the process. The details are attached to the IA for Plan Approval as filed before the NCLT for adjudication. On following dates the CoC Meetings were held and the CIRP was conducted accordingly:

Sr. No.	**COC Meeting**	**Date**
1	1st COC Meeting	30/01/2025
2	2nd COC Meeting	22/02/2025
3	3rd COC Meeting	24/03/2025
4	4th COC Meeting	30/04/2025
5	5th COC Meeting	09/05/2025
6	6th COC Meeting	29/05/2025
7	7th COC Meeting	02/06/2025
8	8th COC Meeting	10/06/2025
9	9th COC Meeting	20/06/2025

32. The RP has duly made the INFORMATION MEMORANDUM ("IM") and the REQUEST FOR RESOLUTION PLAN ("RFRP") and the same was duly made available to the PRAs in the matter. After due consideration of all the resolution plans submitted by all the PRAs and after giving them an opportunity to revise the plans submitted the Consortium of Varad Ferro-Alloys Private Limited, Varad Crop Science Private Limited and Yogesh Madhani Solutions (OPC) Private Limited, the PRA was taken for final consideration and approved in the 9th CoC meeting held on 20.06.2025. All the CoC members reconfirmed approval of Resolution Plan by sending e-mails on 21.06.2025. The RP has already filed the

Application u/s 30(6) before the Adjudicating Authority for approval of the Resolution Plan bearing IA (IBC) (Plan)/75 (MB)/2025, which is pending for adjudication before the NCLT/AA. The RP/ Respondent No. 3 as under his duties under the provisions of the Code being the RP of the Corporate Debtor had appointed Mr. Rupesh Pachori (FRN: 024651C), Chartered Accountant, as Transaction Auditor to conduct the transaction audit / forensic audit to identify any transaction falling within the scope of Sections 43, 45, 50 and 66 of the Code.

33. The RP has filed an Application under Section 43 of the IBC, 2016 for Preferential transaction before the NCLT, Mumbai Bench bearing IA(IBC) 3871(MB)/2025. The NCLT has already issued notices to the respondents to file the replies and the next date in this matter is 24th September 2025. The RP has not yet received any reply in the matter from the respondents. The RP / Respondent 3, in his capacity as the Resolution Professional, had no role whatsoever in the initiation, filing, or admission of the petition before the Adjudicating Authority under Section 7, which is the subject matter of the present appeal. The Respondent's name was merely proposed for appointment as the Interim Resolution Professional, and the Hon'ble Bench, exercising its discretion, was pleased to appoint him as IRP accordingly. Thereafter, the Committee of Creditors, in exercise of its statutory powers, resolved to confirm his appointment as the Resolution Professional, which was subsequently ratified and approved by the Hon'ble Adjudicating Authority, thereby vesting him with

the office of the Resolution Professional of the Corporate Debtor. Therefore, the RP has no comments / reply to make on the present appeal on any merits and/ or facts as the RP is nothing but the proforma respondent wherein the impugned order is challenging the admission of CIRP vide Order dated 02nd January 2025 and not on the conduct of CIRP process. The Respondent No. 1, AGRITECH INDIA LIMITED, which is the main respondent in the matter may satisfy the Bench on order passed by the NCLT for admission of the CIRP process. The RP has duly discharged all responsibilities and functions vested in him under the Insolvency and Bankruptcy Code, 2016 with due diligence, fairness, and integrity. In strict adherence to the statutory mandate enshrined under Sections 18 and 25 of the Code, the Respondent has faithfully carried out his obligations, acted without bias or prejudice, and upheld the highest standards of professional conduct, thereby fulfilling his duties to the fullest extent permissible under law.

Appraisal

34. Heard counsels of both sides and also perused the material placed on record. The main issues before us are:

- Whether the Appellants as shareholders have locus standi and in the facts and circumstances of the case the appeal is maintainable or not?

- Whether the initiation of CIRP has been done fraudulently or not.

35. The Appellants herein namely Balkishan Shrikisan Baldawa had filed an IA No. 841 of 2025 in C.P (IB) No. 787/MB/2024 before the Adjudicating

Authority under Section 60(5) read with Section 65 of Code wherein they highlight fraud perpetrated by Respondent No.1 – Financial Creditor and Corporate Debtor – Respondent No.2. Both of them are admittedly related parties and it is brought to our notice that, in collusion with each other, Financial Creditor filed for initiation of insolvency proceedings and it was not resisted by Corporate Debtor. The Appellant has sought to recall the order dated 02.01.2025 passed by the Adjudicating Authority initiating CIRP against the Corporate Debtor – Respondent No.2 - Techindia Nirman Limited and further requesting for imposing a penalty on the Respondents under Section 65 of the Code for fraudulent initiation of CIRP.

Maintainability of the Appeal

36. Respondent No.1 – Financial Creditor questions the maintainability of the appeal. Questioning the maintainability, the Respondent-FC brings to our notice para 8 of the daily order sheet of 02.09.2025 of this Appellate Tribunal reproduced herein below:

> "8. Ld. Counsel for the Respondent No. 1 vehemently argued that the appellant as a shareholder is not having any locus at all to challenge the admission of CIRP. In this regard Ld. Counsel for the Respondent No. 1 has relied on the law laid down by a coordinate Bench of this Appellate Tribunal in 'Park Energy Pvt. Ltd. vs. SBI', CA (AT) (CH) (Ins) No. 62 of 2023."

Respondent contends that since this Tribunal has taken a note of the fact that Appellant as a shareholder is not having any locus to challenge the admission of CIRP basis Park Energy (supra), therefore, the orders relating

to maintainability should be passed first. In this direction, it also relies on **Securities & Exchange Board of India vs. Mangalore Stock Exchange (2005) 10 SCC 274** wherein it was held that:

> "2. The primary question which has been raised in this appeal is whether the appeal is maintainable before the Securities Appellate Tribunal under the Securities and Exchange Board of India Act, 1992 against the order passed by the Board under Section 4(4) of the Securities Contract (Regulation) Act, 1956. It appears that the Tribunal has already passed an interim order on 20th September, 2004. The issue as to the maintainability of the appeal was raised by the appellant before the Tribunal and noted on 22th November, 2004. Despite this, the Tribunal has passed an order on 20th January, 2005, directing the appellant to consider the application made by the respondent for corporatisation and demutualisation dehors the order passed by the Board under Section 4(4) of the Securities Contract (Regulation) Act, 1956. Being aggrieved by the order dated 20th January, 2005 this appeal has been preferred. We are of the view that once the Tribunal has noted that the appeal had been challenged as not being maintainable, it should dispose of the issue of maintainability first before passing any further order. In that view of the matter, the impugned order dated 20th January, 2005 is stayed until the Tribunal disposes of the issue of maintainability. The Tribunal is requested to dispose of the issue as early as is conveniently possible, preferably within a period of 8 weeks from date."

We note that in the above cited judgment of the Hon'ble Supreme Court, the primary question was whether the appeal is maintainable before the Securities Appellate Tribunal under the SEBI Act, 1992 or not. In the above cited case, the Tribunal had already passed an interim order on 20.09.2004 and the issue as to the maintainability was raised by the appellant before the Securities Appellate Tribunal and noted on 22.11.2004.

37. But in the case in hand, this AT had heard the matter in detail on 02.09.2025 and basis that interim directions were issued. So, the present case is distinguishable and the above judgment of SEBI is of no assistance to the respondent No.1. In any case, the issues relating to the objections regarding the locus of the Appellant have been taken up by us hereinafter separately.

38. Furthermore, while challenging the locus of the Appellant, Respondent No.1 places its reliance on this Appellate Tribunal in **Park Energy Private Limited (supra)** wherein it was held that a shareholder cannot be an aggrieved person. Relevant part of the judgement is extracted below:

> "…
> 18. Once again, the answer to the conclusion given by BYJU Raveendran Judgment (supra) as contained in para 75, would be similar to the one which has already been answered by us in the preceding paragraphs. The Hon'ble Apex Court in the para 75 above was dealing with the issue of aggrieved person, in extension to the observation already made in the preceding part of the Judgment of BYJU Raveendran. The para 75 itself cannot be exclusively extracted to be read, as if the reference made to the word "any person or aggrieved person" as considered therein will include shareholders because it was made in the context of observation made in para 42 which limits the expression to a class of creditors and therefore it would not automatically be made applicable to the shareholders too, even if the Judgment refers, the term 'person aggrieved', as "any person" who would be affected by the order. The word aggrieved person would be the person who is affected by the order, would be a person who does not have any other forum or a platform under law available to safeguard his right or interest, arising from the proceedings which are being held before the Tribunal. However as far as the interest of the shareholders is concerned, it is protected by the agent or the authority appointed by the NCLT i.e., Resolution Professional, or the liquidator, where the liquidation has been ordered and the shareholders are taken care of by the aforesaid two agents who are appointed by the court under law. Therefore, the proceedings at the behest of the shareholders, in their individual capacity will not be maintainable as in case the shareholders

> are permitted to maintain the proceedings under the I & B Code, it would run contrary the very object of the Code of timely resolution of insolvency, and would rather be an abuse the process, in a proceeding where time plays an important role to conclude the proceedings in a time bound basis."
>
> [Emphasis supplied]

39. We note that in the above cited judgment, it was held that the word aggrieved person would be a person, who does not have any other forum or a platform under law available to safeguard his right or interest arising from the proceedings, which are being held before the Tribunal. However, as far as the interest of the shareholders is concerned, it is protected by the agent or the authority appointed by the NCLT i.e. RP or the Liquidator. We note that the above judgment is distinguishable from the present case. In the present case being a shareholder, Appellant had, through an IA under Section 60(5) r/w Section 65, approached the Adjudicating Authority and claimed fraudulent initiation of CIRP, which was dismissed by the AA and now there is appeal before us against that order. The Appellant is claiming collusion between the Respondent – Corporate Debtor and the Financial Creditor. Thus, the above judgment will not be of any help to the Respondent.

40. Respondent No 1 also placed reliance upon a similar judgment dated **29.10.2025** passed by this Appellate Tribunal. In **(Comp.) (App.) (AT) (Ins) No. 1393 of 2023** titled ***Peninsula Holdings and Investments Pvt. Ltd. v. JM Financial Credit Solutions Limited & Anr. (2025) ibclaw.in 887 NCLAT***, where this tribunal held:

> "36. The issue of whether a shareholder can maintain an appeal under Section 61 of the IBC has been conclusively settled by a three-member Bench of this Appellate Tribunal in 'Park Energy Pvt. Ltd. v. State Bank of India (2025 SCC OnLine NCLAT 1289)'. The larger Bench examined conflicting earlier judgments and laid down a uniform principle that the proceedings at the behest of a shareholder, being merely an investor with profit interest, but without administrative control or direct legal injury, are not maintainable under the IBC. The term 'person aggrieved 'under Section 61 cannot be expanded to include shareholders or investors.
>
> 37. The Judgement in Park Energy (Supra) also clarified that allowing shareholders to challenge insolvency orders would defeat the object of the IBC, which emphasizes speedy resolution and finality of proceedings. If shareholders were permitted to intervene or appeal, it would lead to multiple litigations and delays, contrary to the Code's objectives.
>
> 38. Once the Corporate Debtor is admitted into CIRP, Section 17 of the IBC automatically transfers the management and control of the company to the Interim Resolution Professional (IRP). The Board of Directors, and consequently all shareholders, lose their authority over the affairs of the company. The IRP/RP is the protector of the interests of the shareholders in such a situation. Thus, even if the Appellant had prior administrative control, that control ceased upon admission. The mere fact of holding 51% shares or being a "majority owner" does not confer a separate or superior locus under Section 61. The Appellant's attempt to distinguish Park Energy (supra) on the basis of being a majority shareholder or holding preference shares cannot succeed."

This judgment is also of no assistance as the facts in the present case are distinguishable as we had noted in Park Energy (Supra).

41. On the other hand, on the issue of the locus and maintainability of the appeal, the appellant places its reliance on **Independent Sugar Corporation Limited Vs. Girish Sriram Juneja & Ors. (2025) 5 SCC 209, para 24**. Appellant claims that "any aggrieved person" appearing in Section 62 or Section 61 of the Code must be understood widely and not in a restricted person. The relevant para is extracted as below:

> "24. Once the CIRP is initiated, the nature of proceedings are no longer in personam but rather become in rem. In light of the same, the expression "any person aggrieved" in the context of IBC has been held to be indicative of there being no rigid locus requirements to institute an appeal challenging an order of NCLT before NCLAT or an order of NCLAT before this Court. Similarly, in the context of the Competition Act, even those persons that bring to CCI information of practices that are contrary to the provisions of the Competition Act, could be said to be "aggrieved". Therefore, the term "any person aggrieved" appearing in Section 62 IBC and Section 53-T of the Competition Act must be understood widely and not in a restricted fashion.
>
> 25. In the present case, the appellant as an unsuccessful resolution applicant whose resolution plan could have otherwise been approved by CoC, satisfies the requirement of being aggrieved. This preliminary locus standi objection vis- à-vis the appellant, therefore, does not merit acceptance**."**
>
> [Emphasis supplied]

42. We note that Hon'ble Supreme Court has interpreted any aggrieved person to be not in a restricted manner but widely as it says that *"the term "any person aggrieved" appearing in Section 62 IBC and Section 53-T of the Competition Act must be understood widely and not in a restricted fashion."* Countering the above arguments, the Respondent brings to our notice para 197 of the same judgement **[Independent Sugar Corporation Limited (supra)]** and contends that the *meaning of aggrieved person should harmonise with the object of the Code*. The para is extracted below:

> "42. In a few cases, the Courts have declined to be bound by the letter when the letter frustrates the patent purposes of the statute. The learned J.C. Shah, J. in *New India Sugar Mills Ltd.* v. *CST*, noted that:
>
> > "… It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the legislature."

> The limitation of the purposive role of construction is that the interpretation shall not result in legislation by the Court. Hardship, inconvenience, injustice, absurdity and anomalous results are avoided while construing the statute they need be."

43. Respondent further contends that CIRP is a creditor driven process and not a shareholder driven process and therefore shareholders do not have any locus standi to maintain this appeal. It claims that this principle is enunciated very well in the statement of objects and reasons of the IBC, 2016 as noted below:

> "2. The objective of the Insolvency and Bankruptcy Code, 2015 is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development."

44. Respondent contends that in the backdrop of the above noted object of the Code, the appellant does not have locus standi to file this appeal.

45. From the above analysis, we observe that:

(a) The aforesaid judgment of **Park Energy Private Limited (supra)** pronounced on 22.07.20225 has no application in the present case, where the Appeal arises out of an order in the application filed by the Appellant under Section 60(5) and Section 65 of the Code, and not an order under Section 7 of the Code.

(b) **Park Energy Private Limited (supra)** also fails to consider earlier judgment of the Hon'ble Supreme Court in **Independent Sugar Corporation Limited (supra)** pronounced on 29.01.2025, wherein in the context of the use of the term "aggrieved party" in the Code, has been held that CIRP is a proceeding *in rem* and *"any person aggrieved"* must be understood widely.

(c) Therefore, **Park Energy Private Limited (supra)** will not apply to the present facts and circumstances where the application by a related party creditor has been disguised under Section 7 of the Code to circumvent the requirement of approval of the shareholders contemplated under Section 10 of the Code, as has been noted by us separately hereinafter.

(d) There is strong argument that the present transaction is a collusive transaction between the Corporate Debtor and the Financial Creditor, and the only person aggrieved are the public shareholder like the Appellant.

46. We have noted the contentions of both sides and find that the arguments presented by Respondent do not come in the way of the Appellant to be considered as an aggrieved person. The Code doesn't bar the Appellant to file an appeal. Section 61 of the Code clearly states that *notwithstanding anything to the contrary contained under the Companies Act, 2013, "any person aggrieved" by the order of the AA under this part may prefer an appeal*

to the NCLAT. The shareholders are the Appellant in this case and they are aggrieved by the order of the AA and interpreting the law in it widest terms and not in a restricted manner, we come to conclusion that the appellants have the locus to file an appeal and their appeal is maintainable. Even otherwise, we find that there are serious allegations of fraudulent initiation of CIR proceedings, which should be looked into by us. Accordingly, we further delve into the merits of the Appeal.

Is CIRP initiated fraudulently?

47. Now we delve into the issue whether the CIR proceedings have been initiated collusively by the Financial Creditor and Corporate Debtor and not for the resolution, but for other purposes as is alleged by the Appellant. Section 65 provisions are extracted as below:

> **"Section 65.** Fraudulent or malicious initiation of proceedings.
>
> (1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.
>
> (2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.
>
> [(3) If any person initiates the pre-packaged insolvency resolution process--
>
> (a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or

(b) with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.]"

48. Respondent No. 1-FC contends that appellant sought to make out nuances on Sec. 65 of IBC and Appellant's claims that it was not an issue before the respective Hon'ble Tribunal/s cannot be accepted, since the allegation of fraud by the instant Appellant is based on conjectures, and no case is made out as to how the instant Respondent benefits out of the CIRP, since post approval of Resolution Plan, even the shareholding of the instant Respondent No.1 is bound to be wiped out in a similar manner as that of appellant, and it defies rationale as to how someone commits fraud without deriving any benefit out of it; since the Appellant & Respondent No.1 are on the same footing in terms of the shareholding vis-à-vis the CIRP of Respondent No.2/CD. Thus, the appellant cannot carve out an exception for himself in the entire IBC mechanism which is being attempted by the appellant in the instant appeal, without establishing/ proving any purported fraud.

49. To find out whether the insolvency has been initiated for fraudulent purposes or not, we go into the background of the initiation insolvency in this case. We note that the Appellant, Balkishan Shrikishan Baldawa, is the shareholder in both Respondent No.1, Agri-Tech (India) Limited (Financial Creditor), and Respondent No.2, Techindia Nirman Limited (Corporate Debtor). The Appellant holds 63059 Equity Shares in the Respondent No. 1 and 163064 Equity Shares in Respondent No. 2. The Appellant is also

supported by other shareholders who executed a power of attorney in his favour, and the Appellant and the other shareholders hold 342880 Equity Shares in Respondent No.1 and 1997711 Equity Shares in Respondent No.2. The Appellant brings to our notice the purported fraudulent scheme of the common promoters of Financial Creditor – Respondent No.1 – Agri-Tech (India) Limited and Corporate Debtor – Respondent No.2 - Techindia Nirman Limited. Appellant brings to our notice that:

11.05.2021	The Financial Creditor / Respondent No.1 allegedly advanced a sum of ₹65,00,00,000/- to Corporate Debtor / Respondent No.2 for a period of 3 years from 01.04.2021. It is alleged that the Parties agreed that interest of 12% was payable as per the loan agreement executed between Parties.
2021 - 2024	In the Annual Return of the Corporate Debtor for FY 2021-2022, FY 2022-2023 and FY 2023-2024, it is indicated that the **rate of interest is NIL** (and not 12% as alleged by Financial Creditor) and the disclosure of outstanding balance also does not include any interest. It was also indicated in the Annual Report for FY 2022- 2023 that the advance was **operational in nature**. Further, the existence of any written agreement for extending any loan by Respondent No.1 to Respondent No.2 was negated by the Statutory Auditor in Audit Report for FY 2022-2023 and 2023-2024.
01.04.2024	The alleged date of default of payment by Corporate Debtor to Financial Creditor.

19.09.2024	In the annual general meeting of the Corporate Debtor / Respondent No.2, the public shareholders of the rejected all resolutions placed at the said meeting including re-appointment of directors from Kagliwal family.
25.09.2024	Similarly, in the annual general meeting of the Financial Creditor / Respondent No.1, the public shareholders rejected all resolutions including approval of material related party transactions and re-appointment of director from Kagliwal family.
17.10.2024	Immediately thereafter, unable to exert pressure on the public shareholders and to retain the control of the Corporate Debtor, the Respondent No.1 / Financial Creditor (in collusion with its related party, the Corporate Debtor / Respondent No.2), filed an application under Section 7 of the Code before the Ld. Adjudicating Authority, Mumbai (being CP (IB) 787(MB)/2024) ("Company Petition") for default in payment of ₹ 86,96,94,174/- (including interest @ 12%) by Respondent No.2.

50. We note that on 02.01.2025, CIRP was admitted by NCLT. Appellant claims that the order of the Adjudicating Authority does not reflect that the issue of related parties was considered or placed before the Bench by the Financial Creditor – Respondent No.1 – Agri-Tech (India) Limited. Appellant also brings to our notice that the same management proposes a settlement and then rejects it. This is noted in the Impugned order dated 25.04.2025 at para 9 &10:

"…

9. Undisputedly, there is challenge to the jurisdiction of this Tribunal to pass an Order in C.P. (IB) 787/2024. Further, the

Code does not contemplate issuance of any notice to any stakeholder in a Petition u/s 7 of the Code while adjudicating the initiation of CIRP proceedings except the Corporate Debtor itself. The Applicant's prayer for recall is premised on the ground that the Order dated 02.1.2025 was obtained by suppressing that (a) the Respondent No. 1 and Respondent No. 2 are managed by same set of persons controlling the majority of Board of Directors of both the companies; (b) the loan agreement placed before this Bench is a sham agreement to prove existence of financial debt while in fact loan was taken for operational purposes; (c) the Petition was filed to gain control of the Corporate Debtor led by rejection of all resolutions by the shareholders in the Annual General Meeting held on 25.9.2024 whereat all resolution seeking adoption of annual financial statements for the year ended on 31.3.2024, appointment of three directors from Kagliwal Family (relatives of director in control of both the companies), and material related party transaction were rejected by 66.77% vote by the shareholders.

10. On perusal of case records of CP (IB) 787 of 2024, we note that the audited financial statements of the Corporate Debtor and the Respondent No. 1 financial creditor for the year ended 31.3.2022 and 31.3.2023 were placed on record by Respondent No. 1, which clearly reveals the composition of board of both the companies; the relatedness between them; and existence of financial debt. Accordingly, we do not find any substance in the allegation of suppression of any facts to obtain an order of admission u/s 7 of the Code. Nonetheless, it is trite law that (a) a petition u/s 7 or 9 cannot be dismissed merely for the reason that it is filed by a related party; (b) interest free loan also constitutes financial debt; and (c) existence of an agreement is not mandatory to prove a financial debt, which can be substantiated by other evidences. Even though, it is considered

> that the contents of the agreement do not support the accounting entries and statements in the audited financial statements, this aspect may not have much relevance if the amount claimed in default is acknowledged as financial debt in the audited financial statement. The contention that the financial statements acknowledge such advance having been taken for "operational purpose" does not disqualify it to be held as financial debt, as (i) the working capital finance is also disbursed by lenders for operational purposes, and (ii) an advance can qualify as financial debt under the Code if there is disbursement of such advance for time value of money. The decision in case of Apnaghar Builders Pvt. Ltd. (Supra) is distinguishable as the issue therein was whether this Tribunal or Hon'ble NCLAT has jurisdiction to enquire into allegations of fraud."

51. When we look into the background in which Section 7 proceedings have been admitted, we find that both Financial Creditor and Corporate Debtor are admittedly related parties / associate companies. Financial Creditor had advanced a loan of ₹65 crores to Corporate Debtor (Respondent No.2) vide loan agreement dated 11.05.2021 and default was committed on 01.04.2024. The said liability is admitted by Corporate Debtor, which is a related party of the Respondent No.1 – Financial Creditor and the proposal to settle is refused by Financial Creditor. NCLT admitted the Corporate Debtor into insolvency vide order dated 02.01.2025. It appears that no opposition was made by Respondent No.2 and there was no genuine attempt to settle. From the perusal of the impugned order, we find that admission of insolvency has been done in a very mechanical manner. It is not noted in the impugned order that the two entities

namely Respondent No.1 and 2 are managed, owned and governed by the same management and they are related parties, which though not barred yet would require deeper scrutiny. The Board of Directors of the two companies is also more or less identical and they have common members of Audit Committee. The fact that the said companies are related is not even disputed. All these facts would have a bearing on the insolvency initiation.

52. We observe that the CIRP initiation order dated 02.01.2025 does not reflect that the aspect of related parties (Directors and Shareholders) was considered by the bench. We also note that the same management proposes a settlement on behalf of the Corporate Debtor and that it is rejected by the FC which is also the same management. This indicates pre-determined course of action to ensure insolvency against the Corporate Debtor succeeds. It is also noted that the rejection of the resolution by shareholders at the AGM, including the related party transaction was not mentioned in the order. All this indicates collusiveness between the FC and CD.

53. In February, 2025, the Appellant, who was aggrieved by the initiation of CIRP, filed an application under Section 60(5) read with Section 65 before NCLT seeking recall of CIRP order and for a penalty under Section 65 of the Code on the following grounds:

> "a) No explanation for the audit records as indicated above
>
> b) Section 7 Petition is not filed by CD or FC at any stage

c) Approval of Board of Directors under Section 186, Companies Act as produced [Pg. 145) is a general omnibus approval, and in terms of Section 186(4) full particulars of loan (for instance, Agreement, interest, etc.) not provided to shareholders.

d) Consequence of non-compliance with Section 186 under Section 186(13) is fine with imprisonment.
e) The notice for AGM send by FC and CD sent in August 2024 themselves seeking approval of related party transactions with each other under Section 188 of Companies Ac without any particulars of for what amounts/transactions. However, there is no denying the fact that particulars of audit records above indicate it is not a loan but at the highest an operation debt.

f) They also sought approval of shareholders which is even otherwise mandated under Regulation 23(4) LODR. Related party transactions is defined Regulation 2(zc) of LODR, and is broader than contracts/transactions under Section 188 of Companies Act. Under Regulation 23(4) read with 23(1) proviso LODR, no prior approval of material related party transactions (i.e. more than 10% annual consolidated turnover, Rs. 65Cr > annual consolidated turnover of roughly 0-1Cr of CD) by shareholders. This approval is rejected on 19.09.2025 for CD and on 25.09.2025 for the FC.

g) No renewal of the general/omnibus board resolution provided under Regulation 23(3)(e) of LODR.

h) No disclosure of filing of Section 7 Application under Regulation 30(2) & (6) r/w Clause 6, Part A. Schedule III, LODR"

54. The Appellant had filed the recall application before the NCLT to bring to its notice that the Respondent No.1 and 3 are admittedly related parties and CIRP has been initiated collusively and it is a case of a fraudulent initiation of CIRP. It had also sought relief under Section 65 of the Code.

55. The Adjudicating Authority vide order dated 25.04.2025 dismissed the above mentioned IA. While passing its order, the Adjudicating Authority made following observations in the impugned order, which are noted as below:

"12. The Applicant has also alleged that the Petition u/s 7 of the Code was fall out of all resolution seeking adoption of annual financial statements for the year ended on 31.3.2024, appointment of three directors from Kagliwal Family (relatives of director in control of both the companies), and material related party transaction were rejected by 66.77% vote by the shareholders and this fact of rejection of these resolution was suppressed from this Tribunal, which otherwise, could have been material fact for this Bench to conclude that the Petition was filed for wiping out public shareholders from the corporate debtor and not for the purpose other than resolution of corporate debtor. Though there may be substance in this contention, it is relevant to note that the Insolvency Resolution Process is in rem proceedings and the Corporate Debtor is sought to be resolved after inviting interest from public at large, wherein any of eligible person can submit its plan for resolution of corporate debtor. It cannot be presumed at this stage that the promoters of the Corporate Debtor shall unfailingly succeed in their designs, if there is one, to acquire the Corporate Debtor back as such promoter's ability to plan is well circumscribed in the Code and they shall have to pass those conditions to be eligible to come back.

13. At last, the violations of Companies Act or SEBI Regulations can be examined by those authorities and this tribunal cannot examine those aspects unless those aspects have a bearing on determination of existence of debt and default therein.

14. In view of the aforesaid, we are of considered view that present application fails to make out any case for recall of order on the ground of fraudulent or malicious initiation of CIRP. Accordingly, IA 841 of 2025 is dismissed and disposed of accordingly."

[Emphasis supplied]

56. We note that immediately after the public shareholders on 19.09.2024 and 25.09.2024 rejected the resolutions at the Annual General Meeting of the said Respondent companies, inter alia, for approval of material related party transactions and re-appointment of director from Kagliwal family, the Respondent No.1 filed the Company Petition under Section 7 of the Code, seeking initiation of Corporate Insolvency Resolution Process against Respondent No.2 i.e. its related party/associate company. The transaction as alleged by

Respondent No.1 to assert the financial debt, including interest and/or any written agreement, is contrary to disclosures of the Respondent Companies in their Financial Statements/Annual Returns / Audit Reports. Despite that, the Respondent No.2 has admitted its liability and then, on one hand, the Respondent No.2 has proposed to pay the principal amount of ₹65 Crores in 60 instalments and on the other hand, Respondent No.1 (with common directors) has refused to accept the proposal of Respondent No.2. It also appears from the order dated 02.01.2025 that the fact of the parties being related was not brought to the notice of the Ld. Adjudicating Authority. The above-stated facts also reveal a clear design by Respondent Companies (who have common management) to evade the requirement under Section 10 of the Code to seek approval of shareholders for voluntary insolvency resolution, and instead misuse the provisions of Section 7 of the Code to set at naught the shareholding of public shareholders.

57. Strongly refuting the arguments of the Appellant, Respondent No. 1 argues that to allege fraud, the Appellant relies solely on the statement of auditor in the Financials that there was no loan agreement. To rely solely on the statement of auditor in Financials to alleged fraud conflicts the authoritative pronouncement of law made by Hon'ble Supreme Court in the matter of **Devas Multimedia (P) Ltd. v. Antrix Corpn. Ltd**., **2022 SCC OnLine SC 46** – Para 126, wherein it was categorically stated that – "…*The auditor's report can neither be taken as gospel truth nor act as estoppel against the company. The statement in the auditor's*

report, is as per the information given to them or as per the information culled out to the best of their ability…". Appellant although had conceded that the agreement was produced before the Adjudicating Authority to establish debt and default for initiation of CIRP, but still persisted solely on the auditors' statement in financials to allege fraud, thereby acting contrary to the settled canons of law that "*Fraud has to be pleaded and proved*"[3]. Mere allegations basis on conjectures & surmises does not and cannot establish fraud. Respondent No1 contends that in the entire appeal & submissions the appellant has not manifest / established / proved his allegation of fraud at all even after the Ld. Bench asked the counsel to specifically argue what is the fraud. The mere answer given by the counsel that by way of CIRP admission the shareholding of the appellant is getting wiped out. It is the well-established IBC law that CIRP is a creditor controlled & run process and on admission of CIRP the shareholders have no standing as the value of shareholding gets zero / negative as technically and commercially company gets & declared insolvent & moreover the shareholding of not only appellant but also of the R1 is getting wiped out which is a legal phenomenon under IBC.

58. We note that it is undisputed fact that in and around 19.09.2024 and 25.09.2024, at the annual general meetings of Respondent No. 2 and Respondent No.1 rejected resolutions *inter alia* in respect of appointment of

[3] Ref.: Vishnu Vardhan v. State of U.P., 2025 SCC OnLine SC 1501 – Para 3
& Chandro Devi v. Union of India, (2017) 9 SCC 469 – Para 7

directors from Kagliwal family (promoters) and approval of material related party transactions. It is also undisputed that immediately thereafter, the Respondent No.1 filed an application under Section 7 of the Code against its related party, Respondent No.2. Further it is also undisputed that the filing of the said Section 7 Petition was not disclosed under Regulation 30[4] of the SEBI LODR to shareholders of the Respondent No.2/ Corporate Debtor, and CIRP was initiated on 02.01.2025.

59. We also note that the alleged Agreement do not support accounting entries and audited financial statements of the Respondent Nos. 1 and 2, and there may be substance in the contention that the Company Petition was filed to wipe out public shareholding.

60. We also note that after annual general meetings [19.09.2024 and 25.09.2024] of Respondent No. 2 and Respondent No.1 rejected resolutions *inter alia* in respect of appointment of directors from Kagliwal family (promoters) and approval of material related party transactions immediately thereafter, on 17.10.2024, the Respondent No.1 (which is related party of Respondent No.2), filed a petition under Section 7 of the Code against the Respondent No.2. Respondent No.1 claims that copy of resolution considered in AGM of September

[4] **Regulation 30 of SEBI LODR**
[Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015]

Disclosure of events or information.
30(1) Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material.

2024 wherein the related party transactions are rejected by the shareholders is not produced by the Appellant. But Respondent No.1 has produced one resolution which is part of the Notice of the AGM for 19th Sept 2024. We've gone through the resolution which is part of the AGM notice produced by the Respondent No.1 and we find that it is a very generic resolution for related transactions aggregating up to an amount not exceeding ₹250 Crs for the financial year. We note there is no specific bifurcation of related party transactions to individual entities to which the loan is being given. Moreover, this is being done in the financial year 2024 and even not approved by AGM and the monetary transactions had happened much earlier.

61. Respondent No.1 also claims that to chain certain events to stretch into the definition of fraud to suspect the proven debt & default, conflicts the known canons of law of evidence, as was ruled in the matter of **Union of India v. Chaturbhai M. Patel & Co., (1976) 1 SCC 747** wherein it is ruled that –

> "… However suspicious may be the circumstances, however strange the coincidences, and however grave the doubt, suspicion alone can never take the place of proof. In our normal life we are sometimes faced with unexplained phenomenon and strange coincidences, for, as it is said truth is stranger than fiction. …".

62. However, looking at the sequence of events and also the facts and circumstances of the case, we find the arguments of the Appellant to be convincing that Respondent No1 was unable to exert pressure on public shareholders, and therefore filed the Section 7 petition. We also note that

Respondent No.2, admittedly disclosed the Company Petition filed by Respondent No.1 to its shareholders only in January 2025, despite the fact that the Company Petition was filed in October 2024. We note that the same is contrary to Regulation 30 read with Schedule III (Item 16) of the SEBI LODR, which requires disclosure of any application being filed by a financial creditor for initiation of CIRP. It raises serious doubts about the intentions of both FC and CD and closes the options of other shareholders to agitate timely. It is for this reason the Appellant could file the Application belatedly upon becoming aware of the said proceedings. This indicates beginning of covering of fraud played by the common management of Respondent No.1 and Respondent No.2. Therefore, the judgment cited by Respondent No.1 is of no help as it is not a case of suspicion but indicates design to defraud the shareholders.

63. Even though the Adjudicating Authority records in the Impugned Order dated 25.04.2025 that there may be substance in the contention that the Petition was filed to wipe out public shareholders, yet it refused to recall the CIRP order dated 02.01.2025 on the pretext that it cannot be assumed that promoters of Corporate Debtor will succeed. In the background, we can unhesitatingly conclude that by such actions the Respondent Companies, with common management, resorted to Section 7 of the Code in an attempt to wipe out the shareholding (including public shareholding).

64. Furthermore, it is brought to our notice by the Appellant that fraud is being committed even during the CIRP. It is brought to our notice that while

Respondent No. 3 (RP) has asserted that the liquidation value as ₹10 Crores, however, he has failed to mention that there are Applications pending before the Adjudicating Authority to indicate while assessing the liquidation value, vital assets of the Respondent No.2 / Corporate Debtor have been omitted. For instance, including a parcel of land located at Itkheda, Aurangabad, Maharashtra, admeasuring approximately 8.65 acres, which alone appears to be worth significantly more than the liquidation value of ₹10,00,00,000/- indicated by the Respondent No.3, as a neighbouring parcel of land in the vicinity was sold in June 2025 at a rate of more than ₹17,00,00,000/- per acre (i.e. a total of approximately ₹150 Crore), based on a perusal of public records by the Appellant. The said Application and repeated orders passed by the Ld. Adjudicating Authority calling for response of the Resolution Professional are not part of the record. All these facts put the CIRP into a cloud.

65. We also note that the Adjudicating Authority observes in the Impugned Order that a perusal of the records of the Section 7 Petition (being the audited financial statements) shows that the Respondent Companies are related parties. However, the same factum of Corporate Debtor and Financial Creditor being related parties is not reflected in the CIRP order dated 02.01.2025 even though a mere mention in the fine print of statutory filings cannot constitute proper disclosure. The Adjudicating Authority passed the CIRP Order dated 02.01.2025, relying on admissions made by common management in respect of the alleged debt and default, and proposal and rejection for repayment of alleged debt of ₹65

Crores in 60 instalments by the same common management. To us, it is incomprehensible as to how the same set of persons, i.e., the common management behind both companies, could have made an offer through one company and rejected the same through the other company. It is blatantly evident that this was a mere tactic to cloud the analysis of the Adjudicating Authority.

66. We also note that the Respondent No. 1 filed the Section 7 Petition on the basis of purported Loan Agreement on 11.05.2021 claiming a financial debt of ₹65,00,00,000/- at interest rate of 12% p.a. for 3 years [pgs. 132-138, APB], on which the Respondent No.2 allegedly defaulted on 01.04.2024. Respondent No 1 claims that Appellant is relying on the Auditor's noting of Loan for Operations and is being termed as "Operational Debt". It claims the position in law being that *loan for operations / operational purposes* is a *"Financial Debt",* as was ruled in the matter of Hon'ble Supreme Court in the matter of **Orator Marketing (P) Ltd. v. Samtex Desinz (P) Ltd., (2023) 3 SCC 753 – Para 31**, wherein it is ruled that – *"Financial debt" would have to be construed to include interest free loans advanced to finance the business operations of a corporate body*. Strangely, extracts of Annual Reports of Respondent No.1 for FY 2021-22 to FY 2023-24 mention that the loan to Respondent No.2 is *operational in nature* and bears 'Nil' interest [pg. 139, APB]. The same shows that the alleged debt (if any) is an operational debt and one could not have initiated CIRP under Section 7 of the Code. Further Statutory Auditor's reports for FY 2022-2023 and 2023-2024

indicate that loans issued by Respondent No.1 do not carry an interest component and no interest payment schedule has been provided. [Auditor's Report @ para 3b, pg. 147, APB]. Further Annual Report of the Financial Creditor indicates that the alleged loan and advances were given without any written agreement [*extracted at* pg. 246, Ann. A/17, Vol.1]. The arguments presented by Respondent No. 1 do not appear to be convincing and are therefore rejected.

67. Even Adjudicating Authority *inter alia* records in the Impugned Order dt. 25.04.2025 that contents of the alleged Agreement do not support accounting entries and statements of audited financial statements [pg. 85, APB]. Furthermore, Adjudicating Authority treats "*operational in nature*" as *"operational purpose*" and holds that interest free loan also constitute financial debt. We observe that the AA has passed the order basis incorrect details provided by Respondent Companies. We observe that Adjudicating Authority ought to have looked into the facts and circumstances holistically that related parties have sought initiation of CIRP by providing incorrect details in respect of nature and particulars of alleged debt with an intention to mislead the Adjudicating Authority into initiating the CIRP.

68. With respect to violations of SEBI LODR regulations, it is claimed by the Respondent No 1 that these regulations do not apply for filing of Section 7 cases by FC. The material event is the admission of the CIRP and the same was duly intimated to the stock exchanges by FC and CD both. It further claims that even assuming appellant is right in his perspective of filing disclosure, the only

difference was there would have been some intervention in Section 7 proceedings but the same is done by Appellant even by filing IA seeking recall of CIRP order, which is outrightly rejected by NCLT.

69. We also observe that the Adjudicating Authority observed that violations of Companies Act, 2013, and SEBI LODR can be examined by authorities thereunder only [para 13, Impugned Order, pg. 86, APB]. However, we note that Respondent No.2, being a public listed company under the jurisdiction of the Securities and Exchange Board of India, with the common management behind Respondent Nos. 1 and 2 as per Regulations 23(3) and 23(4) of the SEBI LODR was mandated that omnibus approval for related party transactions is taken from audit committee, and thereupon, is only valid for a period of one year. Further all material related party transactions require shareholder approval. However, the material on record, including, particularly, the Annual Reports of Respondent Nos. 1 & 2, do not disclose any such omnibus and/or shareholder approval for the Loan Agreement dated 11.05.2021. No approval of the aforesaid transaction by Board and / or shareholders of the Company has been placed under Section 188 of the Companies Act, 2013. The Respondents have not produced any such approval before the Adjudicating Authority.

70. Appellant has brought to our notice that orchestrating such self-serving loan arrangements between related parties, especially when a common family is at the helm of both the companies, has been considered fraudulent by us under

Section 65, leading to vacation of CIRP initiation orders. Appellant places its reliance on the following judgements **M/s Santoshi Finlease Private Limited v. State Bank of India & Anr.,** judgment dated 05.03.2025, in Company Appeal (AT) (Ins.) No. 974 of 2023 and **Apnaghar Builders Pvt. Ltd. v. Intense Fitness and Spa Pvt. Ltd. (2024)** *SCC Online NCLAT 1384*. Civil Appeal Diary No. 4152 of 2025 is pending, where notice was issued by the Hon'ble Apex Court on 24.03.2025.

71. In M/s Santoshi Finlease Private Limited (supra) it was held that

> "35. …The filing of the Section 7 Petition by these individuals, while being Directors of the Financial Creditor, was not intended to seek a genuine resolution for the CD but rather to harm its interests, thereby demonstrating malicious intent. The Appellant is a related party to the CD, with common Directors during the relevant period when the alleged debt and default occurred. We find merit in the argument that the Mittal family members, who controlled both entities at the time, orchestrated the Loan Arrangement, making the claim self-serving and legally untenable. The Appellant and its related entities were actively involved in the management of the CD during the transactions in question, reinforcing the case for malice."
>
> 36. Thus, we find strength in the arguments of Respondent No. 1– SBI that the Appellant's Section 7 Petition was filed with ulterior motives. Consequently, we see no infirmity in the findings of the AA, as they are based on the material on record.
> 37.This Tribunal, in its judgment dated 05.01.2023, in the case of Wave Megacity Centre Private Limited vs Rakesh Taneja & Ors. (Company Appeal (AT) (Insolvency) No. 918 of 2022), held the following:
>
> > "15. When the Adjudicating Authority has recorded a finding that a Section 10 Application has been initiated fraudulently and maliciously, the Authority is not obligated to admit the Application, even if debt and default exist. Section 10 and Section 65, being part of the

same statutory framework, must be read together to give full effect to the legislative intent of the Code. If a corporate applicant initiates CIRP fraudulently or with malicious intent for any purpose other than insolvency resolution, holding that the Adjudicating Authority is bound to admit the Section 10 Application would contradict the statutory scheme under Section 65. If the conditions under Section 65 are met, the Section 10 Application may be rejected, even if debt and default are proven. Thus, Section 65 serves as an enabling provision, allowing the rejection of an application despite the establishment of debt and default, and the admission of a Section 10 Application is not mandatory..."

Applying this principle, the AA extended these observations to the Section 7 Petition, dismissing IB-662/2022 filed by the Appellant and allowing the Section 65 Application under the IBC, 2016, filed by SBI. Given the facts and circumstances of the present case, we find no infirmity in the AA's decision to impose a penalty of Rs 10 lakhs on the Appellant—M/S Santoshi Finlease Pvt Ltd."

[Emphasis supplied]

72. It is also brought to our notice that Civil Appeal No. 9937 of 2025 in the above matter was dismissed on 01.08.2025 by the Hon'ble Apex Court.

73. In the matter of **Apnaghar Builders Pvt. Ltd. (supra)** it was held that**:**

"37. The allegation of the Appellant is that in order to circumvent the proceedings initiated by the Appellant in the suit, a collusive application bearing CP (IB) No. 228/ND/2022 under Section 7 of the Code has been filed in which the impugned order has been passed to which the Appellant was not a party but as soon as the Appellant came to know, form public announcement made by the IRP about the CIRP of the CD, it filed the claim on Form B for an amount of Rs. 17,41,09,137/- and without prejudice to the filing of the claim, the Appellant has also filed the present appeal because the Appellant is aggrieved against the admission of the application under Section 7 of the Code which is according to it an act of collusion to defraud the appellant and other creditors.

> 38. …This amount has been assigned by way of an agreement dated 10.02.2020 on the basis of which the application under Section 7 has been filed, however, Respondent No. 3 who happened to be a director and shareholder in all three companies, namely, Navayuga, Respondent No. 1 and Respondent No. 2. In Navyuga he is director and 21.77% shareholder, in Respondent No. 1 he was a Promotor and director till 2015 and 33.34 % shareholder and in Respondent No. 2 he is a director & 66.66% shareholder which shows that this case shall come within Section 5(24) (m)(i) and (iii) of the Code as Respondent No. 3 is controlling more than 20% of the voting share of these companies and also the assignor…
>
> 42. In view thereof, we have no doubt in our mind that the petition filed by Respondent No. 2 against Respondent No. 1 was collusive and for a purpose other than for the resolution of insolvency and hence the impugned order by which Respondent No. 2 has pushed Respondent No. 1 into CIRP is hereby set aside. Appeal allowed. No costs."

Both above judgments support the case of the Appellants.

74. We also note that the Application was also filed under Section 65 of the Code to set aside fraudulent initiation of CIRP, whereas the Adjudicating Authority treated it mainly as only application for Recall and accordingly refused to exercise its jurisdiction. We note that there is no restriction under Section 65 of the Code to adjudicate the complete issue and considering it only on limited scope of recall is found to be erroneous.

75. Appellants also bring to our notice another aspect that if the common management had a *bona fide* interest in seeking initiation of CIRP, instead of resorting to Section 7 of Code through a related party, the Corporate Debtor could have followed the procedure under Section 10 of the Code. And under Section 10 of the Code, the promoters / directors of a company seeking initiation of CIRP require a *special resolution from shareholders or a resolution from at least*

three-fourths of the partners approving the filing. We are convinced with the arguments of the Appellants that after the Kagliwal family in cahoots with the directors/promoters of Respondent Nos. 1 and 2 failed to take control of Respondent No.2 through shareholder resolutions, the Company Petition was conveniently filed by Respondent No.1 against Respondent No.2 in respect of a loan sanctioned in 2021, for which no records have been tendered to show that there was any prior communication or efforts by Respondent No.1 for recovery. The said mechanism saves the common management from the requirement of a Special Resolution during a General Meeting with shareholders to enter into voluntary CIRP under Section 10 of the Code and allowing such use of Section 7 of the Code, will render Section 10 (as well as the protections therein) otiose.

76. Appellant also brings to our notice that CIR proceedings are going on and Financial Creditor – Respondent No.1 – Agri-Tech (India) Limited was classified as a related party and is not part of the CoC. CoC does not have any banks or financial institutions as its members. Moreover, Corporate Debtor – Respondent No.2 - Techindia Nirman Limited has no tax dues. CoC consists of those companies whose claim have arisen in last one year and there are IAs challenging the constitution of the CoC which is pending in NCLT. Appellant brings to our notice the constitution of the CoC, which is as follows:

S. No.	Name of creditor	Amount of claim admitted	Voting percentage
1.	Gemag Multitrade Private Limited	1,87,57,479.45	37.77%
2.	Jeen Bhavani Metals Private Limited	1,03,22,191.78	20.79%

3.	Paharimata Commodities Private Limited	1,03,09,041.10	20.76%
4.	Maa Pahari Mercantiles Private Limited	1,02,69,589.04	20.68%
	Total	**4,96,58,301.37**	**100%**

77. Appellant also brings to our notice that large number of assets of the Corporate Debtor – Respondent No.2 - Techindia Nirman Limited, with high value, have not been included in the CIR proceedings and an IA is pending in NCLT, where despite multiple opportunities, no reply has been filed by the resolution professional. In the meantime, CoC has approved the resolution plan for ₹25 cores with roughly ₹18 crores provided only for Financial Creditor – Respondent No.1 – Agri-Tech (India) Limited against debt of ₹86 crores. This implies that a promoter group initiated CIRP against its own company and by related company, FC will have no direct say in CoC (as not part of the CoC) and then getting a comparatively meagre amount in the resolution plan and also keeping out valuable assets of the Corporate Debtor – Respondent No.2 - Techindia Nirman Limited. With such a resolution plan, all public shareholders holding of about 82.44% of the Corporate Debtor – Respondent No.2 - Techindia Nirman Limited will be reduced to 5%.

78. Respondent No.1 has also canvassed that the Appellant has made averments beyond the contours of the pleadings, thereby conflicting with the settled position in law in the matter of **Bachhaj Nahar v. Nilima Mandal, (2008) 17 SCC 491 – Para 12 & 13**, wherein it was held that *pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable*

courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take. Thus, in the circumstances, any submission made beyond the pleadings being considered for adjudication, and being held against the instant Respondent will be to the prejudice of the undersigned, since the instant Respondent had no opportunity to contest the same in the absence of any opportunity to contest during the oral hearing, thereby infracting the rules of natural justice. Respondent No.1 claims that allegation of fraud in the initiation of CIRP and the said argument was never the subject matter of the material before the Adjudicating Authority, nor in the Appeal filed. Hence the infraction of law for the Appellant is ex-facie in terms of the law settled in the matter of **Ram Sarup Gupta v. Bishun Narain Inter College, (1987) 2 SCC 555 – Para 6,** wherein it was held that "*…It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet*".

79. We find that the main issue before the Adjudicating Authority and before us in the appeal is relating to fraudulent initiation of CIRP and at the Appellate stage on the question of maintainability, for which arguments have been made by both sides. The pleadings relate to a fraud basis which CIRP has been initiated and for arriving at a conclusion, sufficient material exists on record. We don't find anything beyond the pleadings. We therefore do not

find the arguments of the Respondent No1 to be convincing and we reject these arguments of the Respondent.

Conclusion:

80. In the facts and circumstances, when Appellant has made out a case for fraudulent initiation of CIR proceedings and both the FC and the CD are related parties, we unhesitatingly conclude that Appellants are aggrieved person and have the locus to file the Appeal and the Appeal is maintainable. We also conclude that FC and CD being related parties have collusively filed the Section 7 application and got CD admitted into CIR Proceedings and this is case of a fraudulent initiation of CIR proceedings. We also conclude that the filing of Section 7 in this case is not for resolution of the Corporate Debtor but for some other purpose. Had the purpose been the resolution of the CD, the offer of settlement of Corporate Debtor could have been accepted by FC, especially when both have the same management. CD could have explored Section 10 route under the code. This is a sure way of wiping out major shareholding. We also notice pending transaction audit and PUFE application before Adjudicating Authority. This indicates a nefarious pattern. We thus conclude that the initiation of CIRP against CD has been done collusively with FC and as discussed herein earlier, it is a fraudulent initiation of CIRP and should be dealt with a heavy hand as per Section 65 of the Code.

81. Basis above analysis we don't hesitate to come to a conclusion that Adjudicating Authority erred in dismissing the Appellant's Application under

Sections 60(5) and 65 of the Code, despite clear evidence that the Section 7 proceedings were collusive device between related parties to wipe out the interests of public shareholders of Respondent No.1.

Orders

82. We hold that CIRP proceedings have been initiated fraudulently and accordingly, we set aside the CIRP proceedings under Section 7 of the Code against Respondent No. 2-CD and also under Section 65 of the Code, we impose a cost of ₹25 lakhs (Rupees twenty-five lakh only) against Respondent No. 1 – Financial Creditor.

83. We also refer the matter to IBBI to look into the facts and circumstances of the case and also the conduct of the Resolution Professional. Furthermore, the affairs of this Company may also be looked into by MCA as per appropriate applicable provisions of law.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

New Delhi.
December 15, 2025.
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