NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 548/2026
IA No. 1536/2026

In the matter of:

KKP SPINNING MILLS PRIVATE LTD.
Represented by its Director
Old No.88, New No.263, Salem Road,
Namakkal, Tamil Nadu - 637001 **…APPELLANT**

Vs

MR. S. SUNDAR RAMAN
Interim Resolution Professional
of M/s KG Denim Ltd **...RESPONDENT NO.1**

KG DENIM LIMITED
Then Thirumalai Coimbatore,
Tamil Nadu – 641 302 **...RESPONDENT NO.2**

With
Company Appeal (AT) (CH) (Ins) No. 550/2026
IA No. 1542/2026

In the matter of:

KKP SPINNING MILLS PRIVATE LTD.
Represented by its Director
Old No.88, New No.263, Salem Road,
Namakkal, Tamil Nadu - 637001 **…APPELLANT**

Vs

MR. S. SUNDAR RAMAN
Interim Resolution Professional
of M/s KG Denim Ltd **...RESPONDENT NO.1**

KG DENIM LIMITED
Then Thirumalai Coimbatore,
Tamil Nadu – 641 302 **...RESPONDENT NO.2**

Present :

For Appellant : Mr. Solaippan O, Advocate

JUDGMENT
(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

Because of the fact that these company appeals, engage consideration of common question of fact and law, for the purposes of brevity they are being decided together.

2. The facts, that engage consideration are that the Company Appeal (AT) (CH) (Ins) No. 548/2026 had been preferred by the Appellant praying to set aside the order dated 31.07.2026 that has been passed by the Ld. Adjudicating Authority on intervention application, being Intervention Petition No. 1 of 2026, as preferred in I.A No. 2026 of 2025, which in turn was preferred in C.P. (IB) No. 222/CHE/2023.

3. In the connected company appeal, Company Appeal (AT) (CH) (Ins) No. 550/2026, the challenge given by the Appellant is to the order dated 31.07.2026, that was passed on I.A No. 2026 of 2025 preferred in C.P. (IB) No. 222/CHE/2023, permitting withdrawal of CIRP initiated against the Corporate Debtor, KG Denim Limited.

4. In Company Appeal (AT) (CH) (Ins) No. 548/2026, the brief facts, that engages consideration are that the Appellant claims himself to be a Creditor and in that capacity, it had filed an intervention application being Intervention Petition

No. 1 of 2026, seeking to intervene in the withdrawal application preferred under Section 12A of the I & B Code, 2016, being I.A No. 2026 of 2025, and the said application has been rejected.

5. So far as brief facts are concerned, KKP Spinning Mills Private Limited, i.e., the Appellants herein, and M/s. KG Denim Limited, had been in business relationship ever since 2010. It is alleged by the Appellant that they had been the supplier of yarns and fabric to M/s. KG Denim Limited, as against the invoices, that were issued, from time to time, and that the substantial payment as against the invoices remained outstanding despite of the part payment having been made, and despite of the recurring assurances extended from time to time and issuance of cheques, the repayment was not made. Meanwhile, the Corporate Debtor has fallen in default, because of which proceedings stood initiated as against the Corporate Debtor by an Operational Creditor, Mrs. Parthiban Uma Sankari, and by virtue of an order passed on 26.11.2025, CIRP was directed to be commenced against the Corporate Debtor.

6. In these proceedings, we may not be much concerned so far as it relates up to the stage of initiation of the CIRP process as against the Corporate Debtor, because that is not a subject of concern for us in the present company appeal. However, once CIRP was directed to be commenced, the present Appellant who also claims himself to be having a status of the Creditor filed his claim in the shape of Form B before the IRP and they were allegedly assured by IRP that they would be getting the amount claimed on conclusion of CIRP. They have further

stated that the amount that was falling due to be paid to them, was much below the threshold limit as prescribed under Section 4 of the I & B Code, 2016, and because of legal embargo created by Section 4 of the I & B Code, 2016, they, in their individual capacity wouldn't have been able to initiate any proceedings under the I & B Code, 2016 to recover the said amount which has allegedly fallen due to be paid to them by the Corporate Debtor.

7. In the said CIRP, which stood initiated in the shape of C.P. (IB)/222(CHE)2023, at a subsequent stage the Corporate Debtor, i.e., M/s. KG Denim Limited, and the Applicant to the proceedings are shown to have filed an application under Section 12A of the I & B Code, 2016, whereby, by citing the settlement that has been entered into between them to their satisfaction, they prayed for that the proceedings may be withdrawn. The said application I.A No. 2026 of 2025 was filed in C.P. (IB)/222(CHE)2023 under Section 12A of the I & B Code, for withdrawal of the Section 7 application filed as against the Corporate Debtor, because of the fact that the parties have entered into a settlement.

8. It is at this stage, when this application was preferred, the present Appellant is said to have filed an application for his intervention in the proceedings, and that intervention application was numbered, as Intervention Petition No. 1 of 2026, which has been ultimately rejected by the impugned order dated 31.07.2026, as against which the Appellant is before us.

9. A short question that arises for consideration is as to whether, owing to the financial liability which could have fallen due to be paid by the Corporate Debtor

to the intervention petitioner/ present Appellant, who claims himself to be the Operational Creditor, and whose claim is falling well below the threshold provided under Section 4 of the Code, could have been made as a party to the proceedings of the C.P. (IB)/222(CHE)2023 drawn by an another creditor. In that eventuality, where because of the legal embargo created by law, the Appellant couldn't have independently drawn a proceedings as against the Corporate Debtor, he could not have been made as a party to the proceedings drawn by the Operational Creditor as against the Corporate Debtor, because choice of parties was exclusively with the Operational Creditor who had initiated Section 9 proceedings in which all other Operational Creditor may not be the necessary party, like the one, i.e., Appellant herein.

10. The question that would arise for consideration would be as to whether at all the Appellant could claim himself to be a necessary party who could be permitted to intervene in the proceedings under Section 12A of the I & B Code, 2016, which was jointly preferred by the parties to the company petition, as the consequence to this application would bind the parties to proceedings only. The Appellant in his intervention application had prayed for the following reliefs: -

> a) *Set aside / quash the Impugned Order dated July 31, 2026, passed by the Hon'ble Adjudicating Authority, Chennai Bench in Intervention Petition No. 1 of 2026 in I.A. No. 2026 of 2025 in C.P. (IB) No. 222/CHE/2023;*
> b) *Any other relief that this Hon'ble Tribunal may be pleased to grant considering the facts and circumstances of the present case.*

This application came up for consideration before the Ld. Tribunal and the Ld. Tribunal by the impugned order dated 31.07.2026, has rejected the same, against which the Appellant is before us.

11. In the Connected Company Appeal, being Company Appeal (AT) (CH) (Ins) No. 550/2026, the challenge given by the Appellant is to the orders passed on I.A No. 2026 of 2025 in C.P. (IB) No. 222/CHE/2023. The application I.A No. 2026 of 2025 was preferred by the parties to the company petition by invoking the provisions contained under Section 12A of the I & B Code, 2016, for withdrawing of the proceedings owing to a certain settlement, that has been arrived at between the parties.

12. The sole question that would fall for consideration in both the company appeals would be as to, whether at all the Appellant who had sought himself to be imposed upon the proceedings by filing of an intervention application, happens to be the necessary party to the proceedings, where the intervention could be permitted, to enable him to place his case in a proceedings drawn by the other Operational Creditor qua the Operational Debt that has fallen due to be paid to the Operational Creditor the applicant to the proceedings from the Corporate Debtor.

13. Obviously, something which is not permissible to be drawn by Appellant, as per the intention of the law because of restriction of Section 4 of the Code, couldn't be permitted to be carried to be overridden out by virtue of filing of an intervention application, which otherwise the Appellant would under law facing

a bar of not being in a position to otherwise invoke the provisions contained under the I & B Code. In the instant case, the intervention application that was preferred, intended to override law, because the Appellant, in its application itself had given a tabulation of its claim as contained under para 7.5 and as elaborated in para 7.8 and 7.11, which even after including the interest payable on the amount claimed to be paid, will not be falling above the threshold as contemplated under Section 4 of the I & B Code. And in that eventuality, in the proceedings of the company petition instituted by other Operational Creditor, or even in the proceedings of withdrawal under Section 12A of the I & B Code, 2016, the Appellant would not at all be the necessary party who could be required to be permitted to intervene in the proceedings under Section 12A of the I & B Code, 2016. And it is because of that reason, the Ld. Tribunal, after considering the rival contentions, has taken a view that because of the fact that the total claim of the Appellant had been Rs. 59,70,356/- only and even after inclusion of the interest payable on it, it doesn't cross over the threshold limit, the Appellant cannot be permitted to intervene and that he will have to seek out his remedies available under law.

14. The Ld. Tribunal rightly took the view that the Appellant would not be the necessary party in the proceeding under Section 9 drawn by the Operational Creditor and it will have to work out its remedies as available to it under law, and that such remedy could not be alternatively resorted to by permitting the Appellant to participate in the proceedings of the company petition drawn at the behest of another Operational Creditor by invoking the provisions contained

under Section 9 of the I & B Code, 2016, especially when allowing it to participate in the proceedings has an effect of overriding the embargo created by law against the Appellant.

15. Owing to the fact that, the Appellant was not a party to the proceedings and that he was rightly not made as a party to the proceedings, because he wouldn't have, in any manner whatsoever, be able to assist, in an effective adjudication of the proceedings of the company petition since his claim was altogether independent and distinct to the claim of the Operational Creditor who has initiated the proceedings under Section 9 of the I & B Code, 2016, the Appellant doesn't become the necessary party to substantiate the claim raised by the Operational Creditor in the proceedings under Section 9 of the Code, which was ultimately intended to be closed on the basis of the settlement arrived at between them by filing of an application with Section 12A of the I & B Code, 2016.

16. The Appellant had an independent role and an independent claim as against the Corporate Debtor. Further, the claim of the Appellant cannot be kept in parlance to the claim of the Operational Creditor, as both were independent and distinct to one another. The claim of the Appellant, as it has already been discussed in preceding paragraphs, apart from the fact it was below the threshold, couldn't have facilitated at all in an effective decision-making process qua the claim which was raised by the Operational Creditor and which was subject matter in C.P. (IB) No. 222/CHE/2023. Hence, his presence in the proceedings by virtue of an intervention application in the company petition or even in the application

I.A No. 2026 of 2025 preferred under Section 12A of the I & B Code, 2016, of withdrawal of the CIRP was not at all necessary as the said application could still be decided even without the Appellant being made an effective party to the proceedings. In fact, the Appellant by seeking to intervene in the said proceedings, was trying to stake his claim which was otherwise barred by law under I & B Code, in a proceedings drawn by another Operational Creditor which is not sustainable.

17. The basic governing principle of allowing an intervention application is that the said intervention application may be allowed only when prima facie a person is likely to be affected, or if any of its legally sustainable rights, is likely to be hampered because of withdrawal of the proceedings. In the instant case, the consequences of the proceedings at the behest of the other Operational Creditor, qua the Corporate Debtor even by its withdrawal under Section 12A of the Code, would not at all cloud the rights of the Applicant, whose rights are independent and are yet to be agitated by him in an appropriate proceeding before an appropriate forum, but at least not in the proceedings under the I & B Code, 2016.

18. Hence, for deciding the rights of the Operational Creditor as against the Corporate Debtor, the Appellant doesn't become the necessary party and it doesn't fall to be within the ambit of Order I Rule 10 of the Code of Civil Procedure, 1908, because even in its absence, the proceedings under Section 12A of the I & B Code, 2016, can be adjudicated which will obviously be confined to the inter se rights between the Operational Creditor, who has filed the C.P. (IB) No.

222/CHE/2023 vis-a-vis as against the Corporate Debtor, i.e., M/s. KG Denim Limited. If at all any settlement takes place as a consequence of an order being passed under Section 12A of the I & B Code, 2016, on the application being I.A No. 2026 of 2025, such order would be having only an inter se binding effect amongst the parties to the proceedings of the company petition only, and it will not at all affect the Appellant who seeks to intervene by virtue of filing of an application, i.e., IVN-P(IBC)/1/CHE/2016. In that eventuality, when the Appellant is not at all prejudiced by any decision which is to be taken on the application filed under Section 12A and when Appellant is not a necessary party who could have at all facilitated in an effective adjudication of the application under Section 12A of the Code or even the company petition in itself, the Appellant does not become a necessary party who could be permitted to intervene in the proceedings.

19. There is yet another reason not to accept the prayer made by the Appellant in the intervention application, for the reason being that if we scrutinize the prayer that has been made by the Appellant in his intervention application, Intervention Petition No. 1 of 2026, the prayer is of intervention. Under legal connotation, “intervention” is distinct to “impleadment”. An intervener in proceedings only gets a right to be heard. He doesn't get his own right to agitate his claim or to plead anything on merits as upon permission to intervene does not bestow a right to raise pleadings or a relief. In that eventuality, the intervention in the shape as it was sought by the Appellant, since such intervention exclusively would not

facilitate the Appellant to address his claim on merits, would be an act of futility for the purposes of the proceedings under Section 12A of the I & B Code, 2016, or even for the purposes of the company petition itself. And since he would not have effectively helped in the decision-making process of 12A proceedings or the proceedings of the company petition under Section 9 of the I & B Code, 2016, he cannot be permitted to intervene in the proceedings, as his claim is independent of the claim of the Operational Creditor Mrs. Parthiban Uma Sankari, which has to be independently decided.

20. There is another feature which is required to be considered and looked into, which is that the initiation of proceedings under the I & B Code under Section 9 is the prerogative of an Operational Creditor which is an independent right and another Operational Creditor cannot ride on it. In the instant case, since the Appellant cannot independently institute a Section 9 application as an Operational Creditor because of the amount claimed by it falling below the threshold limit, it cannot substitute itself to be impleaded in the proceedings to agitate its claim, which it, otherwise under law, is statutorily barred to agitate by invoking any of the provisions contained under the I & B Code. The resort to filing of an intervention application couldn't be alternatively permitted to be adopted by the Appellant to open an avenue for him to invoke the proceedings under the I & B Code, thereby opening a new chapter which he otherwise, under law, is not permitted under the provisions of the I & B Code. Hence, the step taken by the Appellant to intervene in the proceedings is not sustainable in the

eyes of law and therefore, the rejection of the intervention application and, consequently, the orders passed on I.A No. 2026 of 2025 doesn't suffer from any apparent error in the eyes of law.

21. Having said so, the dismissal of the intervention application of the Appellant and consequently passing of an order on I.A No. 2026 of 2025 preferred by the parties to the proceedings of the company petition under Section 12A of the I & B Code, 2016, would be without prejudice to the rights of the Appellant to resort to an appropriate process as available to him in accordance with law for the purposes of pressing any of his claims, if at all he has in the eyes of law, by drawing an appropriate proceeding as available to him under the normal civil code.

22. Subject to the aforesaid exception, the company appeals lacks merit and the same is accordingly dismissed. All pending interlocutory applications would too stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

04/11/2026
SN/MS/AK