

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 235 of 2025

IN THE MATTER OF:

J & K Integrated Textiles Park Ltd. ...Appellant

Versus

Silkron Processors Pvt. Ltd. & Ors. ...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Akshat Singh and Mr. Utkarsh Kandpal, Advocates.

For Respondents : Mr. Bishwajit Dubey, Mr. Kunal Godhwani and Ms. Kinjal Chadha, Advocates for R-1.

Mr. Aditya Wadhwa, Mr. Arunav Sarma and Mr. Abhyankar Pant, Advocate for PNB

WITH

Company Appeal (AT) (Insolvency) No. 289 of 2025

IN THE MATTER OF:

Silkron Processors Pvt. Ltd. ...Appellant

Versus

J&K Integrated Textiles Park Ltd. & Ors. ...Respondents

Present:

For Appellant : Mr. Bishwajit Dubey, Mr. Kunal Godhwani and Ms. Kinjal Chadha, Advocates

For Respondents : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Akshat Singh and Mr. Utkarsh Kandpal, Advocates.

Mr. Aditya Wadhwa, Mr. Arunav Sarma and Mr. Abhyankar Pant, Advocate for PNB.

WITH

Company Appeal (AT) (Insolvency) No. 307 of 2025

IN THE MATTER OF:

Orbit Spinning Pvt. Ltd. ...Appellant

Versus

J & K Integrated Textiles Park Ltd. & Ors. ...Respondents

Present:

For Appellant : Mr. Bishwajit Dubey, Mr. Kunal Godhwani and Ms. Kinjal Chadha, Advocates

For Respondents : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Akshat Singh and Mr. Utkarsh Kandpal, Advocates.

Mr. Aditya Wadhwa, Mr. Arunav Sarma and Mr. Abhyankar Pant, Advocate for PNB.

WITH

Company Appeal (AT) (Insolvency) No. 308 of 2025

IN THE MATTER OF:

Silklon Synthetic Pvt. Ltd. ...Appellant

Versus

J&K Integrated Textiles Park Ltd. & Ors. ...Respondents

Present:

For Appellant : Mr. Bishwajit Dubey, Mr. Kunal Godhwani and Ms. Kinjal Chadha, Advocates

For Respondents : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Akshat Singh and Mr. Utkarsh Kandpal, Advocates.

Mr. Aditya Wadhwa, Mr. Arunav Sarma and Mr. Abhyankar Pant, Advocate for PNB.

WITH

Company Appeal (AT) (Insolvency) No. 309 of 2025

IN THE MATTER OF:

Toplon Industries Pvt. Ltd. ...Appellant

Versus

J&K Integrated Textiles Park Ltd. & Ors. ...Respondents

Present:

For Appellant : Mr. Bishwajit Dubey, Mr. Kunal Godhwani and Ms. Kinjal Chadha, Advocates

For Respondents : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Akshat Singh and Mr. Utkarsh Kandpal, Advocates.

Mr. Aditya Wadhwa, Mr. Arunav Sarma and Mr. Abhyankar Pant, Advocate for PNB.

WITH

Company Appeal (AT) (Insolvency) No. 333 of 2025

IN THE MATTER OF:

J & K Textorium Pvt. Ltd. ...Appellant

Versus

J&K Integrated Textiles Park Ltd. & Ors. ...Respondents

Present:

For Appellant : Mr. Bishwajit Dubey, Mr. Kunal Godhwani and Ms. Kinjal Chadha, Advocates

For Respondents : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Akshat Singh and Mr. Utkarsh Kandpal, Advocates.

Mr. Aditya Wadhwa, Mr. Arunav Sarma and Mr. Abhyankar Pant, Advocate for PNB.

WITH

Company Appeal (AT) (Insolvency) No. 334 of 2025

IN THE MATTER OF:

Chenab Industries Pvt. Ltd. ...Appellant

Versus

J&K Integrated Textiles Park Ltd. & Anr. ...Respondents

Present:

For Appellant : Mr. Bishwajit Dubey, Mr. Kunal Godhwani and Ms. Kinjal Chadha, Advocates

For Respondents : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Akshat Singh and Mr. Utkarsh Kandpal, Advocates.

Mr. Aditya Wadhwa, Mr. Arunav Sarma and Mr. Abhyankar Pant, Advocate for PNB.

WITH

Company Appeal (AT) (Insolvency) No. 338 of 2025

IN THE MATTER OF:

Green Textorium Pvt. Ltd. ...Appellant

Versus

J&K Integrated Textiles Park Ltd. & Ors. ...Respondents

Present:

For Appellant : Mr. Bishwajit Dubey, Mr. Kunal Godhwani and Ms. Kinjal Chadha, Advocates

For Respondents : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Akshat Singh and Mr. Utkarsh Kandpal, Advocates.

Mr. Aditya Wadhwa, Mr. Arunav Sarma and Mr. Abhyankar Pant, Advocate for PNB.

WITH

Company Appeal (AT) (Insolvency) No. 339 of 2025

IN THE MATTER OF:

J & K Integrated Textiles Park Ltd. ...Appellant

Versus

J & K Synthetic Pvt. Ltd. & Ors. ...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Akshat Singh and Mr. Utkarsh Kandpal, Advocates.

For Respondents : Mr. Bishwajit Dubey, Mr. Kunal Godhwani and Ms. Kinjal Chadha, Advocates for R-1.

Mr. Aditya Wadhwa, Mr. Arunav Sarma and Mr.

Abhyankar Pant, Advocate for PNB.

WITH

Company Appeal (AT) (Insolvency) No. 340 of 2025

IN THE MATTER OF:

J & K Integrated Textiles Park Ltd. ...Appellant

Versus

Green Textorium Pvt. Ltd. & Ors. ...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Akshat Singh and Mr. Utkarsh Kandpal, Advocates.

For Respondents : Mr. Bishwajit Dubey, Mr. Kunal Godhwani and Ms. Kinjal Chadha, Advocates for R-1.

Mr. Aditya Wadhwa, Mr. Arunav Sarma and Mr. Abhyankar Pant, Advocate for PNB.

WITH

Company Appeal (AT) (Insolvency) No. 352 of 2025

IN THE MATTER OF:

J & K Synthetic Pvt. Ltd. ...Appellant

Versus

J & K Integrated Textiles Park Ltd. & Ors. ...Respondents

Present:

For Appellant : Mr. Bishwajit Dubey, Mr. Kunal Godhwani and Ms. Kinjal Chadha, Advocates

For Respondents : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Akshat Singh and Mr. Utkarsh Kandpal, Advocates.

Mr. Aditya Wadhwa, Mr. Arunav Sarma and Mr. Abhyankar Pant, Advocate for PNB.

WITH

Company Appeal (AT) (Insolvency) No. 353 of 2025

IN THE MATTER OF:

Jyotsna Industries Pvt. Ltd.

...Appellant

Versus

J&K Integrated Textiles Park Ltd. & Ors.

...Respondents

Present:

For Appellant : Mr. Bishwajit Dubey, Mr. Kunal Godhwani and Ms. Kinjal Chadha, Advocates

For Respondents : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Akshat Singh and Mr. Utkarsh Kandpal, Advocates.

Mr. Aditya Wadhwa, Mr. Arunav Sarma and Mr. Abhyankar Pant, Advocate for PNB.

WITH

Company Appeal (AT) (Insolvency) No. 341 of 2025

IN THE MATTER OF:

J & K Integrated Textiles Park Ltd.

...Appellant

Versus

Silklon Synthetic Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Akshat Singh and Mr. Utkarsh Kandpal, Advocates.

For Respondents : Mr. Bishwajit Dubey, Mr. Kunal Godhwani and Ms. Kinjal Chadha, Advocates for R-1.

Mr. Aditya Wadhwa, Mr. Arunav Sarma and Mr. Abhyankar Pant, Advocate for PNB.

WITH

Company Appeal (AT) (Insolvency) No. 342 of 2025

IN THE MATTER OF:

J & K Integrated Textiles Park Ltd.

...Appellant

Versus

Toplon Industries Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Akshat Singh and Mr. Utkarsh Kandpal, Advocates.

For Respondents : Mr. Bishwajit Dubey, Mr. Kunal Godhwani and Ms. Kinjal Chadha, Advocates for R-1.

Mr. Aditya Wadhwa, Mr. Arunav Sarma and Mr. Abhyankar Pant, Advocate for PNB.

WITH**Company Appeal (AT) (Insolvency) No. 343 of 2025****IN THE MATTER OF:**

J & K Integrated Textiles Park Ltd. ...Appellant

Versus

Orbit Spinning Pvt. Ltd. & Ors. ...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Akshat Singh and Mr. Utkarsh Kandpal, Advocates.

For Respondents : Mr. Bishwajit Dubey, Mr. Kunal Godhwani and Ms. Kinjal Chadha, Advocates for R-1.

Mr. Aditya Wadhwa, Mr. Arunav Sarma and Mr. Abhyankar Pant, Advocate for PNB.

WITH**Company Appeal (AT) (Insolvency) No. 349 of 2025****IN THE MATTER OF:**

J & K Integrated Textiles Park Ltd. ...Appellant

Versus

J & K Textorium Pvt. Ltd. & Ors. ...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Akshat Singh and Mr. Utkarsh Kandpal, Advocates.

For Respondents : Mr. Bishwajit Dubey, Mr. Kunal Godhwani and Ms. Kinjal Chadha, Advocates for R-1.

Mr. Aditya Wadhwa, Mr. Arunav Sarma and Mr. Abhyankar Pant, Advocate for PNB.

WITH

Company Appeal (AT) (Insolvency) No. 364 of 2025

IN THE MATTER OF:

J & K Integrated Textiles Park Ltd. ...Appellant

Versus

Jyotsna Industries Pvt. Ltd. & Ors. ...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Akshat Singh and Mr. Utkarsh Kandpal, Advocates.

For Respondents : Mr. Bishwajit Dubey, Mr. Kunal Godhwani and Ms. Kinjal Chadha, Advocates for R-1.

Mr. Aditya Wadhwa, Mr. Arunav Sarma and Mr. Abhyankar Pant, Advocate for PNB.

WITH

Company Appeal (AT) (Insolvency) No. 378 of 2025

IN THE MATTER OF:

J & K Integrated Textiles Park Ltd. ...Appellant

Versus

Chenab Industries Pvt. Ltd. & Ors. ...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Akshat Singh and Mr. Utkarsh Kandpal, Advocates.

For Respondents : Mr. Bishwajit Dubey, Mr. Kunal Godhwani and Ms. Kinjal Chadha, Advocates for R-1.

Mr. Aditya Wadhwa, Mr. Arunav Sarma and Mr. Abhyankar Pant, Advocate for PNB.

J U D G M E N T
(19th May, 2026)

Ashok Bhushan, J.

These 18 Appeals have been filed challenging nine separate orders passed by the Adjudicating Authority (National Company Law Tribunal) Chandigarh Bench, Court-1, Chandigarh in nine Section 7 applications filed by J&K Integrated Textiles Park Limited (Appellant, the Financial Creditor). Adjudicating Authority by the impugned order has dismissed Section 7 application and imposed penalty on Appellants as well as on the Corporate Debtors of Rs.25,00,000/- in each case. Aggrieved by the order passed by the Adjudicating Authority imposing penalty on the Corporate Debtor, Corporate Debtors in each case have also filed separate nine Appeals which are Appeals (by Corporate Debtors). All these Appeals raises common questions of fact and law, hence have been heard together and are being decided by common judgment.

2. Background facts giving rise to these Appeals are:-

2.1. The Government of India, Ministry of Textiles launched a scheme in 2005 namely— Scheme for Integrated Textiles Park (SITP). The object of SITP was to provide the industry with world-class state of the art infrastructure facilities for setting up their textile units. Under the Scheme, textile park was to be set up in industrial area Kathua, State of Jammu & Kashmir. Integrated Textile Parks had several components including land, common infrastructure, building for common facility, buildings for

production purposes, plant & machinery, work space for textile units. At each integrated textile parks, there would be a separate Special Purpose Vehicle (SPV) formed with the representatives of local industry, financial institutions, State and Central Government which shall be corporate body registered under the Companies Act. J&K Integrated Textiles Park Limited, the Appellant (Financial Creditors) in Appeals was incorporated as a Special Purpose Vehicle (SPV) to implement the scheme for integrated textiles parks. J&K State Industrial Development Corporation Ltd. granted a lease of 200 Kanals of land at industrial estate Kathua (25 acres) in favour of the Appellant by Lease Deed dated 22.03.2012. Lease Deed was for a period of 90 years. The lessee was liable to pay an amount of Rs.1,50,000/- per kanal as premium with annual ground rent of Rs.3,000/- per kanal per annum. Lessee in part performance of the terms and conditions of the allotment has paid an amount of Rs.3,00,00,000/- as premium and Rs.12,00,000/- also as advance ground rent for two years. The lease contemplated that member units of SPV, as and when propose to set up independent entities in the park shall be required to get the Lease Deed executed directly with J&K State Industrial Development Corporation Ltd. Lessee was authorised to raise necessary construction (factory building etc.) on the lease premises. Ownership of the land was to remain with the State of Jammu and Kashmir. After the above Lease Deed, a Memorandum of Agreement was entered on 29.05.2013 on behalf of the President of India through Secretary of Ministry of Textile, Government of India and J&K Integrated Textile Parks Limited, Appellant, the Financial Creditor. Under the MoU, SPV was responsible for implementing the project as per approval granted by Ministry of Textiles to

ensure that textile park is used only for setting up units operating in textile sector. Government of India also sanctioned project cost of Rs.39.70 Crores to the Appellant, Financial Creditor. After allocation of land and execution of MoU, the Appellant was to build up infrastructure on the allotted land for setting up the textile project. The Appellant allocated sites to nine industries (hereinafter referred to as Corporate Debtor). A Tripartite Agreement dated 12.05.2017 was entered between with J&K State Industrial Development Corporation Ltd., J&K Integrated Textiles Park Limited and Silkron Processors Pvt. Ltd. (Corporate Debtor). Similar Tripartite Agreement was entered with eight other Corporate Debtors. The Corporate Debtor was third party in the Tripartite Agreement and was obliged to obtain all necessary no-objection and clearance for establishment of the units in the complex. Under the MoU, J&K State Industrial Development Corporation Ltd. (hereinafter referred to as 'Corporation') decided lease hold rights over 20 Kanal of land applying in favour of each Corporate Debtor. After execution of Tripartite Agreement between the parties, a Loan Agreement dated 16.10.2018 was entered between the Financial Creditor, J&K Integrated Textiles Park Limited and the Corporate Debtor. We need to refer one of the Loan Agreement dated 16.10.2018 executed between the Financial Creditor and the Corporate Debtor- Silkron Processors Pvt. Ltd. Loan Agreement provided that the Financial Creditor has leased out the land measuring 20 kanals to the Corporate Debtor on 12.05.2017 and in consideration of Rs.3,20,00,000/- payable upto March 2018. The Agreement further provided that the net cost of the project/building is Rs.3,55,00,000/- which shall be provided to Corporate Debtor by Financial Creditor as unsecured loan with

interest of 13% per annum. Interest on the amount was to be paid w.e.f. 01.01.2018 yearly and principal amount will be paid into three years starting from 01.01.2020. Penal interest @2% per annum quarterly was also contemplated. The Corporate Debtors have also taken financial facilities from Punjab National Bank in respect to their respective project/project land. For example, Punjab National Bank had granted financial facilities of Rs.9.25 Crores to the Corporate Debtor- Silklon Processors Pvt. Ltd. which financial facilities were sanctioned in the year 2017. The Corporate Debtor having failed to make the payment of lease rent, interest and principal towards unsecured loan, the Financial Creditor J&K Integrated Textiles Park Limited issued a notice for recall of facilities on 22.04.2020 demanding a total amount of Rs.4,67,97,700/- in respect to Silklon Processors Pvt. Ltd. Similar, notices were issued to other Corporate Debtors. Corporate Debtor (Silklon Processors Pvt. Ltd.) sent a reply on 19.08.2020 stating that the Corporate Debtor has not been able to pay the outstanding amount, however, along with letter, post dated cheques for amount of Rs.4,70,00,000/- were enclosed. The cheques which were issued by the Corporate Debtors were dishonoured. Notice was issued by the Financial Creditor to the Corporate Debtor for initiating proceeding calling upon the Corporate Debtor to make the payment of the amount failing which Financial Creditor shall be constrained to initiate proceeding under Section 138 of the NIA Act. Demand notices were issued from time to time to the Corporate Debtor demanding the amount. Punjab National Bank has also initiated proceeding under Section 13(2) of the SARFAESI Act, 2002 with respect to Corporate Debtors. Steps were taken by the Punjab National Bank

to auction the assets of the Corporate Debtor. Auction was held by the Punjab National Bank and Sale Certificate were also issued to the auction purchaser. Section 7 application was filed by the Financial Creditor in December 2023. Section 7 applications were filed against the Corporate Debtor.

2.2. The details of separate nine Section 7 applications filed by the Financial Creditors against nine Corporate Debtors are noticed hereinafter in tabular form which is as follows:-

Sl. No.	Appeal No.	Party Name	Impugned Order Dated with NCLT Filing No.	Relief Sought
1	235/25	J And K Integrated Textile Park Limited Vs. Silkton Processors Private Limited & Ors	8-1-25 in CP(IB)/No. 309/CHD/J &K/2023	Set aside the impugned order. Admit the Section 7 Application. Quash the penalty imposed under Section 65.
2	339/25	J And K Integrated Textile Park Limited Vs. J And K Synthetic Pvt Ltd & Ors	8-1-25 in CP(IB)/No. 314/CHDJ&K/2023	Set aside the impugned order. Admit the Section 7 Application. Quash the penalty imposed under Section 65.
3	340/25	J And K Integrated Textile Park Limited Vs Green Textorium Private Limited & Ors.	8-1-25 in CP(IB)/No. 322/CHD/J &K/2023	Set aside the impugned order. Admit the Section 7 Application. Quash the penalty imposed under Section 65.
4	341/25	J And K Integrated Textile Park Limited Vs. Silkton Synthetic	8-1-25 in CP(IB)/No. 315/CHD/J	Set aside the impugned order. Admit the Section 7

		Private Limited & Ors	&K/2023	Application. Quash the penalty imposed under Section 65.
5	342/25	J And K Integrated Textile Park Limited Vs Toplon Industries Private Limited & Ors.	8-1-25 in CP(IB)/No. 313/CHD/J &K/2023	Set aside the impugned order. Admit the Section 7 Application. Quash the penalty imposed under Section 65.
6	343/25	J And K Integrated Textile Park Limited Vs Orbit Spinning Private Limited & Ors.	8-1-25 in CP(IB)/No. 312/CHD/J &K/2023	Set aside the impugned order. Admit the Section 7 Application. Quash the penalty imposed under Section 65.
7	349/25	J And K Integrated Textile Park Limited Vs. J And K Textorium Private Limited & Ors	8-1-25 in CP(IB)/No. 310/CHD/J &K/2023	Set aside the impugned order. Admit the Section 7 Application. Quash the penalty imposed under Section 65.
8	364/25	J And K Integrated Textile Park Limited Vs. Jyotsna Industries Private Limited & Ors	8-1-25 in CP(IB)/No. 307/CHD/J &K/2023	Set aside the impugned order. Admit the Section 7 Application. Quash the penalty imposed under Section 65.
9	378/25	J And K Integrated Textile Park Limited Vs Chenab Industries Private Limited & Anr.	8-1-25 in CP(IB)/No. 317/CHD/J &K/2023	Set aside the impugned order. Admit the Section 7 Application. Quash the penalty imposed under Section 65.

2.3. The Corporate Debtors have also filed nine appeals challenging the order. Details of the Appeals filed by the Corporate Debtor are noticed in tabular form as follows:

Sl. No.	Appeal No.	Party Name	Impugned Order Dated with NCLT Filing No.	Relief Sought
1	289/25	Silklon Processors Private Limited Vs. J&K Integrated Textiles Park Limited & Ors & Ors	8-1-25 in CP(IB)/No. 309/CHD/J&K/2023	Set aside the Impugned Order in so far as it imposes penalty of Rs. 25,00,000/- on the Appellant i.e., SILKLON PROCESSORS Private Limited;
2	307/25	Orbit Spinning Private Limited Vs. J&K Integrated Textiles Park Limited & Ors. & Ors	8-1-25 in CP(IB)/No. 312/CHD/J&K/2023	Set aside the Impugned Order in so far as it imposes penalty of Rs. 25,00,000/- on the Appellant i.e., ORBIT SPINNING Private Limited;
3	308/25	Silklon Synthetic Private Limited Vs. J&K Integrated Textiles Park Limited And Ors. & Ors	8-1-25 in CP(IB)/No. 315/CHD/J&K/2023	Set aside the Impugned Order in so far as it imposes penalty of Rs. 25,00,000/- on the Appellant i.e., SILKLON SYNTHETIC Private Limited;
4	309/25	Toplon Industries Private Limited Versus J&K Integrated Textiles Park Limited And Ors.	8-1-25 in CP(IB)/No. 313/CHD/J&K/2023	Set aside the Impugned Order in so far as it imposes penalty of Rs. 25,00,000/- on the Appellant i.e., Toplon Industries Private Limited;

5	333/ 25	J&K Textorium Pvt. Ltd. Vs. J&K Integrated Textiles Park. Ltd. & Ors.	8-1-25 in CP(IB)/No. 310/CHD/J&K/2023	Set aside the Impugned Order in so far as it imposes penalty of Rs. 25,00,000/- on the Appellant i.e., J AND K TEXTORIUM Private Limited;
6	334/2 5	Chenab Industries Private Limited Vs. J&K Integrated Textiles Park Limited And Anr	8-1-25 in CP(IB)/No. 317/CHD/J&K/2023	Set aside the Impugned Order in so far as it imposes penalty of Rs. 25,00,000/- on the Appellant i.e., CHENAB INDUSTRIES Private Limited;
7	338/2 5	Green Textorium Private Limited Vs. J&K Integrated Textiles Park Limited And Ors. & Ors	8-1-25 in CP(IB)/No. 322/CHD/J&K/2023	Set aside the Impugned Order in so far as it imposes penalty of Rs. 25,00,000/- on the Appellant i.e., GREEN TEXTORIUM Private Limited;
8	352/2 5	J&K Synthetic Private Limited Vs. J&K Integrated Textiles Park Limited And Ors. & Ors	8-1-25 in CP(IB)/No. 314/CHD/J&K/2023	Set aside the Impugned Order in so far as it imposes penalty of Rs. 25,00,000/- on the Appellant i.e., J AND K SYNTHETIC Private Limited;
9	353/2 5	Jyotsna Industries Pvt. Ltd. Vs. J&K Integrated Textiles Park Limited And Ors. & Ors	8-1-25 in CP(IB)/No. 307/CHDJ &K/2023	Set aside the Impugned Order in so far as it imposes penalty of Rs. 25,00,000/- on the Appellant i.e., JYOTSNA Industries Private Limited;

2.4. In Company Petitions filed by the Financial Creditors, intervention application was filed by Punjab National Bank. In CP (IB) No.309/Chd/J&K/2023, IA No.260 of 2024 was filed by the Punjab National Bank seeking intervention in the Company Petition and further pleading

that penalty under Section 65 of the IBC be imposed. Another intervention application was filed by Sunder Lal Aggarwal, Respondent No.2 in Company Appeal (AT) (Insolvency) No.235 of 2025, a minority shareholder of the Financial Creditor praying that he has already initiated proceedings under Sections 241-242 against the Financial Creditors. It was pleaded that the penalty be imposed under Section 65 of the IBC and Section 7 application be dismissed. Similar, applications were filed by the Punjab National Bank and Sunder Lal Aggarwal in the proceeding against the other Corporate Debtors. Sunder Lal Aggarwal also pleaded that the Financial Creditor is not authorised to initiate proceeding under Section 7. The Financial Creditor raised objection regarding maintainability of application under Section 65 by the Punjab National Bank and Sunder Lal Aggarwal. Adjudicating Authority allowed the Financial Creditor to raise objection regarding maintainability of the application. Under the order of the Adjudicating Authority, the Financial Creditor also brought on record the Board Resolution dated 20.11.2014. The Corporate Debtor also filed reply. Adjudicating Authority heard the parties on Section 7 applications as well as on IAs filed by Punjab National Bank and Sunder Lal Aggarwal. Financial Creditor also filed NeSL record to prove the debt and default. Adjudicating Authority heard Counsel for the Financial Creditor, Corporate Debtor, Learned Counsel appearing for the Punjab National Bank and intervener Shri Sunder Lal Aggarwal.

2.5. Adjudicating Authority framed issues for consideration. Although Adjudicating Authority has passed separate orders in each Section 7 application filed by the Financial Creditor, however, the findings and reasons in all the orders passed on 08.01.2025 being more or less similar, it

shall be sufficient to notice the pleadings in Company Appeal (AT) (Insolvency) No.235 of 2025 arising out of the CP (IB) No.309/Chd/J&K/2023 and the order dated 08.01.2025 passed therein. In the above order dated 08.01.2025, following five issues were framed in paragraph 29. Paragraph 29 is as follows:-

“29. The moot points for consideration involved in the case at hand are:

(A) Whether the Petition is filed within the period of limitation?

(B) Whether the Section 7 petition has been filed by the Financial Creditor after passing a valid Board resolution and is with due authorisation.

(C) Whether the amount claimed by the Financial Creditor is a Financial Debt under the IBC.

(D) Whether Financial Creditor, JKITPL and the Corporate Debtor, including the other eight industrial units are related parties and the present Section 7 petition filed by JKITPL is collusive in nature.

(E) Whether Punjab National Bank in IA No.260/2024 & IA No.932/2024 and Mr. Sunder Lal Aggarwal, Applicant in IA No.273 of 2024 can intervene in the Section 7 Petition filed by JKITPL.”

2.6. On Issue No. (A) regarding limitation, Adjudicating Authority held the application within the period of limitation. On Issue No.(B) whether Section 7 application has been filed after passing a valid Board Resolution, the said issue was decided against the Appellant holding that the said Board Resolution dated 21.11.2014 cannot vest authority in Mr. Ram Avtar Aggarwal to file proceeding under Section 7 of the IBC which came into

enforcement two years thereafter. The application was, thus, held not supported by valid Board Resolution/authorisation. On Issue No. (C), Adjudicating Authority held that the debt as claimed by J&K Integrated Textiles Park Limited, the Financial Creditor does not fall under the definition of financial debt under Section 5(8). On Issue No.(D), the Adjudicating Authority held that the Financial Creditor and the Corporate Debtor are related parties and Section 7 petition filed by J&K Integrated Textiles Park Limited is collusive in nature. After answering the above issues, ultimate conclusion was recorded by the Adjudicating Authority in paragraph 30. Ultimate reasons for dismissing Section 7 applications were recorded in paragraph 30 which is as follows:-

“30. In light of the foregoing discussion, we are of the considered view and arrive at the irreversible conclusion that the present Section 7 Petition is collusive and malicious in nature as the Financial Creditor, JKITPL, and the Corporate Debtor, M/s Silkklon Processors Pvt. Ltd. are related parties and the authorised representative of the Petitioner Company, Mr. Ram Avtar Aggarwal does not have valid Power of Attorney to file the present petition. Further, there is no cogent evidence available for disbursement of the debt amount to the Corporate Debtor by the Financial Creditor and does not fulfill the essential ingredients of a financial debt as defined under Section 5(8) of the Code. Thus, C.P. (IB) No. 309/Chd/J&K/2023 is dismissed and disposed of.”

2.7. By the impugned order, the Adjudicating Authority also imposed cost of Rs.25,00,000/- under Section 65 on the Financial Creditor as well as on

the Corporate Debtor, allowing the application filed by Sunder Lal Aggarwal as well as those of Punjab National Bank. In paragraph 32, cost of Rs.25,00,000/- on Financial Creditors as well as the Corporate Debtors has been imposed. In paragraph 32, following was directed:-

“32. Before parting with this judgment, a cost of Rs. 25 lakh (Rupees Twenty-Five Lacs only) is imposed under Section 65 of the Code on JKITPL and M/s company Silkton Processors Pvt. Ltd., each, for filing a false, frivolous, collusive and malicious petition to cause an intentional loss to the Punjab National Bank and to Mr. Sunder Lal Aggarwal, the Co-director of the Petitioner Company, as well as for furnishing a false affidavit vide diary no. 03891/2 and 03891/3 respectively, to the effect that they are not related parties. The cost shall be deposited into 'Prime Minister National Relief Fund' within four weeks.”

2.8. Aggrieved by the aforesaid order, these Appeals have been filed. Nine appeals have been filed by the Financial Creditors challenging the order rejecting Section 7 application and imposing penalty. In Company Appeal (AT) (Insolvency) No.235 of 2025, following prayers have been made:-

“a. Allow the Appeal and set aside the impugned order dated 08.01.2025 passed by Ld. Adjudicating Authority in CP (IB) No. 309/CHD/J&K/2023;
b. Admit the Section 7 Application filed by the Appellant against the Corporate Debtor for commencement of corporate insolvency resolution proceedings;
c. Quash the penalty imposed under Section 65 of the Insolvency and Bankruptcy Code, 2016;

d. Pass any other order/direction in the facts and circumstances of the present Appeal and in the interest of the Justice.”

2.9. The 2nd Group of nine appeals have been filed by the Corporate Debtor being Company Appeal (AT) (Insolvency) No.289 of 2025 with other appeals including in Group-2 challenging the order dated 08.01.2025. In Company Appeal (AT) (Insolvency) No.289 of 2025, the Corporate Debtor who has filed the Appeal has prayed for following reliefs:-

*“(i) Allow the present appeal;
(ii) Set aside the Impugned Order dated 08.01.2025 passed by the National Company Law Tribunal, Chandigarh Bench passed in Company Petition No. (IB) 309/Chd/J&K/2023 in so far as it imposes penalty of Rs. 25,00,000/- on the Appellant i.e., SILKLON PROCESSORS Private Limited;
(iii) Pass any other order or directions as this Hon'ble Appellate Tribunal may deem fit.”*

3. We have heard Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant, Shri Bishwajit Dubey and Mr. Kunal Godhwani, Learned Counsel for the Corporate Debtor, Shri Aditya Wadhwa, Learned Counsel for the Punjab National Bank.

4. Notices were issued to Sunder Lal Aggarwal, the Respondent in the Appeals. This Tribunal in proceeding dated 27.08.2025 has noted that Sunder Lal Aggarwal has not entered appearance or filed his reply, in event, he does not file reply before next date, he will be set ex-parte. Fresh notices were issued on Sunder Lal Aggarwal by this Tribunal on 18.09.2025. Notices

were served on Sunder Lal Aggarwal but neither he appeared nor he filed reply which has been noted in proceeding of this Appeal dated 27.11.2025.

5. Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant challenging the impugned order submits that the Adjudicating Authority committed error in holding that the transaction does not involved the financial debt. It is submitted that the Adjudicating Authority without advertng to Loan Agreement dated 18.10.2018 entered between Financial Creditor and the Corporate Debtor has determined that there is no financial debt within the meaning of Section 5(8) whereas the Loan Agreement clearly provided that although amount of Rs.3,20,00,000/- was amount for the lease of the property whereas Rs.3.55 Crores was clearly treated to be unsecured loan which was payable by Corporate Debtor with 13% interest within the timelines as provided in the Loan Agreement. Adjudicating Authority erred in not noticing the financial transaction as reflected in Loan Agreement dated 18.10.2018. Adjudicating Authority further committed error in holding that the Financial Creditor is related to the Corporate Debtor whereas there is no finding under which Section 5(24) relationship of the Financial Creditor with Corporate Debtor is established. Without advertng to necessary ingredients of Section 5(24), Adjudicating Authority has made observation that Financial Creditor and the Corporate Debtor are related which findings are unsustainable. There were no common director between Financial Creditor and the Corporate Debtor. No cross shareholding on voting control exceeding 20%. No control over composition on the board of the Financial Creditor. No interchange of managerial person or policy

making nexus. It is submitted that the Adjudicating Authority also committed error in imposing penalty under Section 65 which penalty is unsustainable. No material was brought on record or proves to establish that Section 7 application were fraudulently or maliciously instituted by the Financial Creditor. Ingredients of Section 65(1) have not been proved. Two circumstances relied by the Adjudicating Authority for imposing penalty under Section 65 are (i) initiation of SARFAESI proceeding by the Punjab National Bank and (ii) simultaneous filing of Section 7 application. It is submitted that both the above reasons cannot be any reason for holding that Section 7 application was filed fraudulently or maliciously. Punjab National Bank which was a secured creditor was free to take its proceeding for recovery of its debt under the SARFAESI Act. However, proceedings under the SARFAESI Act by Punjab National Bank can neither interdict nor take away the right of Financial Creditor to seek remedy under Section 7 which is independent statutory remedy. Filing of Section 7 application at the time when SARFAESI proceedings were underway cannot be reason to hold that initiation of proceedings were fraudulent or malicious. It is submitted that the auction conducted by the Punjab National Bank has already been set aside by the Punjab & Haryana High Court. It is submitted that applications filed by the Punjab National Bank and Sunder Lal Aggarwal under Section 65, no notices were issued and Financial Creditor was not asked to file any reply to meet the allegation.

6. The finding of the Adjudicating Authority that Mr. Ram Avtar Aggarwal who was authorised by the Board Resolution was not competent to file

Section 7 application is wholly erroneous. The mere fact that the Board Resolution was passed on 21.11.2014 cannot be a reason to hold that Section 7 application could not have been filed by Mr. Ram Avtar Aggarwal.

7. Learned Counsel appearing for the Corporate Debtor who has also filed nine appeals, as noted above, challenging the impugned order submits that the Adjudicating Authority exceeded its jurisdiction imposing penalty on Corporate Debtor. It is submitted that Section 65 penalty can be imposed on any person who initiate the insolvency resolution process or liquidation proceeding fraudulently or maliciously. Under Section 65 penalty could not have been imposed on the Corporate Debtor. It is submitted that no evidence or proof of any fraudulent or malicious intent has been brought on record. It is submitted that the Adjudicating Authority has wrongly come to the conclusion that the Corporate Debtor and the Financial Creditor are related party. Learned Counsel for the Corporate Debtor referring to clause 5(24)(e) submits that the ingredients for holding Corporate Debtor to be related party to the Financial Creditor which is a public limited company has not been established. Director, partner or manager of the Corporate Debtor is not a director in J&K Integrated Textiles Park Limited. Adjudicating Authority has failed to establish how the alleged relationship between the Appellant and Financial Creditor has fall under Section 5(24).

8. Learned Counsel for the Punjab National Bank opposing the Appeal filed by the Financial Creditor submits that Section 7 application was filed by the Financial Creditor to obtain benefit of Moratorium so as to interdict the proceedings initiated by the Punjab National Bank under the SARFAESI

against the Corporate Debtor. It is submitted that the Punjab National Bank has extended financial facilities to the Corporate Debtor and has initiated proceedings under the SARFAESI Act. It is submitted that the Punjab National Bank has also conducted auction of the assets of the unit holders and sale certificate was issued on 04.12.2023. It is submitted that due to defect, fresh auction was held on 15.01.2024 and fresh sale certificate was issued. Sale certificate was however, cancelled on account of no objection from J&K State Industrial Development Corporation Ltd. It is submitted that there is no financial debt between Appellant and the Financial Creditor.

9. Opposing the submission of the Counsel for the Punjab National Bank, Counsel for the Appellant submits that the Punjab National Bank has proceeded to auction the Corporate Debtor's property without obtaining no objection certificate from J&K State Industrial Development Corporation Ltd. which led annulment of the sale by High Court of Jammu & Kashmir. Punjab National Bank in the SARFAESI proceeding. Punjab National Bank has yet to obtain any NOC from J&K State Industrial Development Corporation Ltd. which means lacks the authority to auction. It is, however, submitted that initiation of SARFAESI proceeding in no manner can interdict the Financial Creditor to initiate Section 7 proceedings which are independent statutory proceeding which are necessary for resolution of the Corporate Debtor in the facts of the present case. As noted above, Sunder Lal Aggarwal did not appear nor file any reply or oppose the appeals.

10. From the submissions which have been made by Counsel for the parties and materials on the record, following are the issues which arise for consideration:-

- (I) Whether Section 7 application filed by the Financial Creditor on the strength of Board Resolution dated 21.11.2014 was incompetent and unauthorised and the Adjudicating Authority has rightly rejected the application under Section 7 as unauthorised and incompetent?
- (II) Whether there was no financial debt in the transaction between the Financial Creditor and the Corporate Debtor within the meaning of Section 5(8) of the IBC?
- (III) Whether Financial Creditor is related party to the Corporate Debtor under Section 5(24) of the IBC?
- (IV) Whether interveners- Punjab National Bank and Sunder Lal Aggarwal in their applications have pleaded and proved ingredient of Section 65 (1) to impose penalty on the Financial Creditor under Section 65(1)?
- (V) Whether Adjudicating Authority has rightly imposed penalty of Rs.25,00,000/- on the Corporate Debtor while dismissing Section 7 application filed by the Financial Creditor?
- (VI) To what relief, if any, the Appellants are entitled in these Appeals?

Issue No.(I)

11. The first question which needs to be answered is as to whether the Board Resolution dated 21.11.2014 can be treated to be sufficient to

authorise Mr. Ram Avtar Aggarwal to file Section 7 application on behalf of the Financial Creditor. The Adjudicating Authority in the impugned order has answered issue no.(B) holding that Section 7 application has not been filed on the basis of valid Board Resolution with due authorisation. The copy of the Board Resolution has been extracted by the Adjudicating Authority in the impugned order. Adjudicating Authority however observed that resolution was passed on 21.11.2014. Adjudicating Authority took the view that the said Board Resolution is under challenge in Section 241-242 proceedings, hence, that cannot be basis for filing Section 7 application. It is useful to notice reasoning and observations made by the Adjudicating Authority in paragraph B (ii) & (iv):-

“(ii) However, it is critical to note that the said resolution and power of attorney vested with the Petitioner, Mr. Ram Avtar Aggarwal dates back to the year 2014, when the IBC was not even enacted. The Code came into force on 28.05.2016. The Power of Attorney, so vested with the Petitioner stands obsolete in view of the chronology of the facts mentioned in the Petition. When a Special Law is enacted and comes into force, the right and power to initiate or defend proceedings or to represent the Company/Institution in such proceedings must be backed by a valid Power of Attorney, authorising the concerned person to initiate/defend proceedings under the said Special Law. Once a Board Resolution is passed authorising a certain person with the right to represent the company before any court of India, the said Board Resolution does not ipso facto confer such rights upon the concerned person for an indefinite time. How could the

Board have visualised the enactment and enforcement of this Code two years advance in 2014? Thus, in the case in hand, a Board Resolution ought to have been passed in favour of the Petitioner authorising him to file the present Section 7 Petition under the Code. Thus, the Power of Attorney relied upon by the Petitioner is obsolete and not valid in the present circumstances.

(iv) Furthermore, the Board Resolution passed in the meeting dated 21.11.2014, is already under challenge in the Company Petition filed under Section 241, 242 and 244 of the Companies Act, 2013, which was filed in the year 2022, before the filing of the present petition and pending consideration before this Bench. Hence, it can be safely concluded that present Section 7 Petition is not supported by valid Board Resolution/authorisation.”

12. We need to first notice the resolution passed by the Board of Directors of the Financial Creditor dated 20.11.2014. It is useful to notice the following Agenda Item No.9 and resolution passed therein:-

“9. GENERAL POWER OF ATTORNEY ON BEHALF OF COMPANY

Mr. Aggarwal submitted that the company should authorized one person for signing, executing and submissions on behalf of the companies to all the departments, Banks, offices, any court of India from time to time and the board should give General power of Attorney to one person on behalf of the company as the Board of Directors of the company resides in different part of the countries and it is not feasible to wait for board meeting for taking decisions as it is making hinderance for the company to take fast decisions. The

Board take the knowledge of the same and accepts the same. The board approve the same and authorize Mr. Ram Avtar Aggarwal, Managing Director of the company for having General Power of Attorney for the same on behalf of the same as he is handling all the day to day activities and he is the only active and full time Managing Director of the company. The Board approve the same and passed the resolution as

"RESOLVED THAT *Mr. Ram Avtar Aggarwal, Managing Director of the Company, is hereby authorized and given General Power of Attorney on behalf of the company to sign, prepare documents, submission of documents, represent the company and execute the necessary documents on behalf of the company to complete the necessary formalities for any of the Department, Banks, Offices and any Court of India.*

"RESOLVED FURTHER THAT *Mr. Ram Avtar Aggarwal, Director of the Company, is authorized to sign, prepare documents, submission of documents, execute all the documents and represent before any of the Department, Banks, any office and any of the Court of India from time to time including any power of attorney, affidavit and other all documents on behalf of the company."*

13. The above resolution has categorically authorised Mr. Ram Avtar Aggarwal, Managing Director of the Company who was given General Power of Attorney on behalf of the company to execute the necessary documents on behalf of the company in respect to department, banks and offices and ***in any court of law.***

14. Learned Counsel for the Appellant has relied on judgment of the Hon'ble Supreme Court in **“Rajendra Narottamdas v. Chandra Prakash Jain, (2022) 5 SCC 600”**. In the said case also, Section 7 application was also filed by the Financial Creditor on basis of resolution of Board of Directors of the Bank dated 06.12.2008 and Power of Attorney executed by General Manager in 2011. The argument raised on behalf of the Appellant that there was no proper authorisation for filing Section 7 application was rejected. In paragraph 12 of the judgment Hon'ble Supreme Court has noted one of the issues regarding maintainability under Section 7 filed by the Power of Attorney. In paragraph 8, two issues were noticed. The Hon'ble Supreme Court in paragraphs 12, 13 and 14 has laid down following:-

“12. The authorisation, in terms of the power of attorney, given by the financial creditor to Mr Praveen Kumar Gupta who has filed the application under Section 7 of the Code has been placed on record. Pursuant to the resolution passed by the Board of Directors of the Bank on 6-12-2008, the power of attorney was executed by the general managers in 2011. By way of the said power of attorney, Mr Praveen Kumar Gupta was appointed by the Bank to act as its constituted attorney with respect to

“all the business and affairs of the Bank and to conduct and manage and to assist in the conduct and management of all such businesses and affairs of the Bank, both within and outside India and to do all acts, deeds and things necessary or proper for carrying on the business and affairs of the Bank”.

Further, Mr Praveen Kumar Gupta has also been authorised to:

“commence, prosecute, endorse, defend, answer and/or oppose any suit or other legal proceedings including any civil or criminal proceedings in any court or tribunals and any demand touching any matters in which the Bank may or may hereafter be interested or concerned and also, ... compromise, refer to arbitration, abandon, submit to judgment or become non-suited, in any such suits or proceedings, to appoint advocate, solicitors and pleaders as occasion shall require and to make, sign, execute, present and file all applications, complaints, petitions, written statements, vakalatnamas or any other papers expedient or necessary ... to be made, signed, executed, presented or filed.”

13. *NCLAT in its judgment in Palogix Infrastructure [Palogix Infrastructure (P) Ltd. v. ICICI Bank Ltd., 2017 SCC OnLine NCLAT 266] held that a “power-of-attorney holder” is not competent to file an application under Section 7 on behalf of the financial creditor. However, NCLAT made certain further observations, as reproduced below : (SCC OnLine NCLAT para 41)*

“41. Insofar as the present case is concerned, the “Financial Creditor”-Bank has pleaded that by Board's Resolutions dated 30-5-2002 and 30-10-2009, the Bank authorised its officers to do needful in the legal proceedings by and against the Bank. If general authorisation is made by any “Financial Creditor” or “Operational Creditor” or “Corporate Applicant” in favour of its officers to do needful in legal proceedings by and against the “Financial Creditor”/“Operational Creditor”/“Corporate Applicant” in favour of its officer,

mere use of word “Power of Attorney” while delegating such power will not take away the authority of such officer and for all purposes it is to be treated as an “authorisation” by the “Financial Creditor”/“Operational Creditor”/“Corporate Applicant” in favour of its officer, which can be delegated even by designation. In such case, officer delegated with power can claim to be the “Authorised Representative” for the purpose of filing any application under Section 7 or Section 9 or Section 10 of “I &B Code”.

14.*NCLAT was of the opinion that general authorisation given to an officer of the financial creditor by means of a power of attorney, would not disentitle such officer to act as the authorised representative of the financial creditor while filing an application under Section 7 of the Code, merely because the authorisation was granted through a power of attorney. Moreover, NCLAT in Palogix Infrastructure [Palogix Infrastructure (P) Ltd. v. ICICI Bank Ltd., 2017 SCC OnLine NCLAT 266] has held that if the officer was authorised to sanction loans and had done so, the application filed under Section 7 of the Code cannot be rejected on the ground that no separate specific authorisation letter has been issued by the financial creditor in favour of such officer. In such cases, the corporate debtor cannot take the plea that while the officer has power to sanction the loan, such officer has no power to recover the loan amount or to initiate corporate insolvency resolution process, in spite of default in repayment. We approve the view taken by NCLAT in Palogix Infrastructure [Palogix Infrastructure (P) Ltd. v. ICICI Bank Ltd., 2017 SCC OnLine NCLAT 266]”*

15. The Hon'ble Supreme Court upheld the view of this Tribunal in **“Palogix Infrastructure (P) Ltd. v. ICICI Bank Ltd., 2017 SCC OnLine NCLAT 266”** that application under Section 7 on the basis of Power of Attorney holder is maintainable. It is relevant to notice that in the case before the Hon'ble Supreme Court, the resolution of Board of Directors was on 06.12.2018 whereas Section 7 application was filed under the IBC. The view taken by the Adjudicating Authority in the impugned order that resolution passed by the Board was 21.11.2014 and the IBC was enforced two years thereafter, hence, the said resolution is clearly erroneous. We, thus, are of the view that Section 7 application filed by Mr. Ram Avtar Aggarwal on basis of Board Resolution dated 21.11.2014 was fully maintainable and view to the contrary taken by the Adjudicating Authority is unsustainable. We hold Section 7 application filed on behalf on basis of authorisation as per the Board Resolution is fully maintainable.

Issue No.(II)

16. The second issue is as to whether transaction in question involves any financial debt or not. Adjudicating Authority while answering issue no.3 has referring to the amount Rs.3,20,00,000/- as cost of land paid to the Financial Creditor and relying on the judgment of this Tribunal in **“Jaipur Trade Expocentre Pvt. Ltd. v. Metro Jet Airways Training Pvt. Ltd., 2022, ibclaw.in 209 NCLAT”** held that there was no financial debt. It is useful to notice paragraph C (ii), (iii) & (iv):-

“(ii) From a conjoint reading of the above provisions of the documents executed between the parties, it can be

safely concluded that JKSIDCO leased out 200 kanals of land to JKITPL for a period of 90 years, where JKITPL paid a premium of Rs.3 crore to JKSIDCO and further paid Rs.12 lacs as an advance ground rent for two years. The ownership of the land vests with the JKSIDCO and the ownership of the building constructed upon that land vests with JKITPL. The industrial units were to pay annual lease JKITPL for the use of the leased premises. Further, as mentioned in the Agreement dated 16.10.2018 between the Corporate Debtor and JKITPL, annexed as Annexure 2 to the Section 7 Petition, it is mentioned that the net cost of the project/building is Rs.3,55,00,000/- for the construction of building and in the same project, the cost incurred by the party of the second part is Rs.3,55,00,000/- for the component of building constructed.

(iii) The amount of Rs.3,20,00,000/- mentioned as cost of land to be paid by the Corporate Debtor to JKITPL is not a financial debt advanced by JKITPL to the Corporate Debtor. The annual lease rent, which the industrial units, including the Corporate Debtor were to pay to JKITPL, is not in nature financial debt, as it intends towards availing services from JKITPL by the Corporate Debtor, i.e., use of the leased premises and buildings.

(iv) While determining, whether a debt falls within the definition of financial debt as defined under Section 5(8) of the Code, mere existence of the debt is not to be ascertained. In addition to the existence of the debt, the intended use of such debt is also to be seen in order to categorise it as a financial debt. In the case of Jaipur Trade Expocentre Pvt. Ltd. v. Metro Jet Airways Training Pvt. Ltd., 2022, ibclaw.in 209 NCLAT, a full-bench of the

National Company Law Appellate Tribunal established that dues related to the lease and license of immovable property are classified as 'operational debt' under Section 5(21) of the Insolvency & Bankruptcy Code, 2016.”

17. Adjudicating Authority further noticed that in the balance sheet of the Corporate Debtor the debt is shown as unsecured loan. In para C (v), following was held:-

“(v) Further, in the Petition filed under Section 7 of the Code, the Financial Creditor has not appended any cogent evidence of disbursement of the debt amount to the Corporate Debtor. The only evidence annexed with the Section 7 petition is the balance sheet of the Corporate Debtor for the Financial Year ending as on 31.03.2022 (Annexure-8), where the alleged debt is shown in Note 2.3. as 'Unsecured Loans- From Others' under the head 'Long Term Borrowings' as below:”

18. Copy of the Loan Agreement between the Financial Creditor and the Corporate Debtor was part of Section 7 application which has been brought on record at page 222 of the paper book. It is necessary to refer to Loan Agreement entered between M/s. Silkron Processors Pvt. Ltd. (Corporate Debtor) and J&K Integrated Textile Parks Limited (Financial Creditor). The said Loan Agreement has noticed consideration for the lease and unsecured loan of Rs.3,55,00,000/-. Both the amount of Rs.3,20,00,000/- and Rs.3,55,00,000/- has been noticed in the agreement and Rs.3,20,00,000/- was mentioned as cost of land and Rs.3,55,00,000/- was mentioned as

unsecured loan with interest of 13%. It is useful to notice following part of the observation in the Loan Agreement:-

“NOW WHEREAS for making the total payment against land and building by the party of the first **** to the party of the second part comes to Rs. 6,75,00,000/- (including cost of land for Rs. 3,20,00,000/- and branley and building cost Rs. 3,55,00,000/-). The party of the second part being the developer and supporter on behalf of the MoT, the party of the second part proposed to the party of the first Part that the payment towards the land will be paid as per the schedule already decided and as per the terms and conditions settled in the Lease Agreement and the cost of Building amounting to Rs. 3,55,00,000/- would be provided as Unsecured Loan of Rs. 3,55,00,000/- to the party of the First Part alongwith the Interest @13% P.a. applicable and for the same both the parties have agreed on the same.

NOW WHEREAS for making this payment it is proposed by the party of the second Part that it would provide Unsecured Loan of Rs. 3,55,00,000/- to the party of the First Part alongwith the Interest @13% P.a. applicable and for the same both the parties have agreed on the same.”

19. Further, terms in writing entered into the above agreement paragraphs 1 to 4 provides as follows:-

“NOW THIS AGREEMENT WITNESSETH AS UNDER

1. That the Second Party has agreed to provide the Unsecured Loan of Rs. 3,55,00,000/- to party of the first part;

2. That the Party of the First Part has also agreed to pay the Unsecured Loan Amount along with the Interest @13% P.a.;

3. That the Party of the First Part will pay the Interest Amount w.e.f. 01.01.2018 yearly and the Principle Amount will be paid into three years starting from 01.01.2020 into equal 36 monthly installments. The holiday period for payment is provided upto 31.12.2019. The party of the second part is providing the exceptional holiday period and the repayment into three years from January 2020.

4. That the party of the first part will pay the penal Interest @2% P.a. quarterly on the default amount of Interest and principle amount due.”

20. The above Loan Agreement clearly has two parts, Rs.3,20,00,000/- cost of land that was in lieu of allotment of 20 Kanals land to the Corporate Debtor by the Financial Creditor. We have already noticed that 200 Kanals road allotted by J&K State Industrial Development Corporation Ltd. of premium lease rent to the Financial Creditor and Financial Creditor thus has allotted 20 Kanals land to the Corporate Debtor on the cost of Rs.3,20,00,000/-. Further, the amount of Rs.3,55,00,000/- which was amount for construction of building and in the project was also given as unsecured loan to the Corporate Debtor with interest @13%. When we look into the transaction as reflected in the above paragraphs, it is clear that it was financial debt within the meaning of Section 5(8)(f) which is as follows:-

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

includes– (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

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

- (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and*
- (ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]*

21. The Adjudicating Authority in the impugned order although has noted the cost of land to Rs.3,20,00,000/- but has not adverted to other part of the Loan Agreement which clearly provided unsecured loan of Rs.3,55,00,000/- which was payable with 13% interest. Interest was to be paid annually w.e.f. 01.01.2018 and principal was to be payable from 01.01.2020. It is also relevant to notice that the Adjudicating Authority in the impugned order has noted that in the balance sheet of the Corporate Debtor the amount is shown as unsecured loan which we have noted above. When the balance sheet of the Corporate Debtor clearly mentioned unsecured loan and the Loan Agreement between the parties clearly captures the nature of transaction, we are of the view that the financial debt was very much involved in the transaction and the Adjudicating Authority committed error in taking the view that there was no financial debt in the transaction.

Issue No.(III)

22. On the above Issue No.(III), the Adjudicating Authority has come to the conclusion that the Financial Creditor and the Corporate Debtor are related party. 'Related party' in relation to the Corporate Debtor defines in Section 5(24) which is as follows:-

“5. Definitions. – (24) *“related party”, in relation to a corporate debtor, means-*

(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;

(b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;

(c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;

(d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid- up share capital;

(f) anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary

course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;

(i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;

(j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;

(k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;

(l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;

(m) any person who is associated with the corporate debtor on account of-

(i) participation in policy making processes of the corporate debtor; or

(ii) having more than two directors in common between the corporate debtor and such person; or

(iii) interchange of managerial personnel between the corporate debtor and such person; or

(iv) provision of essential technical information to, or from, the corporate debtor;”

23. With respect to related party, Adjudicating Authority has noted the relationship of the Financial Creditor with the Corporate Debtor as was

pleaded in IA No.260 of 2024. The pleadings in IA No.260 of 2024 have been noticed in paragraph D (ix) which is as follows:-

“(ix) As mentioned on Page 15 of IA No.260/2024, the relationship of the Financial Creditor with the Corporate Debtor in the present case along with the other eight industrial units has been explained as below:

SN	Name of Unit Holder	Relationship with JKITPL
1.	M/s Silkion Processors Pvt. Ltd.	Directors are friend of Ram Avtar Aggarwal, i.e., the Director of the JKITPL.
2.	M/s J and K Textorium Pvt. Ltd.	Its directors Mahesh Kumar Sharma and Rajesh Kumar Sharma are employees of JKITPL. Vijay Aggarwal is the person, who has given guarantee in the loan account of M/s J and K Textorium Pvt. Ltd to the Intervener Bank and is the son of Sunder Lal Aggarwal, i.e., one of the directors in the JKITPL
3.	M/s Green Textorium Pvt. Ltd.	Its directors Mahesh Kumar Sharma and Rajesh Kumar Sharma are employees of the JKITPL. Vijay Aggarwal is the M/s J and K Textorium Pvt. Ltd to the Intervener Bank and is the son of Sunder Lal Aggarwal, i.e., one of the directors in the JKITPL.
4.	M/s J and K Synthetic Pvt. Ltd.	Its directors Mahesh Kumar Sharma and Rajesh Kumar Sharma are employees of the JKITPL.

5.	<i>M/s Silkion Synthetic Pvt. Ltd.</i>	<i>Its directors Mahesh Kumar Sharma and Rajesh Kumar Sharma are employees of the JKITPL.</i>
6.	<i>M/s Toplon Industries Pvt. Ltd.</i>	<i>Its directors are Kush Aggarwal and Onkar Singh. Kush Aggarwal is the son of Sh. Ram Avtar Aggarwal, director of the JKITPL and the JKITPL had also given his guarantee in the loan account. In addition to the above, Jyotsna Aggarwal, Disha Aggarwal and Anuradha Aggarwal had given their personal guarantees. Jyotsna Aggarwal is the wife of Ram Avtar Aggarwal and Disha Aggarwal is the daughter of Ram Avtar Aggarwal i.e. director in the JKITPL.</i>
7.	<i>M/s Jyotsna Industries Pvt. Ltd</i>	<i>Its directors are Sajan Marriya and Jyotsna Aggarwal, wife of Ram Avtar Aggarwal, i.e. director in the JKITPL. The Corporate Debtor is the related party of the JKITPL as shown in its Balance sheet ending with 31.03.2022 on page no. 49 of the Section 7 Petition.</i>
8.	<i>M/s Orbit Spinning Pvt. Ltd.</i>	<i>Its directors are Sajan Marriya and Kush Aggarwal, son of Ram Avtar Aggarwal, i.e. director in the JKITPL. The JKITPL had also given its corporate guarantee in the loan account. Ram Avtar Aggarwal, who is the director in the JKITPL is</i>

		<i>personal guarantor in the loan account.</i>
9.	<i>M/s Natural Industries</i>	<i>Ram Avtar Aggarwal is the sole proprietor of this firm and JKITPL had also given its corporate guarantee in the loan account. Jyotsna Aggarwal, wife of Ram Avtar Aggarwal, and Kush Aggarwal, son of Ram Avtar Aggarwal had given his personal guarantee in the loan account.</i>

24. When we look into the pleadings as regard to related party as contained in the above paragraph, the first entry in the list of the Corporate Debtor is Silkron Processors Pvt. Ltd. In the column of relationship with J&K Integrated Textiles Park Limited following has been stated “Directors are friend of Ram Avtar Aggarwal i.e. the Director of JKITPL”. The above pleading only states that the Directors of the Corporate Debtor are friends of Ram Avtar Aggarwal i.e. the director of Financial Creditor. We fail to see that the said relationship how is relevant for holding Financial Creditor to be related party of the Corporate Debtor. Learned Counsel for the Appellant in a tabular form has given details of shareholders and directors of the Financial Creditors. For example, Appellant has given details with respect to Silkron Processors Pvt. Ltd. (Corporate Debtor). Detail chart with respect to Silkron Processors Pvt. Ltd. dealing with clause 5(24) (a) to (m) are as follows:-

	<u>DEFINITION OF RELATED PARTY UNDER 5(24) OF IBC</u>	<u>APPLICABILITY ON CORPORATE DEBTOR</u>
5(24)	(24)"related party", in relation to a corporate debtor, means-	<u>SILKLON PROCESSORS LIMITED</u>
(a)	a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;	Not Applicable
(b)	a key managerial personnel of the corporate debtor or a relative of a key or managerial personnel of the corporate debtor;	Not Applicable
(c)	a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;	Not Applicable
(d)	a private company in which a director, partner or manager of the corporate is a director and holds along with his relatives, more than two per cent. of its share capital;	None of the director, partner or manager of the debtor Corporate Debtor is a director in JKITP
(e)	a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;	Not Applicable
(f)	anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;	Board of directors, managing director or manager of JKITP do not act on the advice, directions or instructions of a director, partner or manager of the Corporate Debtor
(g)	any limited liability partnership or a partnership firm whose	Not Applicable

	partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;	
(h)	any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;	Director, partner or manager of the Corporate Debtor is not accustomed to act on the advice, directions or instructions of JKITP
(i)	a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;	JKITP is not a holding, subsidiary or associate company of the Corporate Debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary.
(j)	any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;	JKITP does not control any voting rights in the Corporate Debtor on account of ownership or a voting agreement.
(k)	any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;	Corporate Debtor does not control any voting rights in JKITP on account of ownership or a voting agreement
(l)	any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;	JKITP does not control the composition of the board of directors or corresponding governing body of the corporate debtor.
(m)	any person who is associated with the corporate debtor on account of-i. participation	JKITP is not associated with the corporate debtor on account of participation in policy

	<p>in policy making processes of the corporate debtor; or</p> <p>ii. having more than two directors in common between the corporate debtor and such person; or</p> <p>iii. interchange of managerial personnel between the corporate debtor and such person; or</p> <p>iv. provision of essential technical information to, or from, the corporate debtor;</p>	<p>making process of the corporate debtor.</p> <p>JKITP and Corporate Debtor do not have any directors in common.</p> <p>There is no interchange of managerial personnel between the corporate debtor and such person. There is no provision of essential technical information to, or from, the corporate debtor to JKITP.</p>
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25. When we look into the findings returned by the Adjudicating Authority holding the Corporate Debtor to be related party of the Financial Creditor, it is clear that there is no elaboration in the impugned order as to Corporate Debtor under which clause of Section 5(24) is covered and can be held to be related party. However, for argument sake, if it is accepted that Corporate Debtor was related party to the Financial Creditor that cannot be any reason to prohibit Financial Creditor to file a Section 7 application even against a related party. When financial debt is proved and from the records it is proved that the financial debt has not been paid, we have already noticed that in reply to the recall notice the Corporate Debtor- Silkron Processors Pvt. Ltd. has given post dated cheques which cheques came to be dishonoured and complaint under Section 138 has been filed by the Financial Creditor against the Corporate Debtor for dishonour of the cheque. We, thus, are of the view that no satisfactory finding has been returned by

the Adjudicating Authority in the impugned order as to relation that how the Corporate Debtor and Financial Creditor are related and are covered in which sub-clause of Section 5(24). We thus, are of the view that the findings of the Adjudicating that the Corporate Debtor the Financial Creditor are related party cannot be upheld.

Issue No.(IV)

26. The Adjudicating Authority has relied on IA No.260 of 2024 filed by the Punjab National Bank and IA No.932 of 2024 filed by Sunder Lal Aggarwal, the minority shareholder of the Financial Creditor where they prayed for dismissal of Section 7 application and pleaded for imposing penalty on Financial Creditor under Section 65. We need to first notice the IA No.932 of 2024 filed by Sunder Lal Aggarwal. Sunder Lal Aggarwal, according to pleading in the application, is a shareholder of the Financial Creditor who has already initiated proceeding under Sections 241-242 of the Companies Act, 2013 for oppression and mismanagement against the company before the NCLT making allegation against Ram Avtar Aggarwal. Adjudicating Authority has noticed the proceeding under Section 241-242 initiated by Ram Avtar Aggarwal. Ram Avtar Aggarwal had already made allegations against the Financial Creditor and had filed proceeding and had naturally an axe to grind with respect to the Financial Creditor. We, however, are of the view that the dispute between the minority shareholder and the company under Section 241-242 could not have any basis for coming to the conclusion that proceeding initiated by Financial Creditor was fraudulent with malicious intent. When unsecured loan was extended by

Financial Creditor to the Corporate Debtor and Corporate Debtor failed to repay the amount despite several recall notices issued by the Financial Creditor, further the Corporate Debtor issued the post dated cheques which also got dishonoured, we are of the view that the Adjudicating Authority could not have come to the conclusion only on the basis of allegation made by Sunder Lal Aggarwal in his IA that there was any fraudulent or malicious initiation. Section 65(1) provides as follows:-

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

27. Proceeding under Section 65 being penal in nature they required strict pleading and prove for coming to the conclusion that Section 7 application has been fraudulently initiated with malicious intent.

28. Now coming to the application filed by Punjab National Bank being IA No.260 of 2024. The pleadings in IA filed by the Punjab National Bank is that the Punjab National Bank has also extended financial facilities to nine units and on default being committed by the Corporate Debtor proceeding under SARFAESI Act has been initiated. Punjab National Bank who was also a Financial Creditor to the Corporate Debtor was free to initiate proceeding under SARFAESI Act to recover its dues. The submission which has been

pressed by the Counsel for the Punjab National Bank that timing of filing of the application under Section 7 clearly indicate malicious initiation. It is submitted that the Punjab National Bank has auction the assets of the Corporate Debtor. The application was filed on very next day. The proceeding under SARFAESI Act by the Bank against the assets of the Corporate Debtor are independent proceeding and in no manner can be said to interdict the proceeding under Section 7. We have already noticed the background facts of the case which indicate that entire project was conceptualised under the scheme floated by Ministry of Industry and Textile and under larger scheme to develop textile industry integrated textile park was contemplated. Financial Creditor was leased land of 200 Kanals by J&K State Industrial Development Corporation Ltd. The nine units to whom the land was allotted by Financial Creditor out of the land received from J&K State Industrial Development Corporation Ltd., the unit holder i.e. Corporate Debtor failed to discharge their obligation. When the Corporate Debtor failed to discharge their obligations towards Financial Creditors i.e. J&K Integrated Textiles Park Limited as well as the Punjab National Bank, the resolution of the Corporate Debtor is eminent. Resolution of the Corporate Debtor by following CIRP process may be relevant and necessary for reviving the textile unit which is the object and purpose of whole scheme. The mere fact that Section 7 application was filed by Financial Creditor- J&K Integrated Textiles Park Limited after conducting an auction by Punjab National Bank of the same unit cannot be said that initiation by Financial Creditor as fraudulent or malicious intent. We have already held that there was financial debt extended to the Corporate Debtor by J&K Integrated

Textiles Park Limited which debt was a default. We further notice that post dated cheques were issued by the Corporate Debtor in favour of J&K Integrated Textiles Park Limited which were dishonoured and notice for initiating proceeding under Section 138 were already issued by the Financial Creditor to the Corporate Debtor. We, thus, are of the view that on the allegation made by the Punjab National Bank in IA No.260 of 2024 it cannot be held that initiation by Financial Creditor was fraudulent with malicious intent.

29. There are no other pleadings or findings by Adjudicating Authority for holding that ingredients of Section 65 are made out. Adjudicating Authority referred to the only application by Sunder Lal Aggarwal, minority shareholder of the Financial Creditor. Financial Creditor has already initiated proceeding and the Punjab National Bank who has initiated SARFAESI proceeding has proceeded the penalty under Section 65. Ingredients under Section 65 were not proved in any of the applications filed by the interveners i.e. Punjab National Bank and Sunder Lal Aggarwal. We, thus, are satisfied that the conclusions which are recorded by Adjudicating Authority in paragraph 30 where incorrect observation that petition is collusive and malicious cannot be upheld. The conclusion in paragraph 30 by the Adjudicating Authority were based on their earlier conclusion that (i) there was no financial debt (ii) Financial Creditor and Corporate Debtor are related party which finding we have not been approved. We are of the view that the conclusion recorded in paragraph 30 becomes unsustainable and dismissal of Section 7 application also is unsustainable.

Issue No.(V)

30. Coming to Issue No.(V) under which the penalty has been imposed by the Corporate Debtor. Learned Counsel for the Corporate Debtor has relied on the judgment of this Tribunal in **“Rakesh Arora & Anr. vs. Acute Daily Media Pvt. Ltd. & Ors -Company Appeal (AT) (Ins.) No.1606 of 2024”** which appeal was filed by the Promoter of the Corporate Debtor challenging the penalty imposed under Section 65. This Tribunal while interpreting Section 65 has held that penalty under Section 65 relates to person who has initiated the insolvency resolution process. In paragraphs 8, 9 and 10 of the judgment, following has been laid down:-

“8. "Initiation date" has been defined in Section 5(11). From the definition of "initiation date", it is clear that initiation is by a financial creditor, corporate applicant or operational creditor only. In Section 65 of the IBC when we examine the expression "if any person initiates the insolvency resolution process fraudulently or with malicious intent for any purpose other than for resolution of insolvency", the focus is on the person who initiates the insolvency resolution process. We, in the present case, are concerned with initiation of insolvency resolution process under Section 7. Insolvency resolution process can be initiated under Section 7, 9 and 10 which is also clear from definition of "initiation date" under Section 5(11) and the scheme of the IBC as captured by Sections 7, 9 and 10. No other person is entitled to initiate insolvency resolution process except financial creditor, operational creditor or corporate applicant. The heading of Section 65 also provides

"fraudulent or malicious initiation of proceedings". The use of expression "impose upon such person a penalty" in sub-section (1) of Section 65 obviously relates to the person who has initiated the insolvency resolution process. The submission of the appellant is that the promoter should also be treated in whose collusion the proceedings initiated by financial creditors needs consideration. Counsel appearing for the promoters has refuted the contention that any collusion was found with the promoters. It is not necessary for us to enter into issue as to whether there is any finding of collusion in the order of the Tribunal or this Tribunal dismissing the appeals. We need to examine the statutory scheme under Section 65, unless the promoters can also be covered under the statutory scheme, the prayer of the appellants to impose penalty on the promoters cannot be accepted. Section 65 is a penal provision. Hon'ble Supreme Court in AIR 1954 SC 496- "Tolaram Relumal and Anr. vs. State of Bombay" laid down:-

".....if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty."

9. It is not competent to the court to stretch the meaning of expression used by the legislature in order to carry out the intention of legislature. Even the literal construction of Section 65 does not contemplates that penalty can be imposed on any person other than one who has fraudulently or maliciously initiated the proceedings. It is well settled that penal statute are to be strictly construed. We may refer to the judgment of the Hon'ble Supreme Court in "(2013) 8 SCC 71- Aparna

A. Shah vs. Sheth Developers Pvt. Ltd. & Anr." where in reference to Section 138 of the NIA Act, the Hon'ble Supreme Court has occasion to consider the construction of penal provision. In paragraphs 15 & 16, following was laid down:-

"15. In *S.K. Alagh v. State of U.P.* ((2008) 5 SCC 662: (2008) 2 SCC (Cri) 686) this Court held: (SCC p. 667, para 19)

"19.... If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself. (See *Sabitha Ramamurthy v. R.B.S. Channabasavaradhya* [(2006) 10 SCC 581: (2007) 1 SCC (Cri) 621].)"

16. In *Sham Sunder v. State of Haryana* [(1989) 4 SCC 630: 1989 SCC (Cri) 783], this Court held as under: (SCC p. 632, para 9)

"9.... The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not."

10. Section 65 of the IBC being a penal statute, it is required to be strictly construed and as observed above even a literal reading of Section 65 which is a golden rule of construction of statutory statute, no interpretation can be put on the provisions of Section 65 that penalty can be imposed on any other person except those who have initiated insolvency resolution process fraudulently or maliciously. We, thus, do not accept the submission of

the appellant that in exercise of jurisdiction under Section 65, promoters are also need to be penalised.”

31. We having already held that the ingredients in Section 65 could not be proved and the filing of the application under Section 7 by the Financial Creditor could not have been held to be fraudulent or malicious invoking power of Section 65 was uncalled for. In view of the above, no penalty could have been imposed on the Corporate Debtor in the facts of the present case.

Issue No.(VI)

32. In view of the foregoing discussions, we have already held that the transaction entered between the Financial Creditor and the Corporate Debtor involved a financial debt and financial debt was due and default which was not even denied by the Corporate Debtor in proceeding. Debt and default was proved and when debt and default are proved, the Adjudicating Authority was required to admit Section 7 application which is law laid down by this Tribunal in **“Innoventive Industries v. ICICI Bank, (2018) 1 SCC 407”** and **“E.S. Krishnamurthy v. Bharath Hi-Tech Builders, (2022) 3 SCC 161”**. We having found that reason given by the Adjudicating Authority for rejecting Section 7 applications were all unfounded. Order impugned in this appeal cannot be sustained. We further are of the view that in addition to setting aside the order rejecting Section 7 application, we also need to direct the Adjudicating Authority to admit Section 7 application and pass a consequential order. Penalty imposed on the Financial Creditor and Corporate Debtor cannot be sustained.

33. In result of foregoing discussions, we allow all these appeals in following manner:-

(i) The impugned order dated 08.01.2025 rejecting CP(IB)/No. 309/CHD/J&K/2023, CP(IB)/No. 312/CHD/J&K/2023, CP(IB)/No. 315/CHD/J&K/2023, CP(IB)/No. 313/CHD/J&K/2023, CP(IB)/No. 310/CHD/J&K/2023, CP(IB)/No. 317/CHD/J&K/2023, CP(IB)/No. 322/CHD/J&K/2023, CP(IB)/No. 314/CHD/J&K/2023 and CP(IB)/No. 307/CHDJ&K/2023 are set aside.

(ii) We hold that Section 7 application deserves to be admitted by the Adjudicating Authority. Adjudicating Authority to pass a consequential order admitting Section 7 application within a period of 30 days from the date copy of this order is produced before the Adjudicating Authority.

(iii) The impugned order dated 08.01.2025 having been set aside, penalty imposed under Section 65 against the Financial Creditor as well as the Corporate Debtor also stand set aside. No separate order need to be passed regarding penalty.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Anjali