NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1 and P3.

IVN.P (IBC)/ 20(MB)2026

IN C.P. (IB)/ 1231(MB)2025

&

C.P. (IB)/1231(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **06.08.2026**

NAME OF THE PARTIES: **C.M.P Industrie S.R.L**

Vs

CMP Euro Technoplast Private Limited

Under Section 7 and 60(5) of the IBC/Rule 11 of NCLT, Rules, 2016.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate order. Detailed order is being uploaded on the NCLT portal today.

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

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IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – VI

<u>CP(IB)/1231/MB/2025</u>

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

<u>In the matter of</u>

CMP INDUSTRIE S.R.L.
(Formerly known as CMP INDUSTRIE SPA)
Company incorporated under the Laws of Italy,
having its office at
Via G.A. Fasolo, 9, Vicenza, Italy 36100
Email: silvano.spiller@cmpindustrie.it

... Applicant/Financial Creditor

Vs.

CMP EURO TECHNOPLAST PVT. LTD.
Having its registered address at:
Shop No. 10, Plot No. 62,
Aggarwal Trade Centre,
Sector 11, CBD Belapur, Thane,
Maharashtra – 400614
Email: singhjatinder@cimpeuro.com

... Respondent/Corporate Debtor

<u>INTERVENTION PETITION NO. 20 OF 2026</u>
<u>IN</u>
<u>COMPANY PETITION (I&B) NO.1231 OF 2025</u>

(Application under Section 60 read with Section 65 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016)

<u>CHETAN DOSHI</u>
An adult Indian inhabitant,
Residing at, 102/12, Milap,
Sion (West), Mumbai 400022.

.... APPLICANT/INTERVENOR

IN THE MATTER BETWEEN:

CMP INDUSTRIE S. R. L.
Company incorporated under the
laws of Italy, having its office at:
Via G. A. Fasolo, 9, Vicenza,
Italy 36100
Email: silvano.spiller@cmpindustrie.it

... Financial Creditor/Respondent

Vs.

CMP EURO TECHNOPLAST PVT. LTD.
having its registered address at:
Shop No. I0, Plot No.62, Aggarwal
Trade Centre, Sector 11,
CBD Belapur, Thane,
Maharashtra -400614
E-mail: singhjatinder@cmpeuro.com

... Corporate Debtor/ Respondent

Order pronounced on 06.08.2026

CORAM :

SH. NILESH SHARMA, HON'BLE MEMBER (JUDICIAL)

SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE (IN HYBRID MODE)

For Applicant in CP 1231/ 2025	**:**	Adv. Mr. Rohit Gupta a/Digant Bhatt & Adv. Mr. Solanki i/b Kochha & Co.
For Respondent in CP 1231/ 2025	**:**	Adv. Mr. Nirman Sharma a/w Adv. Mr. Ansh K. Adv. Mr. Alhan K. Adv. Ms. Gauri Sansare i/b Avesh K.
For Applicant in IVN.P 20/2026	**:**	Adv. Mr. Rohit Gupta a/w Adv. Mr. Digant Bhatt & Adv. Mr. Solanki i/b Kochha & Co.
For Respondent in IVN.P 20/2026	**:**	Adv. Mr. Nirman Sharma a/w Adv. Mr. Ansh K. Adv. Mr. Alhan K. Adv. Ms. Gauri Sansare i/b Avesh K.

<u>O R D E R</u>

***PER:* CORAM**

1. CP 1231 of 2025 is an Application filed under Section 7 of Insolvency and Bankruptcy Code, 2016 by ***CMP INDUSTRIE S.R.L. (Formerly known as CMP INDUSTRIE SPA), (hereinafter referred to as "the Financial Creditor")*** against ***The CMP EURO TECHNOPLAST PVT. LTD. (hereinafter referred to as "the Corporate Debtor")*** seeking commencement of CIRP, appointment of IRP and declaration of moratorium upon the Respondent.
2. Perusal of the Part I of the Application reveals that the Applicant is one ***CMP INDUSTRIE S.R.L. (Formerly known as CMP INDUSTRIE SPA), (***hereinafter referred to as **"the Financial Creditor)** "having its registered Office at Via G.A. Fasolo, 9, Vicenza, Italy 36100 Email: silvano.spiller@cmpindustrie.it.The Financial Creditor was incorporated on 02.04.1969.
3. Part II of the application reveals that the Corporate Debtor is one ***CMP Euro Technoplast Private Limited.*** The Corporate Debtor is registered under CIN: U25203MH2013PTC250785 and was incorporated on 05.12.2013. The registered office of the Corporate Debtor is located at Shop No. 10, Plot No. 62, Aggarwal Trade Centre, Sector 11, CBD Belapur, Thane, Maharashtra – 400614 Email: singhjatinder@cimpeuro.com.
4. Perusal of the Form III reveals that the Applicant has proposed the name of Mr. Indrajit Mukherjee having Registration Number: IBBI/IPA 001/IP-P-01533/2018-2019 /12450 as IRP in the Application.

5. Perusal of the Part IV reveals that Applicant has granted a loan of Euros 43,50,000/- (Euros Forty-Three Lakh Fifty Thousand Only) to the Corporate Debtor.
6. The amount claimed to be in default is equivalent Rs. 35,56,79,566/- (Indian Rupees Thirty-Five Crores Fifty-Six Lakhs, Seventy-Nine Thousand Five Hundred and Sixty-Six) as on August 31, 2025.
7. The Applicant is a company incorporated under the Laws of Italy having its headquarters in Vicenza, Italy, and is specialized in producing toys for food companies and plastic promotional items.
8. The Corporate Debtor is also into the business of manufacturing toys and when they were in need of the funds, for taking care of its capital expenditure needed for the acquisition of plant and machinery, construction of factory premises, working capital, and other general corporate purposes, approached the Financial Creditor for a loan.
9. Based on the representations made by the Corporate Debtor, Financial Creditor entered into various loan agreements as with the Corporate Debtor as per the applicable ECB/FCCB guidelines granting ECB facility of Euros 43,50,000/- to the Corporate Debtor ("ECB Facility"). The ECB Facility was registered with the Reserve Bank of India ("RBI") and was granted loan registration numbers respectively.
10. That the ECB Facility was disbursed in accordance with the terms and conditions of the respective loan agreements, and the Corporate Debtor had drawn the entire ECB Facility by 30.06.2016.
11. That in the ECB Agreements, a repayment schedule was also agreed between the Financial Creditor and Corporate Debtor as per which the

repayments were scheduled to start from 2018 in different tranches. Moreover, the loan agreement in regard to delay in repayments, also provided a default interest at the rate of 2% per annum, that shall be payable by the Corporate Debtor to the Financial Creditor.

12. Following the termination of the Corporate Debtors relationship with the Ferrero India Private Limited ("Ferrero Group"), the Corporate Debtor currently has no active business operations. This is because the sole contract that the Corporate Debtor had was with the Ferrero Group, and its termination has left the Corporate Debtor without any ongoing business engagements or revenue-generating activities.

13. The Corporate Debtor defaulted on timely repayment of the ECB Facility, due to which upon mutual understanding of the parties, repayment schedule was revised. However, the Corporate Debtor failed to fulfil its repayment obligations as per revised schedule, except for ECB 2 and ECB 4 (wherein interest is unpaid).

14. It is submitted that the Applicant had filed another Company Petition, which came to be dismissed for non-compliance with the office objections. The Applicant has explained in, great detail the fact and circumstances surrounding the dismissal of the earlier CP, which was not on merits.

15. That, the Applicant Financial Creditor submits that this case" is a fit case for the commencement of corporate insolvency resolution process against the Corporate Debtor. Hence, this present Petition.

16. Applicant has attached the following documents along with the present application :-

a. Copy of the details of transaction, by Financial Creditor to the Corporate Debtor depicting the details of disbursement of the amounts, is annexed as "Annexure G".

b. The working for the computation amount and days of default is annexed as "Annexure H".

c. Form C, record of Financial Information submitted with NESL is annexed as "Annexure I".

d. Copies of the Foreign Currency Loan Agreement executed between the Financial Creditor and the Corporate Debtor are annexed as "Annexure J & K" respectively.

e. Copy of the Demand Notice dated September 8, 2025, is annexed as "Annexure N".

17. Notice was issued by this Tribunal vide order dated **20.11.2025**.

<u>Contentions of the Corporate Debtor</u>

18. A reply affidavit dated 12.12.2025 was filed by the Respondent duly affirmed by Mr. Jatinder Singh, Director of the Respondent. The contentions of the respondent are summarized as below.

19. The Respondent was in requirement of substantial funds for meeting its capital expenditure, including but not limited to acquisition of plant and machinery, construction of factory premises, augmentation of working capital and for other general corporate purposes.

20. The present Company Petition arises out of the alleged External Commercial Borrowing facility extended by the Petitioner to the Respondent under (i) Foreign Currency Loan Agreement dated 5th

September 2014 for Euros 20,00,000/- and (ii) Foreign Currency Loan Agreement dated 25th May 2015 for Euros 10,00,000/- ("ECB Facility").

21. Without prejudice to the Respondent's contentions, it is submitted that the Corporate Debtor has been compelled to suspend its business operations owing to shareholders disputes, severe financial stress, prolonged market related constraints and non-availability of working capital.

22. Due to the closure of operations, the Corporate Debtor has been unable to generate revenue or maintain operational cash flows. Consequently, the Corporate Debtor is presently facing an acute liquidity crunch with no financial resources to meet even essential operational expenses, let alone discharge any alleged liability claimed by the Petitioner.

23. The shareholders disputes, financial distress and cessation of operations constitute a genuine and bona fide circumstance beyond the control of the Corporate Debtor, which negates any allegation of willful default. This financial collapse is a direct consequence of circumstances that are well documented in the correspondence exchanged between the parties, ongoing litigations and the evidence placed on record. At present, the Corporate Debtor has no working capital, no operational cash flow, no orders and no capacity to repay any sums, assuming without admitting that any sums are due.

24. The Respondent submits that its financial inability is not a willful default, nor can it be characterized as a commercial failure warranting invocation of insolvency proceedings by the Financial Creditor. Rather, it is a consequence of unprecedented operational collapse, shareholder

disputes, termination of key client contracts, and the inability of the shareholders to work together supporting the Indian operations. The Corporate Debtor does not have any means of finance and unable to repay the ECB Facility and the interest accrued thereon. In such circumstances, having meaningful resolution that helps in reviving the Corporate Debtor will be the most prudent and commercial step.

25. The Petitioner's attempt to initiate insolvency proceedings is on account of Corporate Debtor's shutdown, lack of cash flow and ongoing shareholder litigation.

26. It is therefore most respectfully prayed by the Respondent that the captioned Company Petition filed by the Petitioner may kindly be reviewed by the Tribunal keeping continuity and the resolution of the Corporate Debtor in mind.

ADDITIONAL AFFIDAVIT OF FINANCIAL CREDITOR

27. An additional affidavit dated 29.01.2026 was filed by the Financial Creditor duly affirmed by Mr. Silvano Spiller, authorized representative of the Financial Creditor. The contentions of the Applicant in the said affidavit are summarized as below:-

i. The Financial Creditor has filed the captioned petition under Section 7 of the Insolvency and Bankruptcy Code 2016 seeking initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor on account of the debt being due and payable to the Financial Creditor along with applicable interest.

ii. I repeat, reiterate, and adopt all that has been stated in the petition *in verbatim* as if the same shall from part hereof.

iii. I am filing the present additional affidavit in compliance of the Order dated January 27, 2026, wherein this Hon'ble Tribunal directed the Financial Creditor to comply with the following directions:

   i. To place on record the memo of parties of the oppression mismanagement case: and

   j. To Inform this Hon'ble Tribunal regarding appointment of an independent Resolution Professional from the panel of this Hon'ble Court.

   I crave leave to refer to and rely upon the Order dated January 27, 2026 when produced.

iv. I say that Chetan Doshi ("Proposed Intervenor") holds 25.25% shares in the Corporate Debtor as opposed to the Financial Creditor's shareholding in the Corporate Debtor which aggregates to 74.74%.

v. The Proposed Intervenor has initiated separate legal proceedings before this Hon'ble Tribunal *vide* Company Petition (Companies Act) No. 11 of 2024 under Section 241 and 242 of the Companies Act, 2013 alleging oppressions and mismanagement in the Corporate Debtor ("Oppression Mismanagement Proceedings") and the same is pending for adjudication before this Hon'ble Court.

vi. I am independently holding 0.0026% shares of the Corporate Debtor. On perusal of the Oppression Mismanagement Proceedings, it is perceived that the Proposed Intervenor has impleaded, the Corporate Debtor (Respondent No. 1); myself (Respondent No. 2), the Financial

Creditor herein (Respondent No. 3), ‘Aannamaria Calore’ (Managing Director) and ‘Jatinder Singh’ (Director) as parties to the Oppression Mismanagement Proceedings. Annexure-A is a copy of the memorandum of parties/cause title of the Oppression Mismanagement Proceedings.

vii. At the time of filing the captioned petition, as a matter of procedure, the financial creditor had proposed the name of an interim resolution professional under Part III. However, it is clarified that, the Financial Creditor does not have any objection in the event this Hon’ble Tribunal appoints an independent resolution professional who is attached to the panel of Insolvency and Bankruptcy Board of India.

viii. In view of the above, it is submitted that no grave, harm, or prejudice shall be caused to the Corporate Debtor in the event if the reliefs sought by the Financial Creditor is granted.

ix. The Financial Creditor reserves its' right to seek liberty of this Hon'ble Tribunal to file an Additional Affidavit as and when advised and if required/ directed by this Hon'ble Tribunal.

28. No rejoinder was filed by the Applicant.

29. Written submissions were filed by the Operational Creditor reiterating the facts as mentioned in the Application in Rejoinder. The same were taken on record.

INTERVENTION PETITION 20 OF 2026

30. The Intervention Petition 20 of 2026 has been filed by the applicant seeking the following prayers :-

a. This Hon'ble Tribunal be pleased to allow the present Intervention Application filed by the Applicant and allow the Applicant to intervene in the abovementioned Section 7 Petition;
b. dismiss the captioned Company Petition filed under Section 7 of the IBC;
c. prosecute and/or pass necessary directions under Section 65 of the IBC;
d. Any other relieved that this Hon 'ble Tribunal may deem fit;
e. For costs.

31. The applicant has stated that he is a 25.25% shareholder and former Director of the Corporate Debtor. He was instrumental in establishing and managing the company from 2013 to 2023.
32. The captioned Company Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") has been filed at the behest of Mr. Silvano Spiller, who is not only the majority shareholder, chairman and director of the Financial Creditor but also holds majority shareholding of the Corporate Debtor through the Financial Creditor. Mr. Spiller is also the Chairman of the Corporate Debtor. The majority shareholding in the Corporate Debtor, i.e. 74.75% is held by Mr. Spiller in his individual capacity and through the Financial Creditor, which in tum is also entirely controlled by Mr. Spiller. Given this level of control and shareholding, the Financial Creditor and the Corporate Debtor are both essentially Mr. Silvano Spiller.
33. The alleged debt arises out of External Commercial Borrowings ("ECB"), which were never rolled over, renewed, or extended by any formal agreement, board resolution, or any other legally valid instrument. The ECB

itself is not supported by any requisite board resolution of the Corporate Debtor. There is, therefore, no enforceable extension of the date of default.

34. There is no written acknowledgment of debt under Section 18 of the Limitation Act, executed within the limitation period. The Financial Creditor has not produced a single document satisfying the mandatory statutory requirements of Section 18.

35. Initially, Mr. Spiller purchased the entire shareholding of the Corporate Debtor (through the Financial Creditor) such that the Italian shareholders held 100% of the shares in the Corporate Debtor. The Applicant was retained as Director and appointed as General Manager. The Applicant has been responsible for overseeing the growth and expansion of the business in India from December 2013 to December 2023, i.e. 10 years.

36. Subsequently, in recognition of the vital role played by the Applicant, the Applicant was made an equity shareholder in the Corporate Debtor. It was under these circumstances that an Agreement dated 7th December 2016 ("2016 Agreement") and a Memorandum of Understanding dated 101h March 2017 ("2017 MOU") were executed between the Applicant and the Financial Creditor. Admittedly, even today, the Applicant is a 25.25% shareholder of the Corporate Debtor. It is pertinent to note that the signatory for the Financial Creditor in the 2016 Agreement and the 2017 MOU was Mr. Spiller himself, who is also the signatory to the board meetings, balance sheets, etc. of the Corporate Debtor. Annexed and marked as Exhibit" A" and Exhibit "B" are copies of the abovementioned documents.

37. On 15th January 2019, the Corporate Debtor executed a Master Agreement on Surprise Toys Procurement ("Master Agreement") with Ferrero India

Private Limited ("Ferrero") for the supply of toys to Ferrero from time to time. Work Orders would be issued by Ferrero under the Master Agreement which the Corporate Debtor would then fulfil and invoice. The term of this Agreement was for "unlimited period" as mentioned in clause 18.1 of the Master Agreement.

38. To the shock and surprise of the Applicant, in 2022, Mr. Spiller entered into talks for the sale of the Corporate Debtor as a whole. This would include the 25.25% shareholding of the Applicant. These talks were entered into without the Applicant's consent and entirely behind his back. Dream Plast Private Limited ("Dream Plast"), a direct competitor of the Corporate Debtor was being negotiated with for a complete purchase of the shareholding in the Corporate Debtor. Dream Plast is a subsidiary of the Sunnino Group, a group with which Mr. Spiller does business with in other countries for Ferrero.

39. It was in September 2022 that the Applicant found out about Mr. Spiller's plan to sell the Corporate Debtor to Dream Plast including forcing the sale of the Applicant's shareholding as well. This led to disputes between the parties. From September 2022 to June 2023, several communications were exchanged between the parties, however, for the sake of brevity, some of the events during this period are summarized below:

    i. The Applicant was not agreeable to sell his shares of the Corporate Debtor as the business of the Corporate Debtor, which was originally started by the Applicant and his father, was doing well. Moreover, the Applicant repeatedly suggested to Mr. Spiller that new business be brought into the Corporate Debtor since the

Agreement with Ferrero did not stipulate exclusivity and it was necessary to have a wider client pool to avoid the vulnerability associated with having only one customer.

ii. Mr. Spiller was adamant on the fact that Dream Plast would only purchase the entire shareholding of the Corporate Debtor. Therefore, the Applicant, after much back and forth and persuasion, was agreeable to sell his shares in the Corporate Debtor, however, at a fair value, for which a valuation of the shares was conducted.

iii. The valuation revealed that the fair value of equity shares of the Corporate Debtor was INR 158/- per share. This valuation was shared with Mr. Spiller, who was not agreeable to the price as, according to him, it was too high. He conducted a fresh valuation, which ascribed a value of INR 77/- per share. Oddly enough, a high valuation would also have benefitted the Italian shareholders as they were to sell their shares to Dream Plast as well. It was therefore highly unusual that Mr. Spiller was seeking to downplay the value of the shares. The Applicant submits that this in fact shows that Mr. Spiller never wished to sell the Corporate Debtor at a fair value or, at the very least, not allow the Applicant's shareholding to be sold at a fair value. The Applicant apprehends that Mr. Spiller and Dream Plast and/or Sunnino Group have a separate arrangement in order to recompense Mr. Spiller for the sale of the Corporate Debtor at an undervalue.

iv. Under the above circumstances, and more particularly since Mr. Spiller refused to perform his obligation of the said Agreement, the Applicant was constrained to approach the Hon'ble High Court of Bombay, seeking reliefs, more particularly mentioned therein. Annexed and marked as Exhibit "C" to "G" is a copy of Commercial Suit (L) No.29976 of 2023 ("Suit"), Interim Application (L) No.29991 of 2023, Affidavit in Reply filed on behalf of Defendant Nos.2 to 4, the Affidavit in Rejoinder; and the Additional Affidavit filed by the Applicant.

40. In fact, with this issue having been brought to the attention of the Hon'ble Bombay High Court, the Hon'ble Court has intervened and granted protection to the Applicant. The basis of the interlocutory protection granted by the Hon'ble High Court was: (i) the admission by the Defendants therein as to the share valuation agreed between parties, and (ii) the clear attempt on the part of the Italian shareholders to unilaterally siphon/alienate the undertaking of the Corporate Debtor and leave the Applicant without a fulcrum.

41. Pursuant to leave being granted by the Hon'ble High Court, the Suit was listed on 18th December 2024, when the Counsel appearing on behalf of the Italian shareholders, on instructions, made a statement "that a settlement in terms of the shareholding of the Plaintiff [Applicant herein] to the extent of 25.5% at the agreed rate of INR 110 per share requires formulation of the stipulation ... ". Annexed and marked as Exhibit "H" is a copy of the Order dated 18th December 2024.

42. Ld. Counsel for the Applicant has given a short note along with application as under:-

   1. **There is no financial debt.** The FC is the parent company of the CD. The ECB were advanced from 2014 onward, repayable by 2019 onward. ECBs were structured as an alternative to FDI (Foreign Direct Investment), which route was not viable/fully available in 2014. That this was always in the nature of investment, and not purely a debt, is clear from the fact that: (i) till 2024, there was not a single demand notice for repayment: (ii) the filings in the Italian Ministry for Companies admits the nature of investment.

   2. **The FC is deliberately driving the company into insolvency-malice is clear from the record.** The CD has been cash flow positive. The FC being aware of the same, and being in full control of the CD Could have channeled repayments directly or upon demand, but did not. The Demand Notice dated was issued only after the Intervenor filed a Suit in October 2023 for specific performance of Mr. Spiller's agreement to purchase Intervenor's shareholding, and after the Intervenor filed a petition for Oppression & Mismanagement in January 2024 against the artificially eroded the business.

   3. **Section 7 petition is a product of collusion-** The identity of the party seeking to initiate insolvency and the party proposed to be taken to insolvency ar controlled by one and the same entity i.e. Spiller Group. This is gross abuse of the provision of section 7 of the IBC since this provision is not to be used as a tool for a foreign investor to illegally close down ventures at its whim.

4. **Section 7 Petition seeks to fraudulently defeat pending proceedings for Oppression & Mismanagement and High Court Suit.** The CD has no financial Creditors. The only dues are statutory, which were fully paid until 2023 i.e. till the Intervenor was the Managing Director. After that, circumstances have been created to prime the CD for CIRP despite a positive cash flow and EBIDTA. GST and other statutory dues have not been paid, despite urging of the Intervenor. Similarly, worker-dues have not been paid. These circumstances are artificially created by the FC.

43. This Intervention Petition No. 20 of 2026 and CP 1231/2025 were listed on 13.04.2026 and the same reserved for orders. Subsequently, the Ld. Counsel appearing on behalf of the intervenor placed before this Tribunal on order dated 27.04.2026 in Writ Petition (L) No. 13056 of 2026 dated passed by the Hon'ble Bombay High Court. In view of the said order of the Hon'ble Bombay High Court, this Tribunal had to de-reserve the Intervention Petition No. 20 of 2026 and Company Petition (I&B) No.1231 of 2025 and posted these matters for hearing on 04.05.2026.

44. In terms of the directions issued by the Hon'ble Bombay High Court these matters were heard by this Tribunal on 04.05.2026 and the following order was passed on the said date: -

1. *"CP 1231 of 2025 and Intervention Petition 20 of 2026 were reserved for orders vide order dated 13.04.2026.*
2. *Subsequent to the said order, Ld. Counsel appearing on behalf of the Intervenor has placed before us an order dated 27.04.2026 in Writ Petition (L) No. 13056 of 2026 passed by Hon'ble Bombay High Court.*
3. *The operative portion of the said order is reproduced below:-*

"………………

2. Having heard the learned counsel for the parties on the principal grievance of the petitioner that he was allegedly not heard by National Company Law Tribunal, Bench-VI, Mumbai (NCLT), the parties have agreed for appropriate directions to be issued by this Court, so that further proceedings before the NCLT are facilitated.

3. It is directed with the consent of the petitioner and respondent No.2 that they shall appear before the NCLT on 4th May 2026. The NCLT shall take up the pending Petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 along with Intervention Application filed by the petitioner therein (Interim Application No. 20 of 2026).

4. The NCLT on the said date or on a future date of its convenience shall hear the petitioner and Respondent No.2 on the aforementioned Intervention Application as also the pending Petition filed under Section 7 of the IBC to pass an appropriate order.

5. It is left to the discretion of the NCLT to pass either a separate order on the Intervention Application or a common order on the Intervention Application and the Petition filed under Section 7 of the IBC.

6. The parties shall be heard, and reasoned order(s) shall be passed by the NCLT in accordance with law.

7. All rights and contentions of the parties are kept open.

8. The Writ Petition is disposed of in above terms.

9. Liberty to the parties to apprise the NCLT about the order passed today by this Court at the earliest so that the NCLT would not be put to inconvenience."

4. *In view of the said order dated 27.04.2026 of Hon'ble Bombay High Court, this Tribunal had to de-reserve these matters and these matters were posted for hearing today, i.e. 4th May, 2026 as specified in the said order.*

5. *Today, the hearing commenced in these matters at 11:15 am, where Ld. Counsel for the Applicant in the CP 1231 of 2025 was asked to make his arguments in regard to the Section 7 application.*
6. *Ld. Counsel Mr. Rohit Gupta for the Applicant in CP 1231/ 2025 thereafter stated that he has already submitted and completed his arguments in regard to the Section 7 application on 13.04.2026 and he does not have any further submissions to make.*
7. *Ld. Counsel Mr. Ansh Karnawat appears on behalf of the Intervenor he states that the order dated 27.04.2026 was passed by Hon'ble Bombay High Court at a point of time when the order dated 13.04.2026 was not uploaded on the NCLT website. He further states that he is being led by Ld. Counsel Mr. Nirman Sharma, who is right now appearing before the Hon'ble Bombay High Court to make his representation in the same matter based upon the order dated 13.04.2026. He thereafter, seeks pass-over of this matter, so that submissions can be made in the matter by Ld. Counsel Mr. Nirman Sharma.*
8. *At this stage one Counsel Ms. Anushka Goel appears on behalf of the Respondent/Corporate Debtor and states that the Corporate Debtor has also finished their arguments in the Section 7 Application and that they do not wish to make any further submissions in the matter.*
9. *The request of the Ld. Counsel for the Intervenor for a pass-over was thereafter accepted by this Tribunal. The matter was passed-over at 11:30 am.*
10. *The matter was again taken up at 12:55 pm after pass-over. However, Ld. Counsel Mr. Nirman Sharma was not available for arguments. Ld. Counsel Mr. Ansh Karnawat was heard thereafter.*
11. *We have heard Ld. Counsel appearing on behalf of the Intervenor from 12:55 pm till 1:45 pm. At this stage, Ld. Counsel*

appearing on behalf of the Intervenor seeks leave of this Tribunal for filing written submissions in the matter and for the said purpose, he seeks 2 days' time and requests for fixing the matter on 06.05.2026 at 2:30 pm.

12. *Ld. Counsels appearing on behalf of the Applicant and Corporate Debtor expressed their no objections to the same.*
13. *Accordingly, the matter is listed for 06.05.2026 at 2:30 pm. It is made clear that no further adjournment will be granted in the matter.*
14. *Ld. Counsel for the Applicant in the Intervention Application has requested a time limit of 25 minutes to complete his arguments. Ld. Counsel for the Applicant in the CP has requested for grant of 10 minutes to reply to the Intervention Application of the Applicant in the said Application. Accordingly, the time period for both the sides in this matter is fixed for the next hearing.*
15. *Accordingly, relist this matter on 06.05.2026 at 2:30 pm. Before that the Intervenor will be filing his written submissions, after sharing the same with the opposite parties."*

45. Further, on 06.05.2026, the hearing in the matter commenced at 2:42 p.m. & concluded at 4:24 p.m. and thereafter both the matters were reserved for orders.

<u>ADDITIONAL WRITTEN SUBMISSIONS</u>

46. Applicant in the Intervention Petition 20/2026 has filed written submissions which were taken on record vide order dated 06.05.2026. In the written submissions the applicant in the Intervention Petition states the following:
47. Applicant in the CP is fully owned by Mr. Silvano Spiller (Italians), who owns, 74.75% of the CD.
48. Intervenor is the founder, promoter and subscriber to MOA and AOA of the CD.

49. Intervenor has become the shareholder of the CD by investing monies, which were invested to keep the “skin in the game” since he was running the day to day operations. The Italians were merely investors. Thus, the CD is a quasi-equity investment.
50. CD earned revenue of INR 37 crores in 2023. The value of land and building was more than INR 42 Crore.
51. CD was doing business with Ferrero and upon termination had offers from Reliance and Hemley’s for future business.
52. Italians suddenly decided to sell the company to Dreamplast, which was opposed by the intervenor.
53. Intervenor states that thereafter the terms of fair exit were discussed and Italians agreed at a price of Rs. 110 per share some time in June, 2023.
54. Italians reneged from the said contract. Intervenor filed a suit for specific performance with Hon’ble High Court of Bombay in October, 2023.
55. Present section 7 petition is an attempt to short-circuit the obligations of the Italians.
56. Intervenor was removed as Managing director of the CD and in his place another person, Italian citizen and German resident was appointed.
57. The business of the company came to a halt.
58. Applicant in the CP filed another company petition u/s 7 of IB Code, which was dismissed for non-removal of defects in 2024.
59. Applicant (Intervenor) has filed an Oppression and Mismanagement Petition after dismissal of the first S. 7 petition.
60. The Financial Creditor (enjoying control over Corporate Debtor) has filed the Section 7 Petition.

61. This is a promoter-led insolvency, couched as a Section 7 Petition.

62. A Section 10 Petition has not been field, because Articles of Association [Art. 35(g)] requires shareholders to consent for insolvency. The Section 7 Petition is to short-circuit that requirement.

63. The Financial Creditor, through the Section 7 Petition, wants to ensure that through a Resolution Applicant in the CIRP, the Italian partners get a fair exit while being able to successfully avoid their fiduciary, documented and legal commitment to give the Intervenor a fair exit.

64. Section 7 is to ensure that the Intervenor's shareholding rights and interests are wiped out and his Suit and Company Petition for Oppression and Mismanagement become infructuous.

65. There is no explanation why the business of the Corporate Debtor should be halted. The default is forced and orchestrated as there was no embargo or court order to stop the Corporate Debtor to do business.

66. The Corporate Debtor has no other financial creditor. If not for the Financial Creditor's fraud and mischief, this Company would never have been dragged to even a default, let alone an insolvency.

67. Even the demand of repayment is orchestrated to project 'default': (a) The purported ECB were purportedly. It could have been repaid back then as the Company had enough cash-flow; (b) Even in 2023, the purported dues could have been repaid as the Company had enough revenue and assets. Dehors that, the Financial Creditor had enough control to sell the Company and ensure both partners get value for their interests in the Company.

68. It is for the Financial Creditor (enjoying control over Corporate Debtor) to explain why and how a revenue rich and high-value company suddenly is

defaulting and has purportedly become defunct. No such explanation is forthcoming for this collusive submission, except for an unsubstantiated submissions at paragraph 18 of their Written Submissions which reads thus: *"18. In fact, the Corporate Debtor by its Affidavit-in-Reply dated December 12, 2025 ("Reply") has categorically admitted in paragraph 6 that the Corporate Debtor has in fact availed the ECB facilities from the Financial Creditor. Further in paragraph 9 of the Reply, that the Corporate Debtor has no working capital, no operational cash flow, no orders and no capacity to repay any sums. assuming without admitting that any sums are due the fact that the Corporate Debtor has no business and/or means to survive and does not dispute the debt at all. Therefore, the question of intervention in the present petition does not and cannot arise at all."*

69. In turn, even paragraph 9 of the Reply of the Corporate Debtor to the Section 7 Petition offers no substantiation or documentary support. Notably, despite reading paragraph 9 of the Reply in open court in the hearing of 04.05.2026, a copy of the Reply was not given to the Intervenor.

70. The Articles of Association expressly forbid insolvency to be triggered without consent of the shareholders (such as the Intervenor). Therefore, to overcome that, the Italian partners have donned the hat of the Financial Creditor to take the Company into insolvency.

71. The ECB was never supposed to be a debt-instrument. It was the Italian partners' contribution towards quasi-equity.

72. The financial statement filed by the Financial Creditor with the Italian Ministry for Corporate Affairs has segments on debt, but the monies infused in the Corporate Debtor is treated not as debt but as '*Investments*

in Subsidiaries'. This shows that in India, their infusion of funds was only couched as a borrowing, for convenience and for records. This shakes the very foundation of the Section 7 Petition.

73. It was only after the Italian Partners found themselves having a conflict of interest with the prosperity and continuity of the Corporate Debtor's business that these funds were weaponized and repurposed as *'financial debt'* to bypass the orders of the Hon'ble High Court.

74. The 'default' in this case is not a commercial reality born from an insolvent state of affairs at the end of the Corporate Debtor. Rather, the 'default' is fraudulent and induced outcome of collusion between the parent and its own controlled subsidiary, controlled by one person - Mr. Silvano Spiller.

75. The collusion is writ large. It is important to note that the Judicial Dictionary of Words and Phrases (by Prem and Saharay's) defines 'collusion' as: "*Collusion in judicial proceedings is a secret arrangement between two persons that the one should institute a suit against the other in order to obtain the decision of judicial tribunal for some sinister purpose*. “That is exactly the character of this Section 7 Petition, achieved by stifling and concealing the business potential of the Corporate Debtor to suit the interest of the Financial Creditor *unilaterally* run by Italian partners.

76. Ongoing proceedings between the parties. Apart from the captioned proceedings, it is necessary to note that between these parties (and the common management) the following proceedings are pending:

77. Transfer Application no. 18 of 2026 before the NCLT, Principal Bench, New Delhi, filed by the Intervenor.

78. Company Petition no. 11 of 2024 under Section 241 and 242 Companies Act, 2013 (O&M Petition), filed by the Intervenor prior to the present Section 7 Petition. There, IA no. 48/2024 and IA no. 103/2026 are pending. By Order dated 28.03.2024, a limited interim relief to the Intervenor has been granted, for Respondents not to use the Intervenor's digital signature in view of the allegations of forgery levelled by the Intervenor.

79. Commercial Suit (L) no. 29976 of 2023 in the High Court, filed by the Intervenor, prior to the present Section 7 Petition.

80. Significance of the Transfer Petition:- Given the peculiar facts and the overlapping issues which require adjudication, in order to ensure comprehensive hearing of the matter, a Transfer Petition has been filed before the Principal Bench, New Delhi. Notice has been issued on 10.04.2026, returnable on 08.05.2026. Pleadings are complete. It is observed that the vide order dated 29.05.2026, the said Application is disposed of as infructuous as arguments were concluded and the orders have been reserved on 06.05.2026.

81. It is the case of the Intervenor that this Tribunal ought to defer the consideration of the captioned proceedings to see the outcome of the Transfer Petition. This is for the following reasons:

82. The Principal Bench is seized of the matter. It has taken cognizance and issued a Notice on 10.04.2026, returnable on 08.05.2026. Pleadings are complete. No prejudice would be caused to the parties of Section 7 Petition if the Transfer Petition's outcome is awaited. Whereas, the Intervenor will be prejudiced if the Transfer Petition's outcome is not awaited.

83. There are overlapping and intertwined points for determination. The Transfer Petition is inter alia based on the fact that there are common questions which arise in the present Section 65 Application before this bench (i.e. NCLT Bench VI) vis-a-vis the Company Petition for oppression and mismanagement filed by the Petitioner and pending before NCLT-Bench IV. For instance, the following will have a bearing on determination of both, Section 65 proceedings as well as proceedings for oppression and mismanagement:

i. Whether there is a conflict of interest on account of the Financial Creditor (i.e. CMP Italy) and Corporate Debtor (i.e. CMP India) being run by the same management?

ii. Whether the filing of the present Section 7 Petition is oppressive?

iii. Whether the purported External Commercial Borrowings (ECBs), on which the Section 7 Petition is based, are in the nature of debt or investment?

iv. Whether the ECBs, assuming them to be debt, are time-barred?

v. Whether the Section 7 Petition is genuine or a counterblast to proceedings initiated by the Petitioner prior in time before the High Court as well as before Bench IV?

vi. Whether the email dated 18.11.2025 issued on behalf of the corporate debtor admitting debt, is a genuine admission or a result of the acts of oppression and mismanagement pending consideration before NCLT?

vii. Whether Mr. Jatinder Singh, nominee of the Financial Creditor in the Corporate Debtor, was authorised to issue the email of 18.11.20257?

viii. Whether Mr. Spiller has breached provision of the Companies Act, 2013 in filing the Section 7 Petition and getting the debt admitted? If so, what is the validity of the Section 7 Petition and the email admitting debt?

ix. Whether the circumstances amount to the Financial Creditor and Mr. Spiller taking advantage of their own wrong? If so, can it be countenanced by admitting the Section 7 Petition whilst also holding the debt as admitted?

x. Whether the Corporate Debtor has been run aground on account of the aforementioned conflict of interest?

xi. Whether the Financial Creditor has induced the circumstances of debt and default in an otherwise cash-flow positive Corporate Debtor?

xii. Whether the Section 7 Petition is an attempt to circumvent the Articles of Association of the Corporate Debtor, which otherwise binds the common management? The above are only illustrative and not exhaustive points of determination that interlink the proceedings pending before Bench IV and Bench VI of NCLT, Mumbai

Notice has already been issued and the Transfer Petition is coming up shortly, on 08.05.2026. Notably, the pleadings in the Transfer Petition are complete and the matter is ripe for final hearing.

84. Proceeding parallelly carries the imminent risk of conflicting findings on the same set of facts by two different Benches. Whilst under Section 241 and 242 of the Companies Act a wider net of inquiry can be cast, dismissing or admitting the Section 7 Petition (with a collusively admitted debt) would short-circuit that fact-finding inquiry which is absolutely necessary in the given circumstances.

85. Moreover, conduct of simultaneous hearings on the same issues before two different Benches would be an avoidable situation.

86. The Order dated 27.04.2026 passed by the Hon'ble Bombay High Court in Writ Petition (L) 13056/2026 provides for the Intervention Application to be heard on merits and a reasoned order to be passed. However, before passing its Order, the High Court was informed of the pendency of Transfer Petition no. 18/2026 before the Principal Bench of NCLT at New Delhi and the Notice issued therein on 10.04.2026, returnable on 08.05.2026. It is *inter alia* for that reason that the High Court was pleased to keep all contentions of the parties open, and to leave it to this Tribunal to hear the matters on 04.05.2026, or on a *'further date of its convenience*.

87. Notably, Bench IV, recognizing the gravity of the pending transfer and has shown judicial deference. Therefore, even on parity, deferring the captioned proceedings would show judicial consistency.

88. Notably, the Hon'ble High Court, while directing this hearing, specifically kept all contentions open and granted this Tribunal the liberty to hear the matter on a *'further date of its convenience'*. This was in view of Order dated 10.04.2026 in the Transfer Petition being brought to the attention of the Hon'ble High Court.

89. Most importantly, the Financial Creditor has neither pleaded nor established any extraordinary urgency or haste that would warrant: (1) bypassing the final outcome of the Transfer Petition scheduled for 08.05.2026; and (ii) breaking the consistency which Bench IV has maintained by granting deference to the transfer proceedings.

90. It would be in the interest of judicial discipline, especially since there is no pleaded or real case for urgency and haste in deciding the captioned proceedings. The equities, assuming any are in favour of the Section 7 Petitioner, would remain unaffected even if the outcome of the Transfer Petition is awaited.

91. Significance of the O&M Petition. In the O&M Petition, Interlocutory Application is coming up on 12.05.2026 for interim reliefs in relation to oppressive acts of the majority shareholder and purported Financial Creditor, which include the issue as to capacity, tenability and right to pursue the present Section 7 Petition. The circumstances for filing of the O&M Petition are relevant even for the appreciation of the Intervenor's case under Section 65.

92. The O&M Petition contains evidence to show how the Corporate Debtor was being artificially depleted when it was otherwise capable of doing business, this is what prompted the O&M Petition. Nevertheless, it still has the assets and production capacity that can be quickly reactivated, capable of generating enough revenue to pay-off debts, if any.

93. The following timeline shows that the present condition of the Corporate Debtor is artificially induced by the Italian Partners. Their intention was to make a quick exit from India instead of withstanding the litigation filed by

the Intervenor where the liability on the Italian Partners to buy-out the Intervenor's stake had become a matter of High Court's Order. Their fraudulent intention of filing the Section 7 Petition should be traced from the timing of their earlier Section 7 Petition (that was ultimately dismissed for default) which shows the grim circumstances under which the Italian Partners were when they approached NCLT:

Sr.	Date	Event	Ref.
1.	2022-23	Corporate Debtor made INR 37 Crores in revenue. Moreover, as on 16.09.2022, the market value of the Company's Land and Building alone was in excess of INR 42 crores.	@1235/Ivn. Pet.
2.	14.6.23	Italian Partners executed a writing to buy-out the Intervenor at INR 110/- per share.	@1063/Ivn. Pet.
3.	21.10.23	Intervenor filed a Suit in HC for specific performance of the buy-out agreement	@36/Ivn. Pet.
4.	18.12.23	HC recorded Italian Partners' commitment to buy-out the Intervenor at INR 110/- per share.	@580/Ivn. Pet.
5.	22.12.23, 08.04.24	Orders were passed in HC, at the behest of the Intervenor, for preservation of the assets of the Corporate Debtor which the Italian Partners were attempting to waste away.	@581/Ivn. Pet.
6.	18.12.23	Having suffered Orders from HC, the Italian Partners became more entrenched in India, contrary to their intention to make a quick exit from India. Therefore, the Italian Partners started starving the Company. To successfully do that, they removed the Petitioner as the Managing	@ 1278, 1594,717/ Ivn. Pet.

		Director and appointed one Jatinder Singh (an Italian and German citizen resident), to that position. With Jatinder Singh, whose appointment is under challenge, the Italian Partners began starving the Company. Requests by Intervenor to find new business opportunities were turned down. Operations of the company were deliberately blocked. The Company otherwise was capable of doing business and paying off the debt, if any. It still is.	
7.	09.02.24	Company Petition no. 11/2024 under Section 241, 242 of @ Companies Act, filed by the Intervenor. By Order of 28.03.2024, interim injunction from abuse of the Petitioner's digital signature has already been granted.	@ 1588-1589/Ivn. Pet.
8.	02.08.24	After starving the Company for several months, the Italian Partners issued a Demand Notice from CMP Italy, and they induced a default, thereby triggering a Company Petition u/s. 7 IBC [CP (Diary) No. 270913807782 of 2024].	Annexure U @ 172/CP(IB)1231 of 2025
9.	11.06.25	HC dismissed the Interim Application for security, filed under Order 38 Rule 5 of CPC. Note-By this time, the acts of oppression to starve Company were already, carried out and the ground was already set for triggering the Section 7 Petition. Therefore, the outcome in Interim Application is only a subsequent event**.**	&584/Inv. Pet.
10.	04.08.25	Appeal in the HC withdrawn with liberty to approach the HC again if occasion arises.	@ 616/Inv. Pet.

11.	17.11.2025	Captioned Section 7 Petition filed.	

94. The O&M Petition filed by the Intervenor shows that:

i. Even as on 2023, right before the Italian Partners began depleting the company, there were business-opportunities from Reliance and Hamleys, which would have ensured continued business (Email of 21.09.2022-Pg. 177/Intervention Petition). The relevant portion is excerpted below.

"Alternatively, I can propose as per below

1. Look for other opportunities; just recent I have been able to contact Hamleys India (Reliance), procurement head and he has shown initial interest in procuring surprises from CMP Euro."

ii. Well after removal of the Intervenor in December 2023, the Italian Partners obtained an Audit Report of C.A. Varun Deshmukh dated 13.12.2024. Paragraph 1 of the Report shows that the Italian Partners intend to continue doing business: "... *Despite these uncertainties, the management has prepared the financial statements on a going concern basis, relying on their intent to continue the business*...". This is in stark contrast to their stand that the Company is defunct. Moreover, this document has been concealed by the Corporate Debtor, who ought to have produced it in reply to the Section 7 Petition. *[Note-As this is a part of the O&M proceedings, a snapshot of the Auditor's statement is given below Pg 407 /14 No. 103/2026 in CP No. 11/2024]*

"We draw attention to the following matters:

"Post-Balance Sheet Revenue Loss: There is a significant loss in revenue post-balance sheet date due to the loss of a major customer base. One of the directors, Mr. Chetan Doshi, has also filed a case against shareholder of the Company. Also, CMP Industry SRL, formally known as CMP Industries SPA had filed petition under section 7 of the insolvency bankruptcy code 2016 before National Company Law Tribunal, Mumbai. *Despite these uncertainties, the management has prepared the financial statements on a going concern basis, relying on their intent to continue the business. We have relied on the management's representation in this regard."*

iii. It is an unsubstantiated submission of the Corporate Debtor that the company is defunct since 2023. The onus of establishing this ought to be on the Italian Partners, especially when the company was cash-flow positive in 2023, with a revenue of INR 37 Crores and valuation of land and assets at INR 42 crores. While the Corporate Debtor has not served its reply on the Intervenor, a portion from it was read out in the course of hearing on 04.05.2026 to state that the Company has no operations. Not a single document has been placed to substantiate this assertion.

95. The O&M Petition also argues that Mr. Silvano Spiller-a common director of Financial Creditor and Corporate Debtor, who has signed the Section 7 Petition against the Corporate Debtor, could not have done so as the same is self-serving and in breach not only of Section 166 of the Companies Act but also against core duties of a Director, most succinctly articulated in *Kerr on the Law of Frond and Mistake (Ed-First Indian Reprint 1997)* where at page 197, it is recorded that:

> "A director cannot, after a company has ended in disaster, cannot turn his office into profit at the expense of those whose interests he was bound to protect"

96. In this case, Mr. Spiller was bound to protect the interest of the shareholders, namely the Intervenor. Whereas, Mr. Spiller has turned this CIRP into his own profit as he will be the one to be paid at the end of the CIRP, but switching his hat from that of a shareholder to a financial creditor.

97. Some of the documents are exclusively before the Bench IV, in the O&M Petition, where a wide net of inquiry is cast. This is also a reason why the two matters need to be heard by the same bench.

98. The capacity and prudence of the Italian Partners in initiating a Section 7 Petition is also under challenge in the O&M Petition.

99. To arrive at the actual nature of the transaction, as to whether it was only debt or in fact an investment, a detailed inquiry is required to be carried out which the O&M Court has the power to. In this regard, a reference may be made to the case of Sachin Corp. vs. Kusuma Bhandary Construction [2018 SCC Online Bom 2744] which was a matter where the Plaintiff relied on the Defendant's books to call a transaction a loan, and the Defendant relied on the Plaintiff's records to call it an investment. Paragraph 6 of the said judgment reads thus, to emphasize the need of a detailed inquiry instead of going by the more plausible of the two cases

> *"6. Learned Counsel for the Plaintiffs further submits that the case set up by the Plaintiffs is consistent with the Defendant's own document. He relies on the balance sheet of the Defendant in this behalf. In the balance sheet, the amount of Rs. 6.35,00,000/- paid by the Plaintiffs to the Defendant is shown as a loan from directors/relatives. (The Defendant, on the other hand, relies on the Plaintiffs' books, where the amount of Rs. 6.05 crores is shown as advance for land.) Learned Counsel, firstly, submits that, considering the pleadings of the parties and the documents placed on record before the Court, his case is imminently probable and, on the other hand, the Defendant's case is less probable. Learned Counsel submits that, in the premises, on the principle of the case of IDBI Trusteeship Services Lad. v. Habtown Lad 1, this Court should grant merely*

conditional leave to the Defendant. He particularly relies on paragraph 17.4 of the judgment of Hubtown. Learned Counsel is not right in his submission. What the Hurtown judgment says is that whilst assessing a defence raised by the Defendant for considering leave to defend, what the Court has to consider is whether the defence, which may be said to the plausible, is improbable. If the defence, though plausible, is considered by the Court to be improbable, the Court may impose conditions not only as to time and mode of trial, but also as to payment into court or furnishing of a security. This does not imply that the Court has to consider a mere preponderance of probabilities of the Plaintiff case, however substantial such preponderance may be. That is accomplished by weighing the probabilities of the parties respective cases. Upon such weighment, the Court finds balance of probabilities and upholds or rejects the Plaintiffs claim. This is what a trial is typically expected to accomplish. This it net what is to be considered at the stars of the summons for judgment. What the Court considers at the stage of summons for judgment is not the balance of probabilities but whether the Defendant's case is at all probable."

100. It is for these reasons that the appreciation of the Section 7 Petition must await the hearing in the Section 241-242 Petition, which is scheduled for hearing on interim reliefs on 12.05.2026.

101. The very array of parties in the Section 7 Petition is alarming and raises serious concerns over the bona fides of the Section 7. The Financial Creditor (CMP Italy) is the parent company of the Corporate Debtor (CMP India). They are related parties.

102. The Management of CMP Italy controls CMP India, which is clear from their shareholding pattern (Pg. 10/Intervention Petition):

Table 1-Sharelmiding Pattern of the Corporate Debtor (Subsidiary)

1	*Intervenor - Chetan Doshi*	*25.25%*
2	*Financial Creditor-CMP Industries SPA*	*74.74%*
3	*Mr. Silvano Spiller (Italian Citizen)*	*0.0026%*
	Total	*100%*

Table 2-Shareholding Pattern of the Financial Creditor (Parent Company)

1	*Mr. Silvano Spiller (Italian Citizen)*	*97 %*
2	*Three sons of Silvano Spiller: Francesco, Cristiano, Angelo*	*1% each*
	Total	*100%*

The tables above make it clear that Mr. Silvano Spiller, directly and indirectly, holds majority stake of 74.75% in the Corporate Debtor.

103. The control exercised by the CMP Italy over CMP India through shareholding, and common management, requires that there be a deeper scrutiny' of the Section 7 Petition. The Hon'ble NCLAT in **Balkishan Shrikisan Baldaw vs. Agri-tech (India) Ltd.** [2025 SCC Online NCLAT 2062] stated at paragraph 51 that

> "*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.*"

104. Being precautious before admitting such a Section 7 Petition becomes all the mote necessary when it is seen that there are no other financial creditors in the books of the CMP India. The word of caution was sounded by the NCLAT as early as 2021, when while dealing with the jurisprudence of Section 65 in the case of Hytone Merchants vs. Satabadi Investment Consultants [2021 SCC Online NCLAT 598], the Hon'ble NCLAT noted at paragraph 38 that:

> "....*Before admitting the Application, every precaution is necessary to be exercised so that the insolvency process is not misused for any other purposes other than the resolution of insolvency."*

105. It is in these circumstances that the present Intervention Petition seeks to assist this Tribunal in a deeper scrutiny of the Section 7 Petition and invited appropriate orders under Section 65.

106. Having appreciated the summary above, a detailed historical context of the Corporate Debtor and its relation with the Financial Creditor is given below.

107. In 2013, the Corporate Debtor was incorporated by the Intervenor and his father. (MOA pg. 683; AOA pg. 692/Intervention Petition). At that time, the Intervenor had several other companies doing business in India (Page 471/Intervention Petition).

108. Contemporaneously, the Financial Creditor at the behest of its majority shareholder, Mr. Silvano Spiller-wanted to tap into the toy-manufacturing business that Ferrero (the famous Italian Chocolatier) was doing in India. However, having no presence or experience in India, they needed an Indian partner to set-up and grow CMP India. The Intervenor stepped into that role.

109. Accordingly, Mr. Silvano Spiller (through the Financial Creditor) acquired the complete shareholding of the Corporate Debtor while appointing the Intervenor as Company's Managing Director.

110. In December 2016 (formalized in the MOU of 10.03.2017), it was agreed to make the Intervenor a partner by giving 26% shareholding of the Corporate Debtor and shortly thereafter, the Intervenor acquired 25.25% in the Corporate Debtor (MOU: @30/ Intervention Petition).

111. Growth of the Corporate Debtor. From the time of the Intervenor's Managing Directorship in December 2013, the Corporate Debtor grew extensively.

112. As the only resident Director-Shareholder in India, and the only one with business experience in India, it was the Intervenor who set up the Corporate Debtor and looked after its day-to-day affairs. The main business of the Corporate Debtor was manufacturing toys.

113. Production Capacity: The Corporate Debtor's production capacity grew manifold. It went from producing 51 million units in 2015-16 to 148.4 million units in 2018-19. Despite COVID-19, the Intervenor was able to maintain an excellent production rate of 94.11 million pieces in 2022-23.

114. The growth in production was achieved by setting up large scale machineries and a workforce of more than a thousand. *(Ref: The efforts of the Petitioner to this end are more particularly at page 462/Intervention Petition)*

115. Jump in Revenue with positive cash flow**:** The growth of the Corporate Debtor reflected in the exponential increase in its revenue, which went from about INR 25 lakhs in 2014-15 to INR 37 crores in 2022-23, the highest point being right before COVID-19 where revenue was INR 51 crores in 2018-19. Copy of a CA certified EBDITA of the Corporate Debtor is at Page No. 1235 of the Petition, and is excerpted below.

Financial Year	Total Revenue	EBITDA
2013-14		-4,55,545
2014-15	25,95,277	-30,59,206
2015-16	16,29,10,589	-62,60,557

2016-17	40,85,25,114	7,51,98,806
2017-18	28,87,69,463	2,90,25,262
2018-19	51,53,77,464	8,36,45,235
2019-20	43,53,97,695	4,61,42,686
2020-21	37,44,86,754	51,38,542
2021-22	45,05,85,792	2,73,53,583
2022-23	37,02,23,899	1,30,86,658
Total	3,00,88,52,047	**26,98,15,464**

116. Statutory compliances and third-party obligations of all kind were duly complied with by the Intervenor till he was ousted. During his tenure as the Managing Director upto 2023, there were no statutory non-compliances, unlike the present day where there appear to be defaults on several statutory obligations and obligations to third-parties as seen from Exh-KKKK and LLLL @627,628/IA No. 103/2026 in CP. No.11/2024).

117. The Applicant has given the summary of outstanding payment at page no. 17 of the Application which is Rs. 22,83,016,94/-

118. The Applicant has given the summary of non-compliant areas at page no. 18.

119. From inception, the Intervenor's contribution has been acknowledged illustratively:

120. Mr. Silvano Spiller says in his email of 24.05.2015 (@1627/Intervention Petition) addressed to the Intervenor that

> *"I take this opportunity to thank you for all the great work you're doing for CMP Euro Technoplast.*
> *I'm very glad that you're the* ***<u>Director Manager</u>*** *of CMP Euro Technoplast LTD."*

i. He also says in his email of 11.08.2015 (@1632/Intervention Petition) addressed to the Intervenor that:

"I want to confirm you all my respect and consideration for the work you have done in that period."

121. The records show that before the differences arose in 2022-23 and the management of CMP Italy (Le. the Italian Partners) started running the Corporate Debtor into the ground, Ferrero had commended the Company's performance and extended the contract for another year i.e. 2023 (@196/Intervention Petition).

122. In contrast to the abovementioned efforts and contribution of the Petitioner as minority shareholder, and despite the growth and potential of the Company, the following facts will show that the current situation of the Company has been forcefully induced by the Italian Partners.

123. Unilateral attempts to sell the company: In September 2022, it came as a shock to the Intervenor that behind his back, the Italian Partners had agreed with another Italian entity i.e. the Sunino Group that Sunino's Indian arm-Dream Plast India Private Limited (Dreamplast)-would take over the Corporate Debtor by October 2022, and that the Intervenor was to help in the smooth transition (@757/Intervention Petition). Notably, Dreamplast would also manufacture toys for Ferrero. Both Ferrero and Sunino Group are on close and personal terms with Mr. Silvano Spiller.

124. The justification came only later, by email of 25.10.2022 (@759/Intervention Petition), where Mr. Silvano Spiller informed the Petitioner that:

125. Instead of both Dreamplast and the Corporate Debtor, Ferrero only wanted to deal with one entity in India, for which it preferred Dreamplast.

126. This justification was ex facie unreliable. Ferrero had recently extended the contract with the Corporate Debtor for another year i.e. 2023 for 100 million pieces/units.

127. CMP Italy needed monies and selling the Corporate Debtor would serve that purpose.

128. This email records that CMP Italy had taken credit from Italian Banks to set and "finance" CMP India.

129. Intervenor's protest. The justifications offered by Mr. Spiller were not reliable Therefore, the Intervenor protested by way of his email dated 31.10.2022 (@760/Intervention Petition) where he pointed out the business for 2023 promised by Ferrero. More importantly, the Intervenor pointed out that representatives of Ferrero's Procurement Team (MPG representatives) had personally informed him that there was no such preference for Dreamplast over Corporate Debtor. Ultimately, as the minority shareholder, the Intervenor asked that his stake be sold at a fair price, at arm's length.

130. On 11.11.2022, the Italian Partners (through Mr. Spiller) responded to the Intervenor's protest (@944/Intervention Petition). The response of the Italian Partners forms the bedrock of why the Section 7 IBC Petition filed by them is oppressive.

131. In the email of 11.11.2022, the Italian Partners wrote:

> *"I am also informed that the model of slump sale as suggested above does not suit you, as you do not want to be left as a shareholder in a non-business entity holding a minority stake*. Yet again, this is a *fair comment and understandable*."

132. On the aspect of valuation and fair terms of exit, the Italian Partners admitted that *"we are not familiar with how to go about to define the available options of exit and ascribing value to our business"*.

133. Once again, the Italian Partners recorded the 'great deal of contributions made to build the Corporate Debtor.

134. The Italian Partners agreed to get a professional valuation of CMP India and of its shares.

135. The subsequent actions of the Italian Partners, which is the subject matter of various proceedings including the present Section 65 Application, is an attempt to do exactly what the email of 11.11.2022 assures would not happen; the Intervenor is now sought to be left with a non-business, shell of a company while the Italian Partners have secured their interest and desires of making an abrupt exit from India.

136. Valuation. Two valuation reports were prepared: (1) Valuation Report dated 16.09.2022 which valued the 'current market value of land & building, plant & machinery at INR 42.49 Crores (@924, 926/Intervention Petition); and (ii) a Valuation Report dated 14.12.2022 prepare by a CA which valued the equity shares of CMP India at INR 158 per share using the Discounting Cash Flow Method (@957, 967/Intervention Petition). *Per contra,* there is a calculation of equity shares' value using the Net Asset Value method, which values one share at INR 56.18/- (@947/ Intervention Petition)

137. In the meantime, on 27.04.2023, a *'Gentleman's Agreement'* was executed between CMP Italy and the Sunino Group, where Dreamplast would buy CMP India on a slump sale basis. Notably, the value offered

even at that point was more than INR 40 crores (@1114/ Intervention Petition).

138. Shortly thereafter, the Italian Partners signed an agreement to buy out the Intervenor at INR 110 per share. (@ 1063-1066/ Intervention Petition). Draft Agreements were exchanged.

139. Shockingly, on 15.09.2023, the Italian Partners reneged out of their agreement to purchase the Intervenor's shareholding in the Corporate @1108/Intervention Petition).

140. Re: Intervenor's actions to obtain fair value of his shareholding

141. Suit in the High Court. Since the Italian Partners backed out of the agreement to purchase shares, the Intervenor filed Suit (L) No. 29976 of 2023 before the Hon'ble Bombay High Court seeking specific performance of the Share Purchase Agreement between the Intervenor and the Italian Partners. (Exh.C @36/Intervention Petition).

142. The reliefs in the Suit and the proceedings in the NCLT are not overlapping. While High Court is seized of a dispute arising for specific performance of a private agreement for sale of shares of the Corporate Debtor by the Intervenor and Mr. Silvano Spiller. Distinct from that, the proceedings in the NCLT impugn actions of the Respondents' in trying to run the Corporate Debtor aground, leaving it into a non-entity shell company.

143. In the initial hearing(s) of the Suit, the Italian Partners once again committed to the purchase of Intervenor's shareholding at INR 110/- per share, in conformity with the agreement sought to be enforced in the Suit.

This is recorded by the Hon'ble Bombay High Court in the order dated 18.12.2023. (@580/Intervention Petition)

144. Financial Creditor and Italian partner's attempts to thwart the Intervenor's claim. Forceful inducement of debt and default.

145. Realizing that the Suit and the statement recorded in the Order of 18.12.2023 will come prevent him from exiting the Indian market rapidly, Mr. Silvano Spiller made several strides towards getting out of the commitment of 18.12.2023 to buy-out the Intervenor's shareholding.

146. Despite the pendency of the proceedings in the High Court, and despite the assurances recorded in the Order of 18.12.2023, attempts were being made to deal with the Corporate Debtor and its assets. The Petitioner immediately approached the High Court on 22.12.2023 whereby the parties have arrived at a consensus that the sale would not be imminent. (@581/Intervention Petition). A reference may also be made to the Order dated 08.04.2024 passed by the High Court. These Orders further entrenched CMP Italy and Mr. Spiller in India, as opposed to their desire to exit India.

147. However, the process of starving the Corporate Debtor of fresh business was induced by the Italian Partners as far back as in May 2023, when on 15.05.2023 Ferrero terminated their agreement with the Company with effect from 14.05.2024. The Termination was induced by Mr. Silvano Spiller who has old ties with Ferrero and Dreamplast.

148. In any case, upon termination, the Corporate Debtor had a year's notice to find new business opportunities. Therefore, the Petitioner repeatedly sought to look for other business opportunities, stating *"I can propose (to)*

look for other opportunities, just recent I have been able to contact Hamleys India (Reliance). procurement head and be initial interest…" (@1191,1204,1027/Intervention Petition) but the Italian Respondents maintained a stance that their set-up in India was 'exclusively for catering to Ferrero (@1212/Intervention Petition). Therefore, there was a complete disinclination to find and do business in India despite the availability of sizeable land and large-scale machinery.

149. The parties therefore were at odds and the Corporate Debtor was facing a deadlock.

150. It is in these circumstances, that to: (1) get out of the Suit without having to await the complete trial, and (u) to bypass orders of the High Court that were in operation at the time (i.e. for purchase of Intervenor's shares and for preventing the Corporate Debtor and its assets from being depleted), that common management got CMP Italy to file a Section 7 Petition.

151. Financial Creditor and promoters forcefully depleting the Company

152. As noted above, the Corporate Debtor had a positive cash flow and significant revenue. This would have continued with the Intervenor running the day to day management of the Corporte Debtor, as had been the case since incorporation in 2013. However, the Italian Partners intended to sabotage that and exit India.

153. The Articles of Association (Pg. 692/Intervention Petition), at Clause 35(g), require a shareholder approval before 'commencement of insolvency proceedings of or in respect of the company or its assets'. Therefore, the Intervenor was required to be called to vote before a Section

10-IBC Petition could have been filed. To circumvent that protection, the Italian Partners have filed a Section 7 Petition.

154. Forcefully induced insolvency of a revenue rich, high-value company to meet vested interest.

155. First Section 7 Petition. It is at this juncture that to avoid (1) making good the commitment of purchasing the Petitioner's share at the agreed rate of 110 rupees per share recorded in the order of 18.12.2023, (ii) the embargo on sale as recorded in the order dated 22.12.2023, that the Italian partners now resorted to filing a Section 7 Petition before the NCLT stating default of External Commercial Borrowing (ECB). This was the first time that the repayment of ECB and interest thereon was characterized by the Italian Respondent as "due and payable"

156. This Section 7 Petition came to be dismissed. Simultaneously, Intervenor's interim reliefs in the High Court were rejected on the ground that the agreement of INR 110/-is not a concluded contract. Additionally, the Order observes that since the Intervenor wanted to continue the business of the Company, it shows that the Intervenor gave up the agreement of INR 110/- per shares. In challenge to this Order of Ld. Single Judge of the High Court, the Appeal came to be disposed with an order granting liberty to the Petitioner to move an application for urgent reliefs if there is a change in circumstances.

157. The First Section 7 Petition arrayed the Corporate Debtor through Mr. Chetan Doshi i.e. the Intervenor. This would have allowed the Intervenor to prepare the Reply for the Corporate Debtor, bringing out the true and correct facts of how the transaction was not in the nature of debt. This

would create resistance to the Section 7 being admitted, as opposed to now when the Intervenor has been ousted and the Italian Partners have caused the Corporate Debtor to admit the debt.

158. It had become critical for the Italian partners to remove the Intervenor from the managerial position, without which their exit from India would be prolonged. Therefore, during pendency of the Suit, to render the Corporate Debtor incapable of defending itself in the Section 7 proceedings and to now drive it aground, one Mr. Jatinder Singh was purportedly appointed as the Additional Director on 18.12.2023 and as a Whole Time Director on 24.01.2024. These appointments were illegal. The Intervenor's protest to Mr. Jatinder Singh's appointment was not addressed in these meetings. (@ 1278, 1594, 717/Intervention Petition).

159. Illegal Removal of the Intervenor prevented the Corporate Debtor from exploring further business opportunities. Notably, the Intervenor had already got in talks with Hamley's/Reliance when the Italian partners sabotaged prospects of future business.

160. Prayer (a), (b) and (c) of the Company Petition no. 11 of 2024 challenges the appointment of Mr. Jatinder Singh. (Page 675/Intervention Petition)

161. At this point, a brief profile of Mr. Jatinder Singh is critical:

i. He is also an Italian citizen,

ii. He is a resident of Germany (as on 10.05.2025);

iii. He is does having a business background and claims to be a philanthropists (Exh-DDDD @ 445/IA 103/2026 in CP/11/2024)

162. Company Petition for Oppression and Mismanagement. Shortly after the appointment of Mr. Jatinder Singh, the Intervenor filed the Company Petition no. 11 of 2024 *inter alia* challenging the appointment of Jatinder Singh (@676/Intervention Petition). Notably, by Order of 28.03.2024, interim injunction from abuse of the Petitioner's digital signature has already been granted.

163. Second Section 7 Petition. In the meantime, the earlier Section 7 Petition came to be dismissed and the captioned Section 7 Petition (CP no. 1231/2025) was later filed. Shockingly, by an email of 18.11.2025, Mr. Jatinder Singh has admitted the demand notice issued for the new Section 7 Petition (Exh-JJJJ@626/1A no. 103/2026 in CP/11/2024). There is no board meeting or resolution in support of the admission of debt made by that email. Moreover, the email is in teeth of Prayers b, c, d of the Company Petition no. 11 of 2024 which have, since 2024, challenged the appointment of Jatinder Singh.

164. Given the shareholding structure of CMP India and CMP Italy, the Section 7 Petition shows that the entity claiming debt and default is the same as the entity which has purportedly admitted to committing the debt and default.

165. There are no other Financial Creditors of CMP India. CMP Italy will fully control the CIRP, if the same were to commence.

166. Overwhelming case of fraudulent and malicious initiation of Insolvency.

167. Thereafter, the Intervenor has filed the captioned Intervention Petition inter alia under Section 65. It was lodged on 8th December 2025 and objection were removed promptly. Several preceipies were moved as the

same objections which were already removed were being repeatedly raised by the Registry. Ultimately, an email dated 10.02.2026 was addressed to the Registry for providing the registration number. It was only on 11th February 2026, that a final filing number was given by the NCLT Registry.

168. The Intervenor's case there is that there is no financial debt (see paragraphs 38, 39 of the Intervention Petition). At this juncture, it is important to appreciate that the true character of the "ECB" was an investment and consideration for equity. In this regard, it is to be noted that:

a) The Italian Partners came to India to tap into the business in India. As outsiders, they needed an Indian partner to set-up and grow CMP India, for which they found the Intervenor.

b) The Intervenor brought his experience and his role of running the day-to-day affairs, to the equity-table. On the other hand, the Italian Partners infused funds.

c) That the true nature of ECB was an investment and not a loan is exposed by the fact that:

169. Since the Intervenor was single-handedly running the Corporate Debtor's day-to-day affairs, without the infusion of funds the Italian Partners would have no other notable contribution to command a 74% profit-sharing interest in the Corporate Debtor.

170. Moreover, if the ECB were merely a debt, simply levying interest on its repayment would have been a complete commercial bargain in itself. To additionally handover an overwhelming majority stake of 74.74% of the

Corporate Debtor, over and above the interest, would not only have been unnecessary but also less viable than taking a loan from the market.

171. Therefore, for the Italian Partners, ECB was a viable mode to couch their investments in India.

172. Statutory Filings by CMP Italy with the Italian Ministry of Corporate Affairs also records their infusion of funds in CMP India under the caption of '*Investments in Subsidiaries' (ref: @1689/Intervention Petition).*

173. That despite the original due date having passed in 2020, no repayment of ECB was sought until the dispute arose in 2022-23, exposes once again the true character of the ECB. It was never intended to be repaid like a loan.

174. It was only after the differences arose in September 2022, that the infusion of funds was repurposed as a loan by exploiting the nomenclature and façade of ECB.

175. By cleverly appointing Mr. Jatinder Singh and ousting the Intervenor, the Company/Corporate Debtor was prevented from exposing the true character of the ECB in its Reply to the Section 7 proceedings.

176. It is submitted that Mr. Jatinder Singh's appointment was a systematic ploy to strip the Intervenor of his control and management of the Corporate Debtor so that it would automatically loose its fulcrum and succumb to the schemes of the Italian partners, *inter alia* by being put into CIRP.

177. Even operational rights over the company's bank account was highhandedly taken away from the Intervenor and transferred to Me. Jatinder Singh who is a complete outsider to the company (@1287/Intervention Petition). This is also under challenge.

178. Having completely squeezed out the Intervenor from the management of the Corporate Debtor, the Italian Partners (through Mr. Jatinder Singh) aggressively doubled down on their strategy to paralyze the Corporate Debtor: (i) the entire workforce of the company has been discharged and there are outstanding dues payable to the workers, (ii) absolutely no steps were taken explore business opportunities for the Corporate Debtor despite repeated urging of the Intervenor, the assets of the Corporate Debtor were kept to deteriorate, as no business opportunities are being found.

179. There are several statutory and third-party obligations which are being defaulted on by the Corporate Debtor running under the management of Italian Respondents (Exh-KKKK and LLLL @ 627,628/1A no. 103/2026 in CP/11/2024). The Corporate Debtor is deliberately made to default on statutory requirements and compliances, the Italian Partners are aware that as the only Resident Director, the Intervenor would be made responsible by the statutory bodies.

180. The collusive and oppressive nature of the Section 7 proceedings is also clear from the fact that:

i. the Financial Creditor Le. CMP Italy is a party invoking insolvency

ii. Insolvency is being invoked against CMP India

iii. Admittedly, CMP Italy controls CMP India

iv. In fact, apart from the control, CMP India and CMP Italy are advised and represented by the same set of advisors in all judicial proceedings. (@1399/Intervention Petition r/w. @5,33-CP(IB)/1231/2026).

181. The above establishes a gross form of oppression and abuser of control by majority shareholder of a company using its financial and majority shareholding muscle power to oppress a minority shareholder.

182. Ultimately, to make matters worse as a icing on the cake, while the Intervenor is completely ousted from management, the latest act of oppression and mismanagement is that the Italian Respondent (through Mr. Jatinder Singh) have issued an email admitting the debt and default in response to the Section 7 Petition (Exh-JJJJ@625/IA no. 103 of 2026 in Company Petition no. 11 of 2024). This is directly under challenge in Prayer 'M' at page 59 of IA no. 103/2026 filed in Company Petition no. 11 of 2024.

183. On account of the query over maintainability of the Intervention Petition, as recorded in the Order-sheet of 12.02 2026, the following needs to be appreciated.

184. This Intervention Petition, which invoked Section 65, cannot be pegged at the same footing as a conventional Intervention Petition for the reason that it invites findings on fraudulent and malicious invocation of Section 7. This difference is critical.

185. In Anil Singh vs. SREI Equipment (2025 SCC Online NCLAT 1320), the NCLAT was faced with a similar situation where also an Intervention Petition *Inter alia* Invoking Section 65 was filed by a homebuyer and was dismissed by the NCLT for want of locus of a third-party to be heard at the pre-admission stage. Holding that the NCLT should have considered the intervenor's allegations instead of dismissing the Intervention on locus, the NCLAT noted at paragraph 26 that:

"...We have noticed relevant observation of the Adjudicating Authority in the impugned order. The Adjudicating Authority has not proceeded to consider Section 65 application, it has only observed that the Appellant has no locus, it being neither proper nor necessary party in Section 7 application. Insofar as, Section 7 proceedings are concerned, there can be no quarrel to the observation that an Intervenor, who may not be necessary party or proper party, cannot intervene, but in a case where prayer of the Intervenor under Section 65 regarding pleading to initiation of CIRP with fraudulent and malicious intent, the Adjudicating Authority ought to have looked into the allegations carefully. The IBC clearly prohibits any malicious or fraudulent initiation of CIRP and when in an application, it has been brought into notice by the stakeholders, the said application deserves consideration on merits. Rejection of the application only on the ground that Intervenor has no locus, is unsustainable."

186. There is another viewpoint to support the maintainability of the captioned Application.

187. It is trite law that a Section 65 can be maintained even at a pre-admission stage, as held in Ashmeet Singh Bhatia vs. Sundrm Consultants [2023 SCC Online NCLAT 1423] where an application under Section 65 by a homebuyer of not the Corporate Debtor but its group-company, was found to be maintainable against the Corporate Debtor at a pre-admission stage.

188. Therefore, when a Section 65 Application is filed, it cannot be said that and the Financial Creditor and Corporate Debtor can be heard. That would

be in teeth of the tight recognized in *Ashmeet Singh Bhatia* (supra) and the right of a third-party to be heard on fraudulent initiation of CIRP would be rendered meaningless.

189. In summation, once a party invokes Section 65 at a pre-admission stage, must be heard in the spirit of ensuring that IBC is not being misused. The Respondent Financial Creditor's attempt to throw-out the Intervenor by emphasising on the nomenclature of the Application being styled as an Intervention, is not only unfounded-given the decision in Anil Singh (supra) but also superfluous for emphasising form over substance, more so in respect of a provision which intends to create checks and balances against abuse of process.

190. Strictly without prejudice to all of the above, it is submitted that the purported instruments namely the four 'Foreign Currency Loan Agreement' on which the case of Financial Debt is based, contains an Arbitration Agreement at Clause 8, which reads thus:

> *"8. Settlement of Disputes: Any disputes arising between the parties of the ONE PART and the party of the OTHER PART herein and/or their legal representatives shall be referred to arbitration in accordance with the provisions of the Indian Arbitration and Conciliation Act. 1996, or any statutory modifications or re-enactment thereto in force."*

191. The Financial Creditor claims that the debt is in the nature of External Commercial Borrowings (ECB). The Arbitration Agreement ought to have been invoked by the Corporate Debtor in response to the demand notice. However, as a result of the collusion, the Corporate Debtor did not invoke

arbitration against the Financial Creditor, both being run by the same management.

192. However, that does not change the fact that there exists '*dispute'* on the very character and nature of the purported financial debt/ECB. For instance, the Financial Statements filed by the Financial Creditor in Italy characterise its infusion into the Corporate Debtor as an '*Investment in Subsidiaries'* and not a debt (ref: @1689/Intervention Petition). Equally, the Intervention Petition states at paragraph 38 and 39 that the ECB are in the nature of investments and quasi-equity.

193. While the above is adequate to show a *prima facie* case of existence of dispute, it is submitted that the determination of the issue will require a full-fledged trial, which in this case ought to be before an Arbitrator pursuant to the Clause 8 of the purported Foreign Currency Loan Agreements.

194. Therefore, there was sufficient material for the Corporate Debtor to have invoked Section 8 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) instead of collusively admitting the debt (ref: email dated 18.11.25 issued by Jatinder Singh at page 625-626 of IA/103/2026 in CP/11/2024). By blocking the Intervenor from representing the Corporate Debtor, the common management of the Corporate Debtor and Financial Creditor prevented an Application to be filed for invoking arbitration.

195. In Writ Petition (L) no. 13056/2026, the High Court was apprised of the pendency of the Transfer Petition (the Orders thereunder) and the O&M Petition. In its two orders, dated 27.04.2026 and 05.05.2026, the High Court has specifically kept all rights and contentions open. In light of the

above, it primarily submitted that this Hon'ble Tribunal be pleased to give deference to the pending O&M Petition and Transfer Petition.

196. Without prejudice to the above, it is submitted that the Insolvency and Bankruptcy Code is intended for the resolution of distressed entities, not as a tool for majority shareholders to short-circuit a fact-finding inquiry into oppression and mismanagement. Where the 'default' is a product of internal collusion rather than commercial failure, the Section 7 Petition is void of bona fides and for ex face being an attempt to fraudulently and maliciously induce insolvency.

197. This Hon'ble Tribunal is, therefore, urged to look behind the veneer of admitted debt, recognize this Petition as a fraudulent abuse of process, and dismiss the same with exemplary costs under Section 65.

ADDITIONAL WRITTEN SUBMISSIONS OF THE APPLICANT IN INTERVENTION PETITION

198. On 25th October 2023 Applicant filed Suit in his capacity as shareholder and challenged all actions initiated by the Petitioner or the Company.

199. Thereafter on 31 January 2024 Applicant initiated proceedings under section 241 of the Companies Act, 2013 by filing petition before this Hon’ble Tribunal.

200. Being entitled to Petitioner filed a Section 7 application on 2nd August 2024 before this Hon’ble Tribunal for initiating insolvency against the Company.

201. No application at that stage was filed under S. 241 petition as well as no Application at that stage was filed under S. 7 application as filed now.

202. Applicant at that stage approached Hon'ble High Court to seek relief restraining Petitioner and the company from pursuing S. 7 application. Hon’ble High Court was pleased to grant add interim order on 30th September 2024.

203. Thereafter, the application was heard and decided by order dated 11th June 2025 on which date the application for grant of interim relief was rejected by Hon’ble High Court and the interim relief granted earlier restraining S. 7 application to be heard was vacated.

204. An appeal was filed from the rejection of interim relief before the Division Bench of Hon'ble High Court which was withdrawn on 4th August 2025. Therefore, the interim order rejecting interim relief attained finality.

205. As earlier Section 7 application could not be pursued because of restraining order from Honorable High Court and therefore same was not restored and dismissed. However, liberty was granted to file a fresh S. 7 by order dated 13th August 2025.

206. Accordingly, on 30th September 2025 fresh S. 7 was filed which is the present Petition. Having failed to obtain any order from Honorable High Court the applicant herein started pursuing this matter this time before this Honorable Tribunal.

207. Applicant filed intervention in present Company Petition and sought for relief under S. 65 of the code and parallelly for identical relief filed an application before Court IV, Tribunal where S. 241 petition is pending.

208. Applicant thereafter pressed for reliefs before this Tribunal on 2 consecutive dates more particularly on 27th January 2026 and 12th February 2026. Having realized that there are legal objections raised with

respect to the intervention application, Applicant then started pursuing its application before Court IV in the S. 241 application.

209. Thereafter as no interim reliefs were granted even by Court IV, applicant filed transfer petition, after having argued matter partially in both the Tribunals, before the Principal Bench seeking to club both the matters. This petition seeking intervention was filed on 23rd Feb 2026.

210. On 10th April 2026, the Transfer Petition, was listed on which date notices were issued by the principal bench. On the same date matter was listed before Court IV as well, however on that date adjournment was not sought before the Tribunal on the ground of pendency of transfer petition but once again request was made to consider grant of interim relief.

211. On 13th April 2026 when the matter was listed before this Tribunal instead of advancing any submission on merits a request was made to adjourn the matter on the ground that transfer petition is pending before Principal Bench.

212. In view of the fact parties were already heard extensively on the earlier occasion and submissions were placed on record. Also, in view of the fact that the Applicant was not willing to argue the matter but seeking to adjourned the matter on the ground of pendency of Transfer Petition, the matter was heard and closed for order.

213. Being aggrieved by the said order the applicant then preferred Writ Petition, requested Hon'ble Bombay High Court that they should be heard as they were not heard and accordingly Hon'ble Bombay High Court has directed that they should be heard on the application on 04th May 2026.

214. In view of the above, it is respectfully submitted then the applicant should argue their application and they should not be allowed to seek adjournment on any ground as Honorable High Court has directed them to be heard. One cannot contend that they were not heard and when an opportunity is accorded to argue the matter they seek adjournment.

ANALYSIS AND FINDINGS: -

215. The present application being CP 1231/2025 has been filed by the applicant u/s 7 of IBC, 2016, claiming a total debt and default of Rs. 35,56,79,566/- (as on 31.08.2025). It is the case of the applicant that they have sanctioned and disbursed External Commercial Borrowings to the Respondent to the tune of € 43,50,000/-.

216. Applicant has placed 4 different ECB agreements, which were executed between the parties on 05.09.2014 (Euros 20 lakh) (ECB-1), 25.05.2015 (Euros 10 lakh) (ECB2), 25.05.2015 (Euros 10 lakh) (ECB-3) and on 19.10.2015 (Euros 3.5 lakh) (ECB 4).

217. Amounts pursuant to the said Agreements were drawn by the Respondent on or before 30.06.2016.

218. The ECB Facilities were registered with the Reserve Bank of India ("RBI") and were granted loan registration numbers respectively. Such approvals are placed on record.

219. The ECB loans were repayable from 2018 in phased manner. The repayment clause is reproduced hereunder:

> *"6. Loan Repayment Schedule: It has been agreed upon by the party of ONE PART and the party of OTHER PART that the amount of loan borrowed shall be repaid upon the expiry of*

period of 5 years from the date of borrowing of respective amounts."

220. As per the Applicant, principal amounts in respect of ECB-2 and ECB-4 were repaid by the Corporate Debtor and the present Application is in respect of default by the Corporate Debtor in payment of ECB-1 and ECB-3, for total outstanding in respect of them claimed in the Application as of 31.08.2025 is equivalent to INR. 35.57 crores including the unpaid interest (Principal o/s of Euros 30 lakh and unpaid interest @ 2% p.a.).

221. The first date of default is mentioned as 01.07.2023 and the last date of default is mentioned as 07.06.2025. These defaults are as per the revised schedule for repayment agreed between the parties, which can be seen from various letters exchanged between the parties attached at page nos. 59-82. Further, Schedule-A attached to the Demand Notice dated 08.09.2025 at page no. 96 of the Application, clearly states the revised date of defaults. Considering the communications between the parties, we are of the considered view that they form acknowledgments from the CD. Therefore, the dates of defaults mentioned by the Applicant are stated correctly. The Applicant has filed this Application on 11.11.2025 and hence, the Application is within the limitation period.

222. Applicant has e-filed the record of default with information utility (NeSL) on 10.12.2025, perusal of which reveals that the amount in default is Euros (€) 2623904.39 and the status of authentication is "Deemed to be Authenticated".

223. Applicant has stated that a COMM Suit No. 2 of 2025 was filed by one of the directors of the Corporate Debtor i.e Mr. Chetan Doshi against the

Corporate Debtor, the promotor of the Financial Creditor i.e. Silvano Spiller, managing Director of the Financial Creditor i.e. Anna maria Calore and the Financial Creditor i.e. CMP Industries SPA. In this Suit an interim application being 29991 (L) of 2023 was filed for seeking injunctions against the Respondent from creating/selling the assets of the Corporate Debtor, creating any third-party rights etc. and also for depositing Rs. 10.88 crores by Mr. Silvano Spiller pursuant to the said alleged agreement dated 14.06.2023 vide which Mr. Spiller is alleged to had agreed to purchase the shareholding of Mr. Chetan Doshi in the Corporate Debtor for Rs. 10.88 crores. However, the said interim application was dismissed by the Hon'ble Bombay High Court *vide* an order dated 11.06.2025. The said suit was also disposed of by the Hon'ble High Court of Bombay as withdrawn on 04.08.2025.

224. It is also stated by the applicant that a petition u/s 241-242 being CP 11 of 2024 relating to the same Corporate Debtor and its shareholders is pending on the file of this Tribunal with a co-ordinate Bench, wherein certain acts of oppression and mismanagement have been pleaded by the intervenor herein. The said petition is yet to be decided by the co-ordinate Bench dealing with the said petition for O&M.

225. In the said Petition, being CP 11 of 2024, one of the reliefs sought by the Applicant being relief (e) is reproduced below :-

> *"Pending the hearing and final disposal of the present Petition, this Hon'ble Tribunal may be pleased to appoint such person as it may deem fit and proper as an Administrator of Respondent No. 1, and to direct such Administrator to manage and oversee the business of Respondent No. 1, and in particular, take such steps as may be necessary to source business opportunities for*

Respondent No. 1, to execute fresh contracts for the manufacture and supply of toys, and to service those contracts."

226. In its reply to the present application the Corporate Debtor has admitted to the debt and default. It was submitted that the Corporate Debtor has been compelled to suspend its business operations owing to shareholders disputes, severe financial stress, prolonged market related constraints and non-availability of working capital.

227. The Corporate Debtor has pleaded that the Corporate Debtor does not have any means of finance and is unable to repay the ECB Facility and the interest accrued thereon.

228. The Corporate Debtor has further pleaded that in such circumstances, having meaningful resolution that helps in reviving the Corporate Debtor will be the most prudent and commercial step.

229. Order of this Bench dated 12.02.2026 records as under :-

"Applicant has stated that, they are giving their consent for appointment of IRP from IBBI /NCLT panel. The said additional affidavit is taken on record."

Applicant has filed an affidavit dated 29.01.2026 and in para 7 of the same has given its consent to appoint an independent resolution professional in case this CP is admitted.

230. As regards the Intervention Petition being Intervention Petition 20 of 2026, the applicant has filed the petition comprising of 1760 pages and thereafter on 13.04.2026, written submissions have been filed, which are recorded in the earlier part of this order.

231. The applicant in the intervention petition has filed written submissions, which extend to 29 pages typed on a single space basis.

232. We have heard these matters and they were reserved for orders on 13.04.2026, however, as per the directions of Hon'ble Bombay High Court at Bombay, as contained in its order dated 27.04.2026, this Bench was directed to re-hear these matters on 04.05.2026 and therefore, the matters were heard again on 04.05.2026 and on 06.05.2026. The cumulative time for hearing on the said two days exceed 2.45 Hours and only upon the conclusion of the arguments by both sides, matters were again reserved for orders.

233. In its intervention petition the applicant has alleged the followings against the applicant in the CP:-

a. Applicant in CP has substantial interest in the Corporate Debtor and that the said applicant and respondent are one and the same.
b. The debt of the applicant in CP is nothing but a quasi-equity.
c. Applicant in the CP has created the present situation.
d. An O&M petition is pending before another Bench of NCLT, Mumbai.
e. A transfer application is pending before the Principal Bench.
f. The present CP is an attempt to short circuit an agreement between the applicant's promoters and the intervenor to wriggle out of an already concluded agreement between the parties for purchase of nearly 25% shareholding of the applicant.

234. We have considered the above allegations of the Intervenor in the following paragraphs. The Applicant in the Intervention Application states that Applicant in the CP has substantial interest in the Corporate Debtor and that the said Applicant and Respondent are one and the same. The interest of the Applicant in the CP in the Corporate Debtor as a shareholder holding 74.74% shareholding is already on record. The same, however, does not affect the maintainability of this CP as the financial creditor and the Corporate Debtor are separate legal entities and there is no bar under IBC 2016. In a related party, initiating CIRP in respect of Corporate Debtor especially when the existence of debt and default is established by the Applicant.

235. The Intervenor has not placed anything on record, which goes on to prove that the ECBs were not disbursed for time value of money as defined under Section 5(20) of the Code. On the contrary, Intervenor has placed the ECB Agreements, on which the applicant and the Corporate Debtor have also relied. The said ECBs are registered with RBI, which is an independent institution. The said ECBs have a pre-defined rate of interest and a repayment schedule. According to the schedule, the debt is under default status, which is also established by the applicant, who has placed before us the record of default issued by NESL, which reflects the status of authentication of default as "**Authenticated**" and a number of other documents including Foreign Currency Loan Agreements and various correspondences exchanged between the parties. As such, the claim of the Intervenor that the debt of the Applicant in CP is nothing but quasi-equity is not tenable and is hereby rejected.

236. The Intervenor has further alleged that the Applicant in the CP has created the present situation. However, the said allegation is not relevant for considering the admissibility of the CP by this Bench and that relevant fact for this CP is the existence of debt and default, which has been established by the Applicant in the CP. Moreover, the allegation is not substantiated by any adjudication order by competent Court and, therefore, the same is not even worth considering.

237. As regards pendency of the Transfer Application by the intervenor Mr. Chetan Doshi for transfer of CP No. 1231/2025 from Court-VI to Court-IV of this Tribunal, the Ld. Principal Bench, New Delhi, *vide* order dated 29.05.2026, disposed of the T.A. (IBC) 18 of 2026 as infructuous as the Applicant therein submitted that the arguments in CP 1231/2025 and intervention petition No. 20/2026 were concluded and the orders had been reserved on 06.05.2026 by this Bench of the Tribunal. The O&M petition between the parties, was however, further listed on 03.09.2026. Moreover, we have observed, that in none of the matters i.e. the Transfer Application 18/2026 (which is now disposed of) or in the O&M petition No. 1/2024 pending before the co-ordinate Bench of this Tribunal, any stay on Section 7 Application has been granted to the applicant in the intervention petition. As such, this Section 7 Application can proceed independently.

238. In regard to the plea of the intervenor that an O&M petition is pending before another Bench of this Tribunal and, therefore, this Section 7 Application should not be proceeded with, this Tribunal relies on the judgment of Hon'ble NCLAT in *Jagmohan Bajaj v. Shivam Fragrances Pvt. Ltd.*, (2018) ibclaw.in 53 NCLAT, wherein the was held that:-

"This is a clever ploy to frustrate the arbitral award. Inter-se dispute between the Directors as regards transfer of shareholding and allegations of oppression and mismanagement stated to be pending adjudication before the Tribunal mayor may not be a fixed match to jeopardize the legitimate interests of Investor/Financial Creditor. But the fact remains that there being no dispute in regard to raising of loan by the Corporate Debtor in the nature of a financial debt which was due and payable and there being default on the part of Corporate Debtor, who failed to transfer the immovable asset in terms of the arbitral award to discharge the obligation arising out of financial debt, the Financial Creditor was within its rights to initiate Corporate Insolvency Resolution Process. <u>Internal dispute of Directors of Corporate Debtor and pendency of application under Section 241 and 242 of Companies Act, 2013 before NCLT, New Delhi Bench for adjudication does not construed a valid defense to triggering of Insolvency Resolution Process. I&B Code is a special law having an overriding effect on any other law as mandated under Section 238 of I&B Code.</u> Triggering of Insolvency Resolution Process cannot be defeated by taking resort to pendency of internal dispute between Directors of Corporate Debtor on allegations of oppression and mismanagement. The statutory right of a Financial Creditor -12-satisfying the requirements of Section 7 of the I&B Code to trigger Insolvency Resolution Process cannot be made subservient to adjudication of an application under Section 241 and 242 of the Companies Act, 2013.I&B Code is supreme so far as triggering of Insolvency Resolution Process is concerned and same cannot be eclipsed by taking resort to remedies available under ordinary law of the land."

Emphasis supplied

239. In view of the above judgment, wherein Hon'ble NCLAT has held that internal disputes of director of Corporate Debtor and pendency of application under section 241 and 242 of the Companies Act, 2013 do not construe a valid defence to triggering of insolvency resolution process, as IBC is a special law having an overriding effect over other laws in view of the provisions of Section 238 of IBC 2016. Hon'ble NCLAT further held that

the statutory right of a financial creditor satisfying the requirements of Section 7 of IBC, 2016 to trigger the CIRP cannot be made subservient to adjudication of an application under section 241-242 of Companies Act, 2013 as IBC is supreme so far as triggering of CIRP is concerned and the same cannot be eclipsed by taking resort to remedies available under ordinary law of the land. As the applicant in the CP has established the existence of debt and default exceeding the threshold of Rs. 1 crore, the plea taken by the intervenor cannot be accepted in view of the above judgment of Hon'ble NCLAT.

240. Hon'ble NCLAT in a catena of judgments held that adjudicating authority is not required to hear a person other than the corporate debtor in an application under Section 7 of the Code. In this regard, we refer to a judgement of Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 44 of 2019 ***Deb Kumar Majumder & Ors. v/s State Bank of India***. The relevant portion of which is reproduced herein:-

> *"We agree with the observations made by the Adjudicating Authority at the stage of application filed under Section 7 that no person has right to claim for hearing except the 'Corporate Debtor'. No other 'Financial Creditor' or 'Operational Creditor' or any other creditor is required to be heard except the 'Financial Creditor' who has filed an application under Section 9 of the I&B Code. The Adjudicating Authority is required to notice whether there is a 'debt' and 'default' committed by the 'corporate debtor' if the application under Section 7 is filed."*

241. Another objection of the Intervenor is regarding short-circuiting the O&M petition and the contract between the shareholders. The same is, however, not at all having any legal force. Considering the Jagmohan Judgment (Supra) of the Hon'ble NCLAT, wherein it has been held that

pendency of an O&M Petition and shareholders' disputes including in regard to the contract between the shareholders does not create any ground for not proceeding with Section 7 Application wherein debt and default is established by the Applicant, as a result of the overriding effect, which provisions of IBC have, in view of Section 238 of IBC, 2016. Moreover, we notice that one of the prayers in the O&M petition, as enumerated above, being prayer (e) in CP 11 of 2024, is for appointment of an Administrator. We are of the view that an IRP is having much more powers than an Administrator and through CIRP process a viable solution for the present Corporate Debtor can be arrived in a better manner.

242. Already we have taken protection for appointment of independent IRP in the matter and for which the applicant in the CP has given his consent.

243. As regards reliance placed by the applicant in the intervention application on the judgment of Hon'ble NCLAT in the matter of ***Anil Singh vs. SREI Equipment*** (2025 SCC Online NCLAT 1320), wherein the intervention petition inter alia invoking Section 65 of IBC filed by a worker (i.e. Mr. Anil Singh) on behalf of himself as well as representative of another 129 workers of the Corporate Debtor was dismissed by NCLT, however in appeal Hon'ble NCLAT vide order dated 25.08.2025 held that the said order of the NCLT cannot be sustained and was set aside. The intervention petition was revived and was directed to be heard by the Adjudicating Authority in accordance with law. We notice that in the said matter the applicant in the intervention petition pleaded circular transaction of debt thereby demonstrating that there was not a genuine debt but circular transaction as per which no genuine transfer of funds out of a debt

transaction had taken place from financial creditor to the CD. Hon'ble NCLAT in para 26 of the said judgment has noticed as under :-

"26. ………………………………………………………………………………… Rather, the Appellant in their application has given other facts, pleading that Respondent No.1 has control on Respondent No.2 through its related entities and the transaction, which is basis of Section 7 application is a circular transaction. Respondent No.2 once has already undergone CIRP and was taken over by related party of Respondent No.1 and the application under Section 7 has been maliciously initiated. We have noticed relevant observation of the Adjudicating Authority in the impugned order. The Adjudicating Authority has not proceeded to consider section 65 application, it has only observed that the Appellant has no locus, it being neither proper nor necessary party in section 7 Application. Insofar as, Section 7 proceedings are concerned there can be no quarrel to the observation that an intervenor, who may not be necessary party or proper party, cannot intervene but in a case where prayer of the applicant under Section 65 regarding pleading to initiation of CIRP with fraudulent and malicious intent, the Adjudicating Authority ought to have looked into the allegations carefully. The IBC clearly prohibit any malicious or fraudulent initiation of CIRP and when in an application, it has been brought into notice by the stakeholders, the said application deserves consideration on merits. Rejection of the application only on the ground that applicant has no locus, is unsustainable."

244. In view of the above finding, Hon'ble NCLAT passed the following order in the above matter:-

"29 In view of the foregoing discussion and our conclusions, we are of the view that order impugned cannot be sustained. In result, the impugned order dated 10.06.2025 rejecting intervention petition (IBC)/1/GB/2024 is set aside. The intervention petition (IBC)/1/GB/2024 is revived, which may be heard by the Adjudicating Authority and decided in accordance with law.

……………………………."

245. Applicant in the intervention application has failed to produce anything on record on the basis of which it can be said that sanction and

disbursement of the ECB in question was a circular transaction or round tripping and not a genuine transaction where funds have not genuinely transferred by the Applicant to the CD. For the ECBs in question the disbursement and terms of ECB were never denied by any of the parties before us. As such we are not able to rely on the judgment of Anil Singh (supra).

246. The reliance placed by the applicant in the intervention application on the judgment of NCLAT in the matter of Balkishan Shrikishan Baldwa (Supra) wherein the intervention petition inter alia invoking section 65 filed by a shareholder of the financial creditor (who initiated the CIRP) and also of the Corporate Debtor, along with other shareholders who executed a power of attorney in his favour, was dismissed by NCLT, however, in appeal Hon'ble NCLAT held that NCLT should have considered the intervenor's allegation instead of dismissing the intervention on locus, we notice that in the said matter the applicant in the intervention petition pleaded that the financial debt based on which CIRP was sought to be initiated by the Financial Creditor (FC) was in fact an operational debt and that the same was not carrying any interest though the financial creditor claimed it to be an interest bearing financial debt and therefore the CIRP was sought to be initiated by providing false information in respect of nature and particulars of alleged debt with an intention to mislead the adjudicating authority into initiating the CIRP. In the said matter it was also held that though the financial creditor and the corporate debtor were related parties, however the said fact was not disclosed by the applicant financial creditor

in the application for initiation of CIRP. In regard to the above we reproduce hereunder the paragraphs 66,67 and 80 to 82 of the said judgment:

*"**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 Rs.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.*

*"**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."*

247. However, in the present CP there is no allegation that the financial debt has been fraudulently claimed to have been in existence and that the fact as to relationship of the financial creditor and corporate debtor has been clearly disclosed in the application. As the Foreign Currency Loan Agreements attached with the Application clearly provide that the financial creditor is holding 99.99% of shares in Corporate Debtor (which was

subsequently reduced to 74.74%, 25.25% transferred to the Intervenor and 0.0026% by Mr. Silvano Spiller). Moreover, the Applicant has also attached along with the Application, order of Hon'ble Bombay High Court dated 11.06.2025 (on page no. 125-156), which also contains the details about the shareholding of Applicant in the CD and also about the dispute between the Applicant/Financial Creditors/others with the Intervenor. The said details are further stated in the additional affidavit of the Applicant dated 29.01.2026. The financial debt granted by the financial creditor to the corporate debtor is registered with RBI as External Commercial Borrowing and, and also the Foreign Currency Loan Agreements, intimation to the RBI (in Form 83) in regard to the change in terms and conditions of ECBs, registered documents of the ECB Loans with RBI, default notices sent by the Applicant to the Corporate Debtor, clearly demonstrate that the amount lent by the financial creditor to the corporate debtor was interest bearing as well as was a financial debt. For the said reasons, the Balkishan Shrikisan Baldwa judgment (Supra) does not apply to the facts of this matter.

248. We have considered the application filed by the intervenor. To us it appears that the sole object of the intervenor is to delay the CIRP of the Corporate Debtor for extracting a better deal for acquisition of its shares in the Corporate Debtor by the Applicant in the CP, who is already holding the balance equity share capital of the CD. The debt and default are already established in the present case by the applicant, the debt in default is within limitation and crosses the threshold prescribed u/s 4 of IBC, 2016. Moreover, IBC proceedings are time bound and permitting the applicant to file his say under the circumstances, in our view is going to prolong the

present matter without any fruitful result. It is also observed from the reply of the Corporate Debtor, that its plant is closed and that it is not generating revenues to pay the other debts owed by the Corporate Debtor, which by itself is one of the reasons to commence the CIRP.

249. The Intervenor has asserted that he is a shareholder holding 25.25% equity and former Director of the Corporate Debtor and has narrated several disputes relating to valuation of his shares, proposed exit from the Company, alleged breach of the Shareholders' Agreement, pending civil suit for specific performance, proceedings under Sections 241 and 242 of the Companies Act, and disputes concerning the management and affairs of the Company. The entire foundation of the Intervention Petition substantially revolves around these inter se disputes between the shareholders and the management of the Corporate Debtor.

250. Equally, the allegations that the Financial Creditor deliberately starved the business, attempted to defeat the Intervenor's civil suit, oppression and mismanagement proceedings, or attempt to extinguish his minority shareholding are issues arising from the internal management of the Company. Even assuming such disputes exist, they do not ipso facto establish that the debt itself is fictitious or that the insolvency proceedings have been maliciously instituted within the meaning of Section 65 of the Code. These allegations require adjudication on evidence before the competent forum and cannot enlarge the limited jurisdiction exercisable under Section 7.

251. Learned Counsel for the Intervenor has relied upon the judgment of the Hon'ble NCLAT in *Anil Singh v. SREI Equipment Finance Ltd.* in support of

the contention that an intervention raising allegations under Section 65 deserves consideration. There can be no quarrel with the proposition laid down therein. However, the said judgment does not lay down that every intervention petition alleging fraud must necessarily be allowed or that admission under Section 7 should be refused merely because such allegations are raised. The Hon'ble Appellate Tribunal only held that allegations under Section 65 ought to be considered on merits and not rejected solely on the ground of lack of locus. The said judgment, relevant para of which is reproduced in early part of this order, clearly held that in Section 7 proceedings an Intervenor who is not a necessary or proper party cannot intervene. Moreover, the judgment of Hon'ble NCLAT in Deb Kumar Majumdar & Ors. (Supra) also clearly hold that at the stage of Section 7 Application, no party has right to claim for hearing except the Corporate Debtor.

252. In the present case, unlike the facts before the Hon'ble NCLAT, this Tribunal has not dismissed the Intervention Petition on the ground of locus standi. Pursuant to the directions of the Hon'ble Bombay High Court, the Intervenor has been afforded full opportunity to place all factual and legal submissions on record, which have been duly considered. Upon such consideration, we find that the allegations of fraud and collusion remain unsupported by any prima facie material demonstrating that the financial debt is fictitious or that the proceedings have been initiated for a purpose other than insolvency resolution.

253. Taking into consideration the above judgments of Hon'ble NCLAT (i.e., Anil Singh (Supra) and Deb Kumar Majumdar (Supra), that the intervention

application being INV 20/2026 filed by the intervenor is hereby rejected. In any case, the objections/allegations raised by the Intervenor in the Intervention Application have been considered by us and we have found that the said objections do not affect the admissibility of this CD.

254. We also place reliance on Hon'ble Supreme Court in Civil Appeal No(s). 2211/2024 decided on 18.02.2026 in the matter of ***Power Trust (Promoter of Hiranmaye Energy Ltd.) v. Bhuvan Madan, IRP of Hiranmaye Energy Ltd. and Ors***. wherein Hon'ble Supreme Court while examining the validity of the admission of the Corporate Debtor to CIRP has laid down as under :-

B. Validity of CIRP Admission

28. The other aspect on which the Appellant has heavily relied is the acceptance of various sums of money paid by the Corporate Debtor purportedly under the 1st and 2nd restructuring proposals, which according to them amounts to deemed approval of such proposal. As discussed earlier, such argument flies in the face of the fact that the 2nd Respondent had resolutely maintained and rightly so, that the restructuring proposals were underpinned on pre-implementation conditions which the Corporate Debtor had failed to fulfil. Under such circumstances, receipt of various sums of money would not amount to acceptance of the restructuring proposals, thereby novating the earlier loan agreement. Neither would such part payments constitute full satisfaction of the existing debt so as to render the Section 7 application inadmissible.

29. It has also been vociferously contended that the Corporate Debtor is an ongoing concern and does not lack the ability to repay the debt. It has a subsisting PPA for 25 years with WBSEDCL, and has raised bills of Rs. 906 crore from 01.11.2024 to 31.03.2025. It also has a continuous fuel supply arrangement with Mahanadi Coalfields Ltd. under the SHAKTI scheme and had earned EBIDTA of Rs. 20 crore per month during the CIRP. These facts though attractive at first blush, do not yield either legal or factual justification to rebut the admission of the Section 7 application.

30. On the legal score, one must bear in mind the scope and purpose for which IBC was promulgated. The main objective of its enactment was to create a complete code for easy, prompt and seamless resolution of insolvency process and thereby ensure that the net worth of the corporate debtor is not dissipated and the entity is salvaged from corporate death through a viable resolution plan accepted by its CoC. <u>The Code prescribes whenever a</u>

<u>corporate debtor defaults on a debt that is due and payable, an insolvency process may be initiated. Section 3(12) defines "default" as non payment of a debt which has become due and payable, and includes default in respect of a part or instalment thereof.</u> Such insolvency process may be initiated either by the corporate debtor itself, or by its creditors who are classified as financial creditor or operational creditor. "Financial creditor" is defined as any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned.26 A "financial debt" means a debt along with interest if any, which is disbursed against the consideration for time value of money and includes money borrowed against payment of interest.27 "Operational creditor" is defined as a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned.28 "Operational debt" is a claim in respect of the provision of goods or services including employment or a debt in respect of payment of dues arising under any law for the time being in force and payable to the Central or State government, or any local authority.29 31. In Swiss Ribbons (P) Ltd. v. Union of India [(2019) ibclaw.in 03 SC],30 such classification of creditors as financial creditors and operational creditors has been held to be constitutionally valid. The Bench underscored the essential differences between a financial creditor and operational creditor and held that financial creditors were mostly secured creditors like banks and financial institutions who extended finance to enable a corporate debtor to set up and/or operate its business. Such credit is extended to a corporate debtor under well-defined loan agreements having specified repayment schedules and reserving rights to recall the loan in case of default or restructure the same enabling a corporate debtor to tide over unforeseen financial stress. On the contrary, operational creditors are mostly unsecured creditors and their claims are relatable to supply of goods and services in the operation of the business. Ordinarily, operational debts are not based on admitted documents and the possibility of genuine disputes with regard to such debts is much higher compared to financial debts.

32. In light of such classification, the Code makes a distinction in the manner in which an insolvency process may be initiated by a financial creditor under Section 7, IBC in contradistinction to an operational creditor under Section 8 and 9, IBC. Unlike an operational creditor, a financial creditor may trigger an insolvency process under Section 7 in respect of default of any financial debt, whether owed to itself or to any other financial creditor. While the financial creditor may directly file an application under Section 7 setting out the particulars of the financial debt and evidence of default, the operational creditor, on the occurrence of a default, is to first deliver a demand notice of the unpaid debt to a corporate debtor and the latter may within 10 days of receipt of such demand notice bring to the notice of the operational creditor the existence of a dispute or record the pendency of a pre-existing suit or arbitration proceeding in respect of such debt. Once a corporate debtor demonstrates a dispute regarding the existence of the debt, the insolvency process stands aborted vis-à-vis the operational creditor. <u>But when the financial creditor initiates the insolvency process for the purposes of</u>

admission, the Adjudicating Authority is only to ascertain the existence of a default from the records of the information utility or the evidence furnished by the financial creditor within fourteen days from the receipt of such application. At this stage, neither is a corporate debtor entitled nor is the Adjudicating Authority required to examine any dispute regarding the existence of such debt. This significantly reduces the scope of enquiry at the stage of a time-bound admission of an insolvency process by a financial creditor which has been succinctly summed up in Innoventive (supra):

"30…… in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

33. Reiterating the ratio in Innoventive (supra), this Court in ES Krishnamurthy v. Bharath Hi-Tech Builders (P) Ltd. [(2021) ibclaw.in 173 SC]32 held as follows: "34. The adjudicating authority has clearly acted outside the terms of its jurisdiction under Section 7(5) IBC. The adjudicating authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the adjudicating authority must then either admit or reject an application, respectively. These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5). The adjudicating authority cannot compel a party to the proceedings before it to settle a dispute."

34. In a similar vein, the Adjudicating Authority is not required to go into the inability of a corporate debtor to pay its debt. This is a clear departure from the scheme of winding up envisaged under Section 433(e) of the erstwhile Companies Act, 1956 which required the Adjudicating Authority to come to a finding with regard to the inability of the company to pay the debt and thereby arrive at a requisite satisfaction whether it is just and equitable to wind up the company.

The Code restricts the scope of enquiry for admission of an insolvency process by a financial creditor merely to the existence of default of a debt due and payable and nothing more. The legislative intent behind such prompt and summary intervention is "to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation."

35. The Appellant has heavily relied on Vidarbha (supra) to argue that the Adjudicating Authority has ample discretion to apply its mind to relevant factors including the feasibility of initiation of insolvency process notwithstanding the *existence of default on a debt due and payable by the Corporate Debtor. In Vidarbha (supra), this Court observed:-*

"61. In our view, the Appellate Authority (NCLAT) erred in holding that the adjudicating authority (NCLT) was only required to see whether there had been a debt and the corporate debtor had defaulted in making repayment of the debt, and that these two aspects, if satisfied, would trigger the CIRP. The existence of a financial debt and default in payment thereof only gave the financial creditor the right to apply for initiation of CIRP. The adjudicating authority (NCLT) was required to apply its mind to relevant factors including the feasibility of initiation of CIRP, against an electricity generating company operated under statutory control, the impact of MERC's appeal, pending in this Court, order of Aptel referred to above and the overall financial health and viability of the corporate debtor under its existing management.

……………………………………………………………………

90. We are clearly of the view that the adjudicating authority (NCLT) as also the Appellate Tribunal (NCLAT) fell in error in holding that once it was found that a debt existed and a corporate debtor was in default in payment of the debt there would be no option to the adjudicating authority (NCLT) but to admit the petition under Section 7 IBC."

36. However, in review, this Court clarified that observations made in Paragraph 90 are restricted to the facts of Vidarbha (supra):-

"6. The elucidation in para 90 and other paragraphs [of the judgment under review] were made in the context of the case at hand. It is well settled that judgments and observations in judgments are not to be read as provisions of statute. Judicial utterances and/or pronouncements are in the setting of the facts of a particular case."

37. Finally, the apparent dichotomy between Innoventive (supra) and Vidarbha (supra) was set at rest in M. Suresh Kumar Reddy (supra), wherein this Court observed: "14. Thus, it was clarified by the order in review that the decision in Vidarbha Industries was in the setting of facts of the case before this Court. Hence, the decision in Vidarbha Industries cannot be read and understood as taking a view which is contrary to the view taken in Innoventive Industries and E.S. Krishnamurthy. The view taken in Innoventive Industries still holds good."

38. In light of the ratio in M. Suresh Kumar Reddy (supra) there is no cavil that the ratio in Innoventive (supra) lays down the correct proposition of law and the observations in Vidarbha (supra) were made in the facts of the case and do not operate as binding precedent.

39. Even otherwise on facts, Vidarbha (supra) does not come to the aid of the Appellant. In Vidarbha (supra), this Court had taken note of an award passed by APTEL in favour of the corporate debtor which far exceeded the claim of the financial creditor, and held in the setting of such facts, initiation of CIRP was unwarranted. In the present case, Appellant's contention regarding

Corporate Debtor's viability is highly dubious. Though the Corporate Debtor strenuously demonstrates its commercial viability, the NCLAT has noted that the extent of outstanding liability as on 02.01.2024 was Rs. 3103.31 crore, which far exceeds the bills raised on WBSEDCL to the tune of Rs 906 crore and EBITDA of Rs. 20 crore per month during the CIRP.

40. For these reasons, we are of the opinion the admission of the Section 7 application was lawful and does not call for interference."

(emphasis wherever required supplied)

255. To summarize the above judgment, we observe as under :-

a. The Code prescribes whenever a corporate debtor defaults on a debt that is due and payable, an insolvency process may be initiated. Section 3(12) defines "default" as non payment of a debt which has become due and payable, and includes default in respect of a part or instalment thereof.

b. When the financial creditor initiates the insolvency process for the purposes of admission, the Adjudicating Authority is only to ascertain the existence of a default from the records of the information utility or the evidence furnished by the financial creditor within fourteen days from the receipt of such application. At this stage, neither is a corporate debtor entitled nor is the Adjudicating Authority required to examine any dispute regarding the existence of such debt. This significantly reduces the scope of enquiry at the stage of a time-bound admission of an insolvency process by a financial creditor.

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

d. The Adjudicating Authority is not required to go into the inability of a corporate debtor to pay its debt

e. The Code restricts the scope of enquiry for admission of an insolvency process by a financial creditor merely to the existence of default of a debt due and payable and nothing more.

2. Applying the ratio of Power Trust (supra), we are of the view that the, the applicant has with the help of various documents including Foreign Currency Loan Agreements, registration of those debts with RBI, intimation to RBI regarding changes in the terms and conditions of ECB default/demand notice, etc. The Applicant established existence of a financial debt, which is in default for an amount exceeding Rs. 1 Crore and based on the same this adjudicating authority is bound to admit the Application. The applicant has also placed on record, the of default issued by the information utility, which clearly indicates that the debt is in default. It is noted that the Respondent Corporate Debtor has not denied the disbursement and default and has expressed its desire to undergo CIRP.

256. In terms of the above we are forced to order commencement of CIRP on the Corporate Debtor.

257. The Applicant and the Corporate Debtor are related parties. The Applicant had already filed an affidavit requesting this Tribunal to appoint IRP from the panel maintained by IBBI. Accordingly, we are appointing

Sumedha Management Solutions Private Limited an IP entity from the panel of IP's maintained by IBBI.

258. In view of the above discussions, the following order is passed :-

ORDER

In view of the aforesaid findings, this Application being **CP(IB)/1231/MB/2025** filed under Section 7 of IBC, 2016 by ***CMP INDUSTRIE S.R.L. (Formerly known as CMP INDUSTRIE SPA), the*** FC, for initiating CIRP in respect of **The CMP EURO TECHNOPLAST PVT. LTD.** the CD, is **admitted.**

We further declare a moratorium under Section 14 of IBC, 2016 with consequential directions as mentioned below:

I. We prohibit:

a) the institution of suits or continuation of pending suits or proceedings against the CD including the execution of any judgment, decree, or order in any court of law, tribunal, arbitration panel, or other authority;

b) transferring, encumbering, alienating, or disposing of by the CD any of its assets or any legal right or beneficial interest therein;

c) any action to foreclose, recover, or enforce any security interest created by the CD in respect of its property, including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and;

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.

II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the IBC or passes an order for the liquidation of the CD under Section 33 thereof, as the case may be.

IV. That the public announcement of the CIRP shall be made in immediately as specified under Section 13 of the IBC read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

V. That this Bench hereby appoints **Sumedha Management Solutions Private Limited,** a registered Insolvency Professional Entity having Registration Number IBBI/IPE-0020/IPA-1/2022-23/50023 and e-mail address info@sumedhamanagement.com having (AFA valid till 31.12.2026) as the IRP of the in this matter.

VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.

VII. That during the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the CD are directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the CD. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules, 2016 for any violation of the law.

VIII. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the CD.

IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the OC is directed to deposit a sum of ***Rs.5,00,000/- (Five Lakh Rupees)*** with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the OC on priority upon the funds becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.

X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.

XI. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.

XII. The Registry is directed to immediately communicate this Order to the OC, the CD and the IRP by way of Speed Post, e-mail and WhatsApp.

XIII. **Compliance report of the order by Designated Registrar is to be submitted today.**

XIV. The IRP is directed to issue notice of admission upon all the statutory authorities of the Corporate Debtor without fail.

Sd/-	**Sd/-**
NILESH SHARMA	**SAMEER KAKAR**
MEMBER (JUDICIAL)	MEMBER (TECHNICAL

(frk)