N NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 992 of 2023
& I.A. No. 5517, 5481 of 2023 & 364, 381, 404, 671 of 2024 & 7702 of 2025

In the matter of:

Chandra Shekhar Jha & Anr. ...Appellants

Vs.

Religare Enterprise Ltd. & Ors. ...Respondents

For Appellants: Ms. Suhasini Sen and Mr. Sista Srinivas, Advocates

For Respondents: Mr. Rajat Choudhary and Ms. Anjali Maurya, Advocates for RP

Company Appeal (AT) (Insolvency) No. 1238 of 2023

In the matter of:

Daiichi Sankyo Company Ltd. ...Appellant

Vs.

Religare Enterprise Ltd. & Ors. ...Respondents

For Appellant: Mr. Arun Kathpalia, Sr. Advocate with Mr. Giriraj Subramanium, Ms. Anindita Barman, Ms. Shreya Hoon, Mr. Tanmay Arora, Ms. Diksha Gupta and Mr. Aditya Dhupar, Advocates.

For Respondents: Mr. Krishnendu Datta, Sr. Advocate with Mr. Aubert Sebastian, Mr. Sujoy Sur, Mr. Shreyash Sharma, Advocates.

Mr. Rajat Choudhary and Ms. Anjali Maurya, Advocates for RP.

J U D G M E N T

(27th May, 2026)

Ashok Bhushan, J.

These two appeals have been filed against the same order dated 18.07.2023 passed by the Adjudicating Authority (National Company Law Tribunal) Principal Bench, New Delhi admitting Section 7 application filed by Religare Enterprises Ltd., the Respondent No.1 herein against the Corporate Debtor- Ligare Aviation Ltd. Company Appeal (AT) (Insolvency) No.992 of 2023 has been filed by two Appellants. Appellant No.1 shareholder of the Corporate Debtor having 1% shareholding and Appellant No.2- RHC Finance Pvt. Ltd. having 70% shareholding in the Corporate Debtor. Company Appeal (AT) (Insolvency) No.1238 of 2023 has been filed by Daiichi Sankyo Company Ltd. claiming to be aggrieved by the impugned order. Appellant claim to have filed execution proceeding in Delhi High Court for execution of Arbitral Award in which garnishee order has been passed against the Corporate Debtor by Delhi High Court for garnishing a sum of Rs.184.04 Crore which has been attached by the High Court of Delhi in the execution proceeding through order dated 26.02.2018.

2. Brief background facts of the case leading to filing Section 7 application need to be noted first.

2.1. The Financial Creditor- Religare Enterprises Ltd. and the Corporate Debtor- Ligare Aviation Ltd. are both group companies and related party. A host of companies including the above two companies were controlled by

two brothers Mr. Malvinder Mohan Singh and Mr. Shivinder Mohan Singh. There were inter-group transactions between various group companies from time to time. An Memorandum of Understanding (MoU) claimed to have entered between Religare Arts Investment Management Ltd. and Corporate Debtor dated 30.03.2009 under which an amount of Rs.5 Crore was sanctioned with interest @13%. In pursuance of the said MoU, an amount of Rs.3,60,00,000/- was transferred by Religare Arts Investment Management Ltd. (hereinafter referred to as 'RAIML') to the Corporate Debtor on 31.03.2009. The amount received by the Corporate Debtor on the same day was transferred to a subsidiary company of the Financial Creditor namely— Religare Finvest Ltd. which is reflected in the bank transfer of the same day. The bank transfer of 31.03.2009 further indicates various amounts received from different group companies and transmitted on the same day to other group companies of the group. Similar to MoU dated 30.03.2009 each year MoU were executed totalling 8 MoUs. Daiichi Sankyo Company Ltd.- Appellant in Company Appeal (AT) (Insolvency) No.1238 of 2023 has initiated an international arbitration proceeding at Singapore against the two Singh Brothers and their various companies. An Arbitral Award was passed on 29.04.2016 in Singapore in favour of Daiichi Sankyo Company Ltd. of Rs.3,500 Crores from Singh Brothers and their various companies. Daiichi Sankyo Company Ltd. initiated proceeding for enforcement of the foreign award in the Delhi High Court. Objections were filed by Judgment Debtors in the proceedings before the Delhi High Court. Orders were passed attaching properties of the different group companies. One of the group company namely—RHC Holdings Ltd. was Judgment

Debtor-19 in the proceeding who was debtor to Corporate Debtor. A garnishee order was issued by Delhi High Court to the Corporate Debtor-Ligare Aviation Ltd. who was debtor of RHC Holding Ltd. on 26.02.2018. In the proceedings before Delhi High Court for enforcement of the foreign award various orders were passed from time to time, undertakings were recorded by Singh Brothers and their group companies. Arising out of the order passed from Delhi High Court proceedings, Special Leave Petitions were filed in the Hon'ble Supreme Court. Before the Delhi High Court also various undertakings were recorded. Orders passed by Delhi High Court were challenged in the Hon'ble Supreme Court where also various undertakings were recorded. Contempt proceedings was initiated against the Judgment Debtor which Contempt Petition (C) No.2120 of 2018 was decided on 15.11.2019 ***("Vinay Prakash Singh vs. Sameer Gehlaut and Ors."- (2021) 16 SCC 319***). In the said proceeding, the Hon'ble Supreme Court has noted the relation between various entities belonging to the group. In paragraph 3 of the judgment of the Hon'ble Supreme Court, chart reflecting various companies of two brothers Mr. Malvinder Mohan Singh and Mr. Shivinder Mohan Singh were noticed. Both the Financial Creditor and the Corporate Debtor were included in the chart. There were change of management in various companies of two brothers including the change of management in the Corporate Debtor as well as Financial Creditor in the year 2016 and thereafter. On 08.12.2017, NCLT permitted amalgamation of RAIML with Religare Enterprises Ltd. (Respondent No.1 herein). On 27.03.2019, the subsidiary of Respondent No.1 namely- Religare Finvest Ltd. filed an FIR No.50/2019 naming the Financial Creditor- Religare

Enterprises Ltd. and the Corporate Debtor making allegation that money advance under one page MoU were not intended to be repaid. FIR made several allegations and alleged that loans were extended on a non arms' length basis. FIR alleged that the MoUs signed were documents created dishonestly to give the colour of genuine transactions to sham transactions the purpose of which was only to siphon away the money. It was alleged that the Financial Creditor-REL is accountable for the actions taken by the then management. Charge-sheet has been filed in the FIR.

2.2. On 18.01.2021, Respondent No.1- Religare Enterprises Ltd. filed Section 7 application against the Corporate Debtor- Ligare Aviation Ltd. for initiating insolvency proceeding for non-payment of amount of Rs.5,87,27,454/- transferred by the erstwhile management of RAIML on the basis of MoU of 2009 and MoUs thereafter. Notices were issued in the application.

2.3. The Hon'ble Supreme Court in the proceeding before it had passed an order staying insolvency proceeding initiated against 23 companies. The Hon'ble Supreme Court subsequently by order dated 22.09.2022 directed that all proceedings including FIR and proceeding before the NCLT be taken to logical end.

2.4. The Corporate Debtor in pursuance of an order passed by this Tribunal filed a reply to Section 7 application. Corporate Debtor in reply to Section 7 application pleaded that the bank statements of the Corporate Debtor for the relevant period of time demonstrate that the amount claimed by the Financial Creditor was not advanced for purpose of creating any valid

financial debt but was intended only to be moved into the account of the Respondent for the purpose of further movement to other corporate entities controlled by the Financial Creditor. Corporate Debtor specifically pleaded that amount of Rs. 3,60,00,000/- received from Religare Arts Investment Management Ltd. was immediately on the same day was remitted to Religare Finvest Ltd., the NBFC arm of the Financial Creditor. Corporate Debtor pleaded that the amount claimed of Rs. 5,87,27,454/- was not advanced for any lawful purpose with the intent of repayment but was in fact nothing more than an instance of the financial layering of money for some fraudulent purpose on the part of erstwhile management of Financial Creditor which also exercised deep, pervasive and day to day control of the Corporate Debtor. Averments of various suppression by Financial Creditor has also been pleaded. Charge-sheet submitted by Economic Offence Wing, Delhi Police, has also been referred and pleaded. Commonality of the directorship between predecessor-in-interest of the Financial Creditor and predecessor-in-interest of the Corporate Debtor was also pleaded. Detail pleadings in reply to Section 7 application were made by Corporate Debtor opposing Section 7 application and pleading that entire transaction was fraudulent and not a financial debt. A rejoinder-affidavit was also filed by the Financial Creditor to the reply.

2.5. Both the parties were heard and Adjudicating Authority by order dated 18.07.2023 admitted Section 7 application. Adjudicating Authority noted the defence taken by Corporate Debtor that the transactions inter-alia on the ground the funds transferred were not for time value of money, but

were transferred further to other sister-concerns of the Applicant which reflects from the Bank Statement of the Respondent. Adjudicating Authority however, rejected the said defence observing that the contention is not sustainable as this particular submission is patently contrary to the terms of the six MoUs validly executed between the parties. It is useful to notice paragraph 10(v) of the impugned order where contention of the Corporate Debtor has been noted and rejected, which is as follows:-

> *"v. A perusal of record reflects that between 01.04.2009 and 09.09.2016, the RAIML disbursed unsecured loans of Rs.4,65,65,000/- under six (6) MoUs which was repayable by the Ligare Aviation Ltd. (earlier known as "Religare Aviation Ltd.") with 12% interest per annum payable at quarterly rest. The Respondent in its Reply has acknowledged the execution of all 6 MoUs, in particular the last MoU dated 30.03.2016. However, on this admitted fact the Respondent has raised a defence against the aforementioned transactions inter-alia on the ground the funds transferred were not for time value of money, but were transferred further to other sister-concerns of the Applicant which reflects from the Bank Statement of the Respondent at Page 46 (Annexure R- 13 annexed with its Reply). Further, the purported MoUs upon which such transfers were allegedly based were also nothing but a sham most probably meant for the purpose of round-tripping of funds. This modus operandi of the Applicant's management in executing these one-page MoUs for the purpose of financial layering is the subject matter of numerous investigations by various*

investigating agencies. The MoUs, which were of single page were shorn of any particulars as to the purpose for the advancement of the amounts etc. The transactions which form the subject matter of the present Application were clearly a part of this larger fraud perpetrated by the management of the Applicant company. The defense raised by the Respondent is that the amounts as received from RAIML was not for a valid debt as the same were transferred to other sister-concerns of the Petitioners i.e. Religare Aviation Ltd and Religare Arts Investment Management Ltd and the directors of Religare were having an indirect control over the entire transaction and also towards onward transfer to a third company. This contention is not sustainable as this particular submission is patently contrary to the terms of the six MoUs validly executed between the parties; none of the 6 MoUs at any of the clauses provide that the payment received by the Respondent was for onwards transmission to a third party."

2.6. The defence of Corporate Debtor was held to be moonshine defence and rejected and Section 7 application was admitted. Aggrieved by the order, these appeals have been filed.

2.7. On 28.07.2023, Company Appeal (AT) (Insolvency) No.992 of 2023 came for consideration before this Tribunal on which date following order was passed:-

*"**28.07.2023:** Learned Counsel for the Appellant submits that by impugned order Adjudicating Authority has admitted Section 7 application filed by*

Religare Enterprises Ltd. (the Respondent herein). It is submitted that the amount which is claimed to be disbursed to the appellant was in fact as per the Bank statement filed before the Adjudicating Authority was transferred on the same day to another subsidiary and there was no disbursement for time value of money. The investigations are going on with regard to the respondent and other subsidiaries and charge sheets have also been submitted. It is submitted that the submissions which was addressed before the Adjudicating Authority that these are all part of fraudulent transactions have been repelled by Adjudicating Authority observing that this is the moon shine defense.

Mr. Sunil Fernandes, Learned Counsel for the Respondent submits that the six MoUs on basis of which the loan was disbursed have not been questioned in the investigation and are not part of the investigation.

Submissions made by Learned Counsel for the parties required consideration.

Let notice be issued to Respondents through Speed Post as well as e-mail. Requisites along with process fee, if not filed, be filed within three days. Reply be filed within two weeks. Rejoinder, if any, may be filed within one week.

Appellant is also allowed one week time to file Additional documents.

In the meantime, the order impugned shall remain stayed. Learned Counsel for the IRP appearing in

person submits that there are certain issues which require consideration. We grant liberty to the IRP to file appropriate application.

List this appeal on 13.09.2023.

We further are of the view that even though we have stayed the CIRP process the appellant or CD shall not alienate its assets."

2.8. Company Appeal (AT) (Insolvency) No.1238 of 2023 filed by Daiichi Sankyo Company Ltd. came for consideration before this Tribunal on 24.11.2023. Learned Counsel appearing for the Respondent No.1 raised objections regarding locus of Daiichi Sankyo Company Ltd. to file the Appeal. The objections raised by Financial Creditor have been noticed in paragraph 2 of the order dated 24.11.2023 as well as submission of the Appellant. It is useful to notice paragraphs 2, 3 and 4 of the order:-

"2. Mr. Sunil Fernandes has raised objections regarding maintainability of the appeal. He submits that appellant claiming to be a decree holder at best is unsecured financial creditor and he cannot be held to be person aggrieved under Section 61 of the IBC Code, 2016 to file an appeal. He has relied on one judgment of Delhi High Court reported in Spice Jet Ltd. & Ors. vs. Malanpur Steel Ltd. & Anr., 2013 (134) DRJ 467 and one judgment of this Tribunal reported in 2019 SCC online NCLAT 1033 L&T Infrastructure Finance Company Ltd. Vs. Gwalior Bypass. Project Ltd. & Anr. He submits that this Tribunal has approved the rejection of the intervention on behalf of the L&T Infrastructure Finance Company Ltd. which was claiming to be largest financial creditor in proceedings

under Section 7 which was initiated by another financial creditor, hence, the appellant cannot be allowed to question the order passed on Section 7 application admitting CIRP against the Corporate Debtor.

3. Mr. Arun Kathpalia in support of appeal submits that appellant has decree of more than 4,000 crores against the erstwhile group of Corporate Debtor where the Corporate Debtor is a garnishee to the extent of 200 crores. He has referred to ground 'm' & 'n' of the appeal which is as follows:

> *"m. In response to the garnishee orders issued under Order XXI Rule 46A of the CPC against the Corporate Debtor, the Corporate Debtor filed objections in the form of an affidavit dated 11 May 2018 before the Hon'ble High Court of Delhi. In these objections, the Corporate Debtor acknowledged its liability to pay debts to Judgment Debtor No. 19 (RHC), amounting to approximately INR 184.04 crores as of 11 April 2018. However, the Corporate Debtor claimed that it does not have adequate funds to fulfil its payment obligations, citing accumulated losses of INR 1000 crores reflected in its financial statements as on 31 March 2017, as well as other secured creditors with claims amounting to INR 290 crores. In response to this, the Appellant filed a reply dated 16 August 2018, refuting the contentions made by the Corporate Debtor. The Appellant asserted that the simplicitor claim put forth by the Corporate Debtor, acting as the garnishee of Judgment Debtor No. 19 (RHC), regarding its inability to fulfil the payment*

obligation ought to be dismissed. Subsequently, the Corporate Debtor filed a rejoinder affidavit dated 05 September 2018 before the Hon'ble High Court of Delhi bringing on record its financial statements as well as the relevant financing documents, as evidence for its inability to fulfil its payment obligations to the Judgment Debtors (and consequently, the Appellant). A true copy of the objections filed by the Corporate Debtor in the form of an affidavit dated 11 May 2018 is annexed herewith and marked as ANNEXURE A-11. A true copy of the reply filed by the Appellant dated 16 August 2018 is annexed herewith and marked as ANNEXURE A-12. A true copy of the rejoinder filed by the Corporate Debtor dated 05 September 2018 is annexed herewith and marked as ANNEXURE A-13.

n. While the garnishee proceedings against the Corporate Debtor were ongoing, it came to light that the Singh Brothers were operating through a web of companies to keep their assets out of the reach of the Appellant. The Singh Brothers routinely engaged in round tripping of monies and undertook various fraudulent and circuitous transactions for the ultimate benefit of themselves and the companies owned, managed and operated by them, including the Corporate Debtor and the Financial Creditor."

4. Learned Counsel for the appellant submitted that the proceedings under Section 7 were all tainted proceedings and hence the appellant is aggrieved person with initiation of Section 7 proceedings which in

result shall stall all proceedings which were initiated by the appellant for realization of his debt against the group companies of the Corporate Debtor including the Corporate Debtor."

2.9. This Tribunal after noticing the preliminary objections of the respondent examined the locus of Daiichi Sankyo Company Ltd. to file the Appeal and in paragraphs 8 to 11 rejected the said objection and held that Daiichi Sankyo Company Ltd. has locus. Paragraphs 8 to 11 are as follows:-

"8. Section 61 uses the expression 'person aggrieved'. It is not necessary for an appellant who files an appeal to be party to the proceeding. The question which needs to be answered is as to whether appellant can be said to be person aggrieved to enable him to challenge the proceedings under Section 7 initiated against the Corporate Debtor.

9. The grounds 'm' and 'n', as extracted above, clearly indicate the grievances of the appellant with regard to proceedings which have been admitted under Section 7 against the Corporate Debtor.

10. The submission of the counsel for the respondent may be true that appellant may be a unsecured financial creditor of the Corporate Debtor but when the very proceedings are questioned on the ground that these proceedings are tainted proceedings, it cannot be said that appellant has no locus to file this appeal. We, thus, reject the objection of the respondent that appellant has no locus. We issue notice.

11. Let Reply be filed within two weeks. Rejoinder, if any, may be filed within two weeks thereafter."

2.10. However, in paragraph 12, it was held that observations of the Tribunal are only for considering the objections regarding the locus raised by the Respondent and are not to be treated to be any expression of the opinion by the court.

2.11. In both the appeals, reply and rejoinder-affidavit has been filed. Various applications have also been filed from time to time. Both the appeals having raising common question of facts and law were heard together and are being decided by this common judgment.

3. We have heard learned counsel Ms. Suhasini Sen appearing for the appellant in Comp. App. (AT) (Ins.) No. 992/2023 and learned Sr. counsel Mr. Arun Kathpalia appearing for the appellant in Comp. App. (AT) (Ins.) No. 1238/2023 as well as learned Sr. counsel Mr. Krishnendu Dutta appearing for respondent No. 1 and learned counsel Mr. Rajat Chaudhary appearing for the IRP.

4. Learned counsel for the appellant appearing in Comp. App. (AT) (Ins.) No. 992/2023 submits that appellant No. 1 is shareholder having one share, whereas, appellant No. 2 is shareholder having 70% shareholding. It is further submitted that appellant No. 2 apart from being 70% shareholder is also creditor of the corporate debtor which is acknowledged in the financial statements of the corporate debtor as on 31.03.2021. Learned counsel for the appellant submits that no financial debt was payable by corporate debtor, the entire basis of the Section 7 application filed by the financial creditor was based on sham transactions. There was no genuine financial transaction involved in the transaction which was subject matter of Section

7 application. The amount of Rs.3.60 crore which was received by the corporate debtor from RAIML now amalgamated with respondent No. 1 was transferred on the same day to Religare Finvest Ltd. a wholly owned subsidiary of financial creditor on the same day. The so-called financial debt did not remain in the account of the corporate debtor even for 24 hours. The corporate debtor never had benefit of the said amount and he cannot be held to be debtor of the financial creditor. Just like the transaction of Rs. 3.60 crore on same day, there were other 6 similar mirror transaction, where money was received by various Religare entities and immediately on the same day transferred out to other Religare entities which indicate that there was a practice of routing money through various group entities for unspecified purposes. The corporate debtor was being used as a conduit by some members of the erstwhile management of the financial creditor to move funds. Such transfers cannot be said to be financial debt. All the MoUs were one-page MoU and were sham transaction. The new management of financial creditor and corporate debtor took place in the year 2016. The Religare Finvest Ltd. a subsidiary of the financial creditor had lodged an FIR with economic offences wing, FIR No.50/2019, whereas Religare Finvest Ltd. who was transferred the amount of Rs.3.60 crore as noted above alleged that MoU signed were documents created dishonestly to give the colour of genuine transactions to sham transactions, the purpose of which was only to siphon away money. The subsidiary of the financial creditor having itself made allegations against the transactions undertaken by the earlier management in a fraudulent manner the said allegation clearly supports the case of the corporate debtor taken before the

adjudicating authority in reply filed to Section 7 application. At the time of relevant transactions, corporate debtor and financial creditor were controlled by the same management and Mr. Anil Saxena who had signed the MoU for Rs.3.6 crore is an accused in FIR No.50/2019. For determining whether the transaction involves the financial debt or not, real nature of transaction has to be found out as has been laid down by the Hon'ble Supreme Court in ***'Phoenix ARC Private Limited' Vs. 'Spade Financial Services Ltd. & Ors.'*** reported in **[(2021) 3 SCC 475].** The corporate debtor in its reply to Section 7 application has specifically and clearly pleaded that transaction claimed by the financial creditor is fraudulent transaction. There was no real financial debt owed by the corporate debtor. Adjudicating authority did not consider the plea raised by corporate debtor in its reply and admitted the Section 7 application observing that MoU entered between the parties does not indicate that money was disbursed to transfer to third entity. Adjudicating authority failed to advert to the materials brought on record which has clearly proved including the bank documents that amount of Rs.3.60 crore received by the corporate debtor was transferred to Religare Finvest Ltd. on the same day. The transaction of money laundering was not a financial debt. It is submitted that the allegation of fraud and malicious proceedings were made, adjudicating authority was obliged to consider the transaction. It is further submitted that appellant has right to file his appeal challenging the admission of Section 7 application which proceedings were clearly vitiated by fraud and malicious initiation. Proceedings initiated for purpose other than resolution of the corporate debtor is proceeding which cannot be entertained and

appellant has every locus to question the order admitting the Section 7 application.

5. Learned Sr. counsel Mr. Arun Kathpalia appering for the appellant in Comp. App. (AT) (Ins.) No. 1238/2023 submits that appellant has locus to file the appeal challenging the order admitting Section 7 application against the corporate debtor. It is submitted that this Tribunal already heard the objection raised by the financial creditor regarding maintainability of the appeal which objection was considered in detail and overruled by a detailed order passed by this Tribunal on 24.11.2023. It is submitted that appellant had obtained arbitration award dated 29.04.2016 against Malvinder Mohan Singh and Shivender Mohan Singh and its various companies. Appellant had filed proceeding for execution of the foreign award before the Delhi High Court in which one of the judgment debtors was a company RHC Holding Ltd. Delhi High Court has already passed order against the corporate debtor as garnishee to the extent of INR 184.04 crore. The Section 7 proceeding initiated by financial creditor did not arise of any financial transaction, hence the appellant has every right to question initiation of such proceedings which arises out of transaction for routing the money through the corporate debtor. The amount transferred to the corporate debtor was not for any time value of money but was only a circuitous routing of money group company under the same management controlled at the time of disbursement. NCLT allowed the admission of Section 7 application observing that none of the 6 MoUs at any of the clauses provide that the payment received by the respondent was for onwards transmission

to a third party. The above observation of the NCLT is wholly erroneous. Sufficient materials were brought on record before the adjudicating authority including the bank record proving that the amount of Rs.3.6 crore received by the corporate debtor on 31.03.2017 was on the same day transferred to Religare Finvest Ltd., the subsidiary of the financial creditor. There are various other transactions reflected from material on record which indicate that all transactions were for siphoning money form one group company to other group company. The MoU was sham one-pager document created dishonestly to give the colour of genuine transactions to fraudulent transaction. Subsidiary of financial creditor itself has lodged an FIR being FIR No.50/2019 where subsidiary of financial creditor itself has made allegation of MoU being sham transaction. Circuitous transfer of money is fully proved from the material on record, adjudicating authority committed error in not finding out the true nature of transaction. There were contemporaneous admissions by the previous management which proved that loan from group company was not for giving a financial loan to one company be another company. Appellant is person aggrieved within meaning of Section 61 of the IBC and has every right to institute an appeal. The various actions/undertaking of Singh brothers including companies controlled by them were examined by the Hon'ble Supreme Court and the promoters and other judgment debtors were held to have committed contempt of the orders of the Delhi High Court as well as the Hon'ble Supreme Court. Section 7 application in background of these facts deserve a dismissal and adjudicating authority committed error in admitting such Section 7 application.

6. Learned Sr. counsel appearing for the financial creditor refuting the submission of the appellant in Comp. App. (AT) (Ins.) No.992/2023 submits that appeal having been filed by 2 shareholders of the corporate debtor is not maintainable and appeal need to be dismissed on the ground that appellant has no locus to file appeal challenging the order for admission under Section 7. Shareholder does not acquire locus under Section 61 mainly because CIRP affects the value of its shareholding. It is submitted that debt and default are established from contemporaneous records and the adjudicating authority at the time of hearing Section 7 application was only require to ascertain the debt and default. Debt and default having been proved on the record, adjudicating authority has rightly admitted the Section 7 application. The debt is evidenced by MoU of 2009, by which loan was granted by RAIML to the corporate debtor with interest of 13% per annum. Subsequent MoU reflected the continuance of debt. Corporate debtor's liability is also supported by balance confirmation. Document relied by appellant do not impeach the debt in question. It is an admitted fact that corporate debtor received the amount from RAIML consequent to the MoU 30.03.2009. The fact that corporate debtor has dealt the amount by transferring to another entity does not have effect in disbursement of a financial debt. MoU 30.03.2009 clearly prove the nature of transaction as financial transaction. The commonality of the management during earlier period does not by itself convert an interest-bearing loan into a sham transaction. The fact that the financial creditor and corporate debtor were under the same management there was no ineligibility by filing Section 7 application. Related-party status between the financial creditor and

corporate debtor does not bar Section 7 application, where financial debt and default are otherwise established which may have consequences for participation of the CoC in an appropriate case. The transfer of Rs.3.6 crore amount received by corporate debtor from financial creditor on the same day does not demonstrate any financial wrong doing. FIR and Criminal Proceedings relied by the appellant are neither relevant nor concerned with the debt in question. FIR No.50/2019 was not filed by the financial creditor rather Religare Finvest Ltd. was subsidiary of the financial creditor and it relate to alleged diversion of money from Religare Finvest Ltd. Section 7 petition is not founded on any transaction undertaken by Religare Finvest Ltd. or any amount allegedly transferred from Religare Finvest Ltd. Section 7 application founded on distinct transaction between RAIML and corporate debtor which RAIML was subsequently amalgamated with respondent No. 1. Appellant has failed to make out any case for fraudulent initiation of CIRP. Appellant as shareholder lack locus to resist CIRP once debt and default has been established. Appeals filed by appellant need to be rejected.

7. Replying to the appeal filed by Daiichi Sankyo Company – respondent No. 1, it is submitted that Daiichi Sankyo Company has no locus to file the appeal. The order of this Tribunal dated 24.11.2023 rejecting the objection raised by respondent No. 1 on locus of the appeal was only *prima facie* opinion and was no adjudication on issue of locus. The respondent is fully entitled to raise the question of locus at this stage. It is submitted that appellant is a holder/execution creditor in separate proceedings arising out of the arbitral award against the Singh brothers and other judgment

debtors. The admission order under Section 7 does not contained any direction against the appellant and does not adjudicate any right claimed by the appellant in the execution proceedings. The appellant is not directly or legally aggrieved by the NCLT's finding about the financial debt owed by the corporate debtor, on the basis of submission of the appellant that corporate debtor is a garnishee in proceedings pending before the Delhi High Court for execution of the award. Appellant is merely execution creditor seeking recovery to alleged garnishee debt which does not give any locus to the appellant to file an appeal under Section 61. The judgment relied by the appellant with respect to person aggrieved of the Hon'ble Supreme Court are not attracted in the facts of the present case. The judgment did not permit a creditor to challenge the admission of CIRP merely because moratorium may affect its recovery proceedings. In the present case, debt and default has been established from contemporaneous record. Adjudicating authority has rightly admitted Section 7 application. Materials relied by the appellant does not impeach the debt in question. FIRs, SEBI proceedings and criminal processes do not concern the debt in question. The appellant has failed to make out any case for fraudulent initiation of the CIRP by the financial creditor. Historical allegations concerning the Singh brothers, RFL, group control or Daiichi's execution proceedings do not meet that threshold under Section 65 of the IBC. Section 65 required specific pleading of fraud. Section 65 cannot be invoked in the facts of the present case. The reliance on the judgment of ***'Phoenix ARC Private Limited'*** **(supra),** is clearly distinguishable. The said judgment was on its own facts, where the transaction was itself found to be sham and arose in the context of related-

party participation in the CoC. Appeal discloses no ground for interference. Appellant lacks locus to resist CIRP proceedings. Appeal filed by the Daiichi Sankyo Company needs to be dismissed.

8. Learned counsel for the IRP submits that subsequent to the commencement of the CIRP, IRP has made public announcement in Form-A on 20.07.2023 calling upon the creditors of the corporate debtor to submit their claims. IRP visited the premises and held meeting at the corporate debtor's office. Corporate debtor was going concern engaged in the business of operating Chartered Aircrafts. In response to the public announcement, IRP has received claim from Power Asset Reconstruction Pvt. Ltd. and Ors. There is continued non-cooperation by the suspended management of the corporate debtor. Corporate debtor has received the fund of Rs.20,45,25,279/- form the Custom Department which has been kept in the fixed deposit with corporate debtor's banker i.e., Yes Bank. IRP has filed an application before this Tribunal for fixation of his monthly remuneration which is still pending. CoC has not been constituted according to the interim order passed in this appeal. IRP has received amount of Rs. 5 lakhs from respondent No. 1 towards expenses. Delhi High Court vide order dated 02.04.2024, directed the attachment of an amount of Rs. 20,79,64,409/- lying to the credit of the Corporate Debtor at Yes Bank. IRP bound to comply the said order. IRP has already written to respondent No. 1 communicating his decision resigning from his professional assignment due to his personal reasons. Authorisation for assignment dated 16.01.2024 of the IRP had already expired and he has not got the same renewed.

Respondent No. 1 was requested to file an appropriate application before the adjudicating authority for replacement by another insolvency professional to act as IRP of corporate debtor.

9. From the submissions of the learned counsel for the parties and materials on record, following issues arise for consideration in the appeals:

I. Whether Comp. App. (AT) (Ins.) No. 992/2023 filed by Chandrashekhar Jha – appellant No. 1 & RHC Finance Pvt. Ltd. – appellant No. 2, is maintainable under Section 61 of the IBC challenging the impugned order dated 18.07.2023 admitting Section 7 application filed by respondent No. 1?

II. Whether the appellant – Daiichi Sankyo Company in Comp. App. (AT) (Ins.) No. 1238/2023 has any locus to file the appeal challenging the order dated 18.07.2023 admitting Section 7 application filed by respondent No. 1?

III. Whether the transaction between the Religare Arts Investment Management Ltd. (**"RAIML"**) with corporate debtor by MoU dated 30.03.2009 and subsequent MoUs reflect a financial transaction entitling the financial creditor to initiate proceedings under Section 7 of the IBC against the corporate debtor?

IV. Whether the corporate debtor having questioned the very existence of financial debt in the transaction between the parties, the adjudicating authority was required to look into the pleadings and material to find out true nature of the transaction?

V. Whether FIR 50/2019 lodged by Religare Finvest Ltd. subsidiary of the financial creditor and the allegations made therein and subsequent proceeding in reference to the FIR has any relevance in the transaction which was subject matter of issue in Section 7 application?

VI. Relief, if any, to which the appellants are entitled in these appeals.

Question No.(I)

10. Learned Counsel for the Respondent No.1 has questioned the locus of the Appellants to file the Appeal by two shareholders. It is submitted that the shareholders have no locus to challenge an order under Section 7 admitting the Corporate Debtor to CIRP process. Learned Counsel for the Respondent No.1 has placed reliance on three Member Bench judgment of this Tribunal in ***"Park Energy Pvt. Ltd. vs. State Bank of India & Anr.- Company Appeal (AT) (CH) (Insolvency) No.62 of 2023"***. The three-member bench of this Tribunal had occasion to consider the locus of shareholders to file an appeal against an order admitting Section 7 application. Three-member bench after considering the question relying on an earlier three member bench judgment in ***Clarion Health Food LLP vs. Goli Vada Pav Ltd. & Anr.- Company Appeal (AT) (Ins.) No.1522 of 2023"*** concluded that shareholders cannot be held to have locus to file an appeal under Section 61 of the IBC. In paragraphs 19 and 21 of the judgment, following was laid down:-

> *"19. There is another logic though we have already observed in the preceding paragraph by way of*

reiteration, it is once again expressed that the sustainability of the proceedings at the behest of the shareholder, would not be a reasonable proposition, which should be judicially stamped in order to provide avenue for the shareholders, to initiate and pursue the proceeding under any of the provisions of the I & B Code, particularly keeping in mind that the time frame is of a prime relevance under the provisions of the I & B Code. If the said object of permitting the shareholders to sustain the proceedings is permitted, that will run contrary to the very object of the code itself, besides, being contrary to the interest of the decision-making process by creating to a multiplicity of proceedings which otherwise could have stood closed. Further, when the interest of the shareholder itself stands protected by the agents appointed by the Tribunal and when as we have observed above, the status of the shareholders being that of an investor, who have profit interest only in the Company, and who do not have any administrative interest or control in the exercise of administrative functions of the Corporate Debtor, the proceedings at their behest will not be maintainable.

21. Owing to the fact that the 3-member bench of the NCLAT, Principal Bench

has already answered the question in the matters of Clarion Health Food LLP (supra) and further because of the Judgment of the Hon'ble Apex Court in Byju's case, the issue no more remains res integra. A fact has been brought on record, that the Judgment rendered by the larger bench of the

NCLAT, as rendered in the matters of Clarion Health Food LLP Vs Goli Vada Pav Pvt. Ltd. & Another, is presently a subject matter of challenge before the Hon'ble Apex Court, but merely because of pendency of an appeal before the Hon'ble Apex Court, will not dilute the implications of the Judgment of the 3-member bench deciding the issue qua the sustainability of proceeding under Section 7 and Section 9 at the behest of the shareholders, which has been answered in negative. Hence the question referred to us is answered accordingly."

11. The above decision of three-member bench is binding on us. We, thus, had to proceed on premise that Appellant cannot claim to have right to file an appeal as shareholder of the Corporate Debtor. Learned Counsel for the Appellant in response to the above objection raised by Learned Counsel for the Respondent No.1 has raised two submissions to canvass that Appeal filed by the Appellant is maintainable. Two submissions which have been advanced by the Learned Counsel for the Appellant to canvass locus of the Appellant is as follows:-

(i) The Appellant No.2- RHC Finance Pvt. Ltd. having shareholding of 70% is also creditor of the Corporate Debtor which has been acknowledged in the financial statement of the Corporate Debtor. In the financial statement of the Corporate Debtor as on 31.03.2021 (Note 13), the Corporate Debtor has acknowledged the loan payable to Appellant No.2 to the extent of Rs.1090.94 lacs. It is submitted that the Appellant No.2 being creditor is entitled to maintain the appeal in

his right of creditor. It is submitted that at the time when the Appeal was filed, the law with regard to maintainability of the appeal by shareholder had not been crystallised, hence, necessary pleadings to that effect were not taken in the appeal but the balance sheet of the corporate debtor as on 31.03.2021 being on record and has also been relied by the Respondent No.1 before the Adjudicating Authority as well as before this Tribunal, the said balance sheet can always be looked into to find that Appellant No.2 is creditor and appeal on behalf of the creditor is maintainable.

(ii) The second submission of the Counsel for the Appellant is that the present is a case where before the Adjudicating Authority itself it was pleaded by the Corporate Debtor that there is no financial debt owed by the Corporate Debtor to the Respondent No.1. It was pleaded that transaction relied by the Financial Creditor for pleading a financial debt was fraudulent transaction which was not for the purposes of extending any financial facility due to the Corporate Debtor rather the transaction was round tripping of funds and was not a genuine financial debt.

12. We, after hearing Learned Counsel for the parties, are of the view that in view of the judgment of this Tribunal in ***"Park Energy Pvt. Ltd."*** (supra) holding that the Appeal by shareholders is not maintainable under Section 61 challenging an order of admission, we cannot give locus to the Appellant to file the appeal as shareholder. Two submissions of Learned Counsel for the Appellant as noted above, need to be considered to find out as to

whether Appellant can have locus to file an appeal under Section 61 and is an 'aggrieved person' within the meaning of Section 61.

13. Before we proceed further, it is relevant to notice a three-Judge bench judgment of the Hon'ble Supreme Court in Civil Appeal No.6071 of 2023- ***"Independent Sugar Corporation Ltd. vs. Girish Sriram Juneja & Ors."***. In the above case, the Hon'ble Supreme Court had occasion to consider the expression 'aggrieved person' within the meaning of Section 61 of the IBC. Objections on locus *standi* was observed in paragraphs 23 to 26 which are as follows:-

> *"23. At the outset, the preliminary objection regarding the locus standi of the Appellant(s) to prefer the present Appeal(s) must be dealt with.*
>
> *24. Section 61 of the IBC provides the statutory framework for appeals against orders of the Adjudicating Authority i.e., the NCLT, stipulating that 'any person aggrieved' by such an order may prefer an appeal to the Appellate Authority i.e., the NCLAT in this case. Further, Section 62 extends this right of appeal to the Supreme Court.*
>
> *25. Similarly, Section 53B of the Competition Act provides that 'any enterprise or any person aggrieved' within the statutory framework may file an appeal against any order of the CCI to the Appellate Tribunal i.e., the NCLAT. Section 53T further extends this right of appeal to the Supreme Court against any decision or order of the NCLAT."*

14. The Hon'ble Supreme Court held that after becoming in rem proceeding, the expression 'any person aggrieved' in the context of the IBC

has to be held to be indicative of there being no rigid locus requirements to institute an appeal challenging an order of the NCLT before the NCLAT or an order of the NCLAT before Supreme Court. It was held that the expression 'any person aggrieved' appearing in Section 62 of the IBC must be understood widely and not in a restricted fashion. There cannot be any dispute to the proposition that any stakeholders in the CIRP process can file an appeal under Section 61 challenging the order of the Adjudicating Authority. Appellant No.2 who is a creditor of the Corporate Debtor which is acknowledged in the balance sheet of the Corporate Debtor makes Appellant No.2 stakeholder in the CIRP process. We have noted above that the order passed by the NCLT admitting Section 7 application dated 18.07.2023 was stayed by this Tribunal on 28.07.2023. CIRP having stayed, the claims have not yet been crystallised, hence, Appellant No.2 who is reflected as creditor in the balance sheet of the Corporate Debtor has to be treated as stakeholder and Appeal on behalf of the Appellant No.2 on this ground has to be held to be maintainable.

15. Now coming to the second submission advanced by the Counsel for the Appellant that there was no financial debt involved in the transaction which is claimed by the Respondent No.1 for filing Section 7 application and the transaction relied by Respondent No.1 was fraudulent.

16. Learned Counsel for the Appellant has relied on the judgment of the Hon'ble Supreme Court in ***"Phoenix ARC Pvt. Ltd. vs. Spade Financial Services Ltd. & Ors.- (2021) 3 SCC 475"*** where the Hon'ble Supreme Court came to consider the definition of 'financial debt' under Section 5(8) of

the IBC. In paragraphs 45 & 46 of the judgment, following has been observed:-

> *"**45.** Under Section 5(7) IBC, a person can be categorised as a financial creditor if a financial debt is owed to it. Section 5(8) IBC stipulates that the essential ingredient of a financial debt is disbursal against consideration for the time value of money. This Court, speaking through Rohinton F. Nariman, J., in Swiss Ribbons (P) Ltd. v. Union of India [Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17] has held : (SCC p. 64, para 42)*
>
> > *"42. A perusal of the definition of "financial creditor" and "financial debt" makes it clear that a financial debt is a debt together with interest, if any, which is disbursed against the consideration for time value of money. It may further be money that is borrowed or raised in any of the manners prescribed in Section 5(8) or otherwise, as Section 5(8) is an inclusive definition. On the other hand, an "operational debt" would include a claim in respect of the provision of goods or services, including employment, or a debt in respect of payment of dues arising under any law and payable to the Government or any local authority."*
>
> *(emphasis supplied)*
>
> ***46.** In this context, it would be relevant to discuss the meaning of the terms "disburse" and "time value of money" used in the principal clause of Section 5(8) IBC. This Court has interpreted the term "disbursal" in Pioneer Urban Land & Infrastructure Ltd. v. Union of India [Pioneer Urban Land & Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416 : (2019) 4*

SCC (Civ) 1] in the following terms : (SCC p. 511, paras 70-71)

> *"70. The definition of "financial debt" in Section 5(8) then goes on to state that a "debt" must be "disbursed" against the consideration for time value of money. "Disbursement" is defined in Black's Law Dictionary (10th Edn.) to mean:*
>
> *'1. The act of paying out money, commonly from a fund or in settlement of a debt or account payable. 2. The money so paid; an amount of money given for a particular purpose.'*
>
> *71. In the present context, it is clear that the expression "disburse" would refer to the payment of instalments by the allottee to the real estate developer for the particular purpose of funding the real estate project in which the allottee is to be allotted a flat/apartment. The expression "disbursed" refers to money which has been paid against consideration for the "time value of money". In short, the "disbursal" must be money and must be against consideration for the "time value of money", meaning thereby, the fact that such money is now no longer with the lender, but is with the borrower, who then utilises the money."*
>
> *(emphasis supplied)*

17. The Hon'ble Supreme Court while considering the heading 'collusive transactions' has held that a transaction which is sham or collusive would only create an illusion that money has been disbursed to a borrower with the object of receiving consideration in the form of time value of money, when in fact the parties have entered into the transaction with a different or

an ulterior motive. In paragraph 48 of the judgment, following has been laid down:-

> *"**48.** The above discussion shows that money advanced as debt should be in the receipt of the borrower. The borrower is obligated to return the money or its equivalent along with the consideration for a time value of money, which is the compensation or price payable for the period of time for which the money is lent. A transaction which is sham or collusive would only create an illusion that money has been disbursed to a borrower with the object of receiving consideration in the form of time value of money, when in fact the parties have entered into the transaction with a different or an ulterior motive. In other words, the real agreement between the parties is something other than advancing a financial debt. A useful elaboration of "sham transactions" can be found in the opinion of Diplock, L.J. in Snook v. London & West Riding Investments Ltd. [Snook v. London & West Riding Investments Ltd., (1967) 2 QB 786 : (1967) 2 WLR 1020 (CA)] : (QB p. 802)*
>
> > *"As regards the contention of the plaintiff that the transactions between himself, Auto Finance and the defendants were a "sham," it is, I think, necessary to consider what, if any, legal concept is involved in the use of this popular and pejorative word. I apprehend that, if it has any meaning in law, it means acts done or documents executed by the parties to the "sham" which are intended by them to give to third parties or to the court the appearance of creating between the*

parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create."

(emphasis supplied)"

18. In paragraph 51, the Hon'ble Supreme Court further has held:-

*"**51.** .....The IBC recognises that for the success of an insolvency regime, the real nature of the transactions has to be unearthed in order to prevent any person from taking undue benefit of its provisions to the detriment of the rights of legitimate creditors."*

19. The present is a case where the Corporate Debtor in its reply to Section 7 has pleaded that transaction claimed by Financial Creditor is a fraudulent transaction and no financial debt is involved. In this context, it is useful to refer to the pleadings of the Corporate Debtor in reply to Section 7 application where Corporate Debtor has clearly pleaded that there is no legally recognise financial debt owed by Corporate Debtor to Financial Creditor. Detailed pleadings have been made to that effect in paragraph 2. After detailed pleadings with respect to transaction relying on the judgment of the Hon'ble Supreme Court in ***"Phoenix ARC Pvt. Ltd."*** (Supra) where it was pleaded that the transaction referred to in the present petition are a sham and collusive. It is useful to notice following in paragraph 11 of the reply:-

"The above decision of the Hon'ble Supreme Court would apply on all fours to the present case as well. In the circumstances set out above, the

present petition deserves to be dismissed. The transactions referred to in the present petition are a sham and collusive, and do not fit within the definition of the term "financial debt", nor does the Applicant fulfil the criteria of a "financial creditor" so far as the Respondent is concerned."

20. Learned Counsel for the Appellant has relied on a three-member bench judgment of this Tribunal in ***"Balkishan Shrikisan Baldawa vs. Agri-Tech (India) Limited & Ors.- Company Appeal (AT) (Insolvency) No. 970 of 2025"*** which was appeal filed by an Appellant who was shareholder rejecting IA No.841 of 2025 under Section 60(5) and Section 65 of the NCLT. In the above case, objection was raised by the Respondent that Appeal is not maintainable relying on the judgment of ***"Park Energy Pvt. Ltd."*** (supra). This Tribunal after considering the submissions of the parties held that the Appeal to be maintainable since shareholder had claimed before the Adjudicating Authority regarding fraudulent initiation of CIRP and collusion was claimed. In paragraphs 45 and 46, following was observed and the locus of such Appellant was held to be maintainable:-

"45. From the above analysis, we observe that:

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

(b) Park Energy Private Limited (supra) also fails to consider earlier judgment of the Hon'ble Supreme

Court in Independent Sugar Corporation Limited (supra) pronounced on 29.01.2025, wherein in the context of the use of the term "aggrieved party" in the Code, has been held that CIRP is a proceeding in rem and "any person aggrieved" must be understood widely.

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

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

46. We have noted the contentions of both sides and find that the arguments presented by Respondent do not come in the way of the Appellant to be considered as an aggrieved person. The Code doesn't bar the Appellant to file an appeal. Section 61 of the Code clearly states that notwithstanding anything to the contrary contained under the Companies Act, 2013, "any person aggrieved" by the order of the AA under this part may prefer an appeal to the NCLAT. The shareholders are the Appellant in this case and they are aggrieved by the order of the AA and interpreting the law in it widest terms and not in a restricted manner, we come to conclusion that the appellants

have the locus to file an appeal and their appeal is maintainable. Even otherwise, we find that there are serious allegations of fraudulent initiation of CIR proceedings, which should be looked into by us. Accordingly, we further delve into the merits of the Appeal."

21. In the background of pleadings by the Appellant in this Appeal that entire transaction relied by the Financial Creditor was fraudulent transaction and there was no financial debt, Appellant who were not part of the proceeding before Adjudicating Authority can very well be allowed to raise the issue and the Appeal filed by the Appellants raising the issue of fraudulent transaction cannot be thrown on the ground of locus.

22. In view of the foregoing discussions, we uphold the locus of the Appellants to file Company Appeal (AT) (Insolvency) No.992 of 2023 and the objection of the Respondent to the maintainability of the Appeal is rejected.

Company Appeal (AT) (Insolvency) No.992 of 2023 filed by Mr. Chandra Shekhar Jha- Appellant No.1 and Appellant No.2 is maintainable under Section 61 challenging the order dated 18.07.2023.

Question No.(II)

23. Learned Counsel for the Respondent has also raised objection to the locus of Appellant- Daiichi Sankyo Company Limited to file the Appeal. It is submitted that Daiichi Sankyo Company Limited has no locus to file the Appeal it being claiming only a creditor of the Corporate Debtor on the basis of garnishees order, cannot be said to be aggrieved by initiation of CIRP and enforcement of Moratorium. No creditor who is affected by enforcement of

Moratorium can be allowed to challenge the order admitting Section 7 application. IBC does not contain any special provision/status for decree holder of garnishees. All decree holder of garnishees are at best unsecured financial creditor, which does not given any right to file an appeal. While noticing the facts, we have noted above that the Appellant- Daiichi Sankyo Company Limited has obtained Arbitral Award dated 29.04.2016 against Mr. Malvinder Mohan Singh and Mr. Shivinder Mohan Singh and various companies floated by them and Daiichi Sankyo Company Limited has already initiated proceeding for enforcement of foreign award before Delhi High Court and Delhi High Court issued various orders in the said proceedings. Delhi High Court had passed an order on 26.02.2018 where it had issued garnishee order against the Corporate Debtor to the extent of Rs.184.04 Crore. Garnishee order has already been issued by the Delhi High Court against the Corporate Debtor for an amount of Rs.184 Crore. It cannot be said that Appellant- Daiichi Sankyo Company Limited has no claim against the Corporate Debtor. We have already noted the objection raised regarding locus of Daiichi Sankyo Company Limited in our order passed on 28.11.2023 in the appeal. The above reason given by us in the above order are reiterated for holding that Appellant- Daiichi Sankyo Company Limited has locus to file the appeal.

24. Learned Counsel for the Appellant has further relied on the judgment of the Hon'ble Supreme Court in ***"Independent Sugar Corporation Ltd."*** (supra) where Hon'ble Supreme Court has held that no rigid locus requirement is there under Section 61 of the IBC in context of a person

aggrieved. Learned Counsel for the Appellant has further relied on the judgment of this Tribunal in ***"Hytone Merchants Pvt. Ltd. vs. Satabadi Investment Consultants Pvt. Ltd.- Company Appeal (AT) (Insolvency) No.258 of 2021"*** where this Tribunal held that the concept of the corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. In paragraphs 39 and 42 of the judgment, following was held:-

> *"39. Thus, it is clear that the Adjudicating Authority should be very cautious in admitting the Application so that Corporate Debtor cannot be dragged into Corporate Insolvency Resolution Process with mala fide for any purpose other than the resolution of the Insolvency. Therefore, to protect the Corporate Debtor from the mala fide Initiation of CIRP, the law has provided a penalty under sections 65 and 75 of the Code. Before admitting the Application, every precaution is necessary to be exercised so that the insolvency process is not misused for any other purposes other than the resolution of Insolvency.*
>
> *42. The concept of the corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the Court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned."*

25. In view of the foregoing discussions, we, thus, are of the view that the objection of the Respondent that Appeal filed by Daiichi Sankyo Company Limited has to be dismissed having no locus has to be rejected. We hold that the Appellant- Daiichi Sankyo Company Limited is a person aggrieved within the meaning of Section 61 of the IBC and can very well maintain the Appeal challenging the order admitting Section 7 application on the facts and grounds as pleaded in the Appeal.

Appellant- Daiichi Sankyo Company Limited in Company Appeal (AT) (Insolvency) No.1238 of 2023 has locus to file Appeal challenging the order dated 18.07.2023.

Question No.(III), (IV) & (V)

26. The above questions being inter-related are taken together. The submission which has been advanced by Learned Counsel for the Appellant in support of the Appeal challenging the order of the Adjudicating Authority is that there being no financial debt involved in the transaction, Section 7 application was not liable to be admitted. Existence of a financial debt is a condition which need to be fulfilled before insolvency proceeding against the Corporate Debtor commences. As noted above, the present is a case where Corporate Debtor has filed the reply to Section 7 application and has pleaded that transaction did not involve any financial debt and disbursement to the Corporate Debtor by Financial Creditor was not for time value of money and the disbursement was not for any lawful purposes with intent of repayment but was nothing more than instance of financial layering of money for some fraudulent purpose on part of the erstwhile

management of the Financial Creditor. We need to notice certain pleadings which have been made by the Corporate Debtor in reply to Section 7 proceeding. Very first objection which was taken in the reply was that there is no legally recognise financial debt owed by the Corporate Debtor. It was further pleaded that the amount of Rs.3.60 Crore which was remitted from Religare Arts Investment Management Ltd. on 31.03.2009 was immediately remitted on the very same day to Religare Finvest Ltd., the NBFC arm of the Financial Creditor. It is useful to notice paragraph 2 of the reply. Paragraph 2 (i), (ii) & (iii) which is as follows:-

> *"2. Firstly, neither is Religare Enterprises Ltd. a "Financial Creditor" of Ligare Aviation Ltd., nor is there any legally recognized financial debt owed by Ligare Aviation Ltd. to Religare Enterprises Ltd. for the following reasons:*
>
> *(i) The bank statements of the Respondent for the relevant period of time demonstrate ex facie that the amount claimed by the Applicant was not advanced for the purpose of creating any valid financial debt but was intended only to be moved into the account of the Respondent for the purpose of further movement to other corporate entities controlled by the Applicant. There is no question of a device of this nature ever being termed a financial debt.*
>
> *(ii) It is respectfully submitted that the most significant component of the claimed amount, i.e., an amount of Rs 3,60,00,000/- which was transferred to the account of the Respondent, was not for the creation of a valid financial debt but was meant only for onward transfer to an entity by the name of Religare Finvest Ltd., which*

is a subsidiary of the present Applicant. The Respondent's account statement for the relevant period of time shows the inward remittance of Rs. 3,60,00,000/- from Religare Arts Investment Management Ltd. (now amalgamated with the Applicant) on 31.03.2009, and an immediate outward remittance of Rs. 3,60,00,000/- on the very same day to Religare Finvest Ltd., the NBFC arm of the present Applicant/. Thus, it is evident on the face of the record that the amount so transferred cannot be said to have been for the purposes of creating a financial debt.

(iii) That the amount of Rs. 5,87,27,454/- (including interest) was not a financial debt which was advanced for any lawful purpose with the intent of repayment but was in fact nothing more than an instance of the financial layering of money for some fraudulent purpose on the part of the erstwhile management of the Applicant, which also exercised deep, pervasive and day to day control of the Respondent at the relevant time. The present petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as, "IBC") is completely silent as to the erstwhile inter-relationship between the parties, and has instead wrongfully sought to portray the transaction of 2009 which has culminated in the petition as a bona fide arm's length transaction between two completely unrelated entities."

27. In the reply to Section 7 application, the Corporate Debtor has filed the Bank Statement dated 30.03.2009 and 31.03.2009 showing the mirror transactions as Annexure R-6 to the reply. In paragraph 7 (iii), following was pleaded:-

> *"(iii) The Applicant has failed to disclose that with respect to the sum of Rs. 3,60,00,000/- which forms the majority of its present claim, and which was transferred to the Respondent by RAIML, on 31.03.2009, an identical transaction of Rs.3,60,00,000/- was made by the predecessor in interest of the Respondent to another company Religare Finvest Ltd., which is a wholly owned subsidiary of the Applicant. A true copy of the excerpts of the bank statement dated 30-31.03.2009 of the Respondent showing the mirror transactions is annexed hereto as ANNEXURE R-6."*

28. In paragraph 8, 'submissions on merit' the very first heading of the submission is as follows:-

> ***"8. SUBMISSIONS ON MERITS:***
>
> *In these circumstances, and in the specific facts set out more particularly below it is submitted that the transaction which forms the basis of the present petition is a sham, being one among the thousands of fraudulent transactions in relation to which the subsidiary companies of the Applicant as well as its erstwhile directors are currently under investigation by various law enforcement agencies:"*

29. Corporate Debtor in its reply has specifically relied on the judgment of the Hon'ble Supreme Court in ***'Phoenix ARC Private Limited'*** (supra) and pleaded following in paragraph 11:-

> *"The above decision of the Hon'ble Supreme Court would apply on all fours to the present case as well. In the circumstances set out above, the present petition*

deserves to be dismissed. The transactions referred to in the present petition are a sham and collusive, and do not fit within the definition of the term "financial debt", nor does the Applicant fulfil the criteria of a "financial creditor" so far as the Respondent is concerned."

30. The bank statement of 30.03.2009 and 31.03.2009 were part of the reply. In the Company Appeal (AT) (Insolvency) No.992 of 2023, Appellant has extracted the transactions dated 30.03.2009 and 31.03.2009 pertaining to the Corporate Debtor in synopsis of the Appeal in paragraph 3(ii). Bank statements have been noticed in chart form which is as follows:-

"(ii) That the fact that the disputed transactions were part of financial layering is evident from the fact, that on 31.03.2009 when the majority of disputed amount of Rs. 3.6 crores were transferred into the account of the Respondent No. 2, by an entity which was also part of the same group of companies i.e., Religare Arts Investment Management Ltd., the said Rs. 3.6 crores were immediately transferred to a company known as Religare Finvest Ltd., i.e. a wholly owned subsidiary and NBFC arm of the Respondent No.1, Financial Creditor. What is more, on the same date, i.e. 31.03.2009, there were as many as five other similar transactions involving the Respondent No.2 and various other group companies of the Respondent No.1, Religare Enterprises Ltd. The same are reproduced hereunder:

Date	**Particulars**	**Debit**	**Credit**
30.03.2009	Religare Technova	6,500,000.00	
30.03.2009	Religare Finvest Limited		6,500,000.00
30.03.2009	Religare General Ins.		45,000,000.00
30.03.2009	Religare Finvest Limited	45,000,000.00	
31.03.2009	Religare Finvest		40,000,000.00

	Limited		
31.03.2009	Super Religare Labor	40,000,000.00	
31.03.2009	Religare Finvest Limited		9,000,000.00
31.03.2009	Religare Finvest Limited	9,000,000.00	
31.03.2009	Religare Arts Investment		36,000,000.00
31.03.2009	Religare Finvest Limited	36,000,000.00	
31.03.2009	Religare Finvest Limited		30,000,000.00
31.03.2019	Religare Finvest Limited		27,000,000.00
31.03.2019	Religare Technova	57,000,000.00	
31.03.2009	Religare Arts Investment Management Limited	3,60,00,000	
31.03.2009	Religare Finvest Limited		3,60,00,000

Thus, it is more than amply clear that the present transaction, is one among numerous such transactions where funds were moved between various group entities, of the Respondent No.1. The same were not advanced for the time value of money, nor were they ever intended to be repaid, and hence could not have been construed to be a valid debt. Likewise the other transactions which formed the subject matter of the Petition under Section 7 were similarly tainted by fraud."

31. The above chart also clearly reflect the amount of Rs.3.6 Crores received from Religare Arts Investment (Financial Creditor) on 31.03.2009 and by very next bank entry, the said amount was transmitted on the same day to Religare Finvest Ltd., NBFC arm of the Financial Creditor. The Hon'ble Supreme Court in ***'Phoenix ARC Private Limited'*** (supra), as noted above, had laid down that a transaction which is sham or collusive would only create an illusion that money has been disbursed to a borrower with

the object of receiving consideration in the form of time value of money, when in fact the parties have entered into the transaction with a different or an ulterior motive, in other words, the real agreement between the parties is something other than advancing a financial debt. Before finding a financial debt the real nature of transaction has to be looked into. The Adjudicating Authority in the impugned order has noted the submission of the Corporate Debtor where it was pleaded that there was no financial debt involved in the transaction. It was specifically pleaded that the present is a case of round tripping. The submission of the Corporate Debtor has been noticed in paragraph 6(i) & (iii) which are as follows:-

> *"**6. Submissions of the Ld. Counsel appearing for the Respondent/Corporate Debtor are:***
>
> *i. The notice was issued to the Respondent/Corporate Debtor for appearance as well as for filing reply. After due service the Respondent/Corporate Debtor appeared through its counsel and filed Reply denying various averments made in the Application. It is inter-alia contended that the Application is not maintainable as the Applicant is neither a Financial Creditor nor the debt in dispute is a Financial Debt as it is contended that the amount claimed by the Applicant was not advanced for the purpose of creating any Financial Debt but was only for the purpose of transferring the amount into other corporate entities controlled by the Applicant which is evident from the account statement of the Respondent/Corporate Debtor for the relevant period. It is a case of round stripping as contended by the respondent counsel.*

iii. The subject transactions are utterly vitiated by fraud as admitted to by the Applicant itself and could never constitute a valid financial debt for the purposes of the IBC: The evidence on record and in the public domain is sufficient to conclude that the subject transactions and the MoUs upon which they were based are fraudulent and cannot be considered to be 'financial debt' within the meaning of the Code."

32. Thus, before the Adjudicating Authority, there was specific pleading that transaction in question is not financial debt and the same was fraudulent purpose. In support of the plea raised by the Corporate Debtor, several materials including the bank statement dated 30.03.2009 and 31.03.2009 of the Corporate Debtor have been referred to and which were filed as Annexure R-6. In paragraph 9 of the order of the Adjudicating Authority, Adjudicating Authority has noticed the documents and materials relied by the Appellant. Adjudicating Authority in paragraph 10 of the judgment has given his analysis and finding. After noticing the definitions of debt, default, financial creditor and financial debt as well as Section 7(1), in paragraph 10 (v), the plea of the Corporate Debtor that there is no financial debt has been rejected. When we look into paragraph 10(v) of the order, the only reason given in paragraph 10 is ***"This contention is not sustainable as this particular submission is patently contrary to the terms of the six MoUs validly executed between the parties; none of the 6 MoUs at any of the clauses provide that the payment received by the Respondent was for onwards transmission to a third party"***. MoU which has been referred by the Adjudicating Authority where MoU dated

30.03.2009 entered between the Financial Creditor and the Corporate Debtor. It is useful to extract the entire MoU which is as follows:-

"MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is made on 30th day of March, 2009.

BETWEEN

***Religare Arts Investment Management Limited**. a Company registered under Companies Act 1956. and having its registered office and place of business at 19. Nehru Place. New Pelhi - 110019. Hereinafter called as "RAIML" (LENDER)*

AND

***Religare Aviation Limited** (Formerly Known as Ran Air Services Ltd.), a Company registered under Companies Act 1956, and having its registered office at 105. First Floor, Aurobindo Place Market. Hauz Khas. New Delhi 110016, hereinafter called as (BORROWER)*

For Religare Arts Investment Management Ltd.

For Religare Aviation Limited.

WHEREAS

Religare Aviation Limited has approached RAIML. for borrowing a sum upto Rs. 5,00,00,000/-(Rupees Five Crores only) in form of unsecured demand loan.

TERMS AND CONDITIONS FOR THE ABOVE TRANSACTION HEREINAFTER, THIS MOU WITNESSETH AS FOLLOWS:

1. RAIML agrees to lend as unsecured demand loan upto Rs 5,00,00,000/- (Rupees Five Crores Only) to Religare Aviation Limited.

2. Religare Aviation Limited agrees to pay Interest to RAIMI. @ 13% p.a. payable at quarterly rest or such other intervals as mutually agreed.

3. Any change/addition in terms and conditions will be subject to mutual consent.

4. This document is not valid for more than a year.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE PUT THEIR HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST ABOVE MENTIONED.

For Religare Arts Investment Management Ltd.

For Religare Aviation Limited."

33. It is under the above MoU that an amount of Rs.3.6 Crores was transmitted in the account of Corporate Debtor by Financial Creditor which is reflected in the bank statement of 31.03.2009 as noted above. The observation of the Adjudicating Authority that "since none of the MoU at any of the clauses provide that payment received by Respondent was for onward transmission to a third party" which indicate that Adjudicating Authority has refused to look into the pleas and materials which have been brought by the Corporate Debtor. It is not denied to the Financial Creditor that amount of Rs.3.6 Crores which was transmitted to the Corporate Debtor on same day was transmitted to subsidiary of the Financial Creditor- Religare Finvest Limited. We have already noticed the specific plea raised by the Corporate Debtor in its reply to Section 7 application where specific pleading of round tripping of the amount and transactions which is reflected in the bank account of 30.03.2009 and 31.03.2009 has been brought on record has specifically pleaded. Adjudicating Authority has not even looked into the

plea that the amount was immediately transferred and did not remain even for 24 hrs with the Corporate Debtor. When the plea was raised before the Adjudicating Authority by Corporate Debtor that there was no financial transaction and transaction is something different and was for layering money and round tripping of the funds. The order of the Adjudicating Authority shows complete non-application to the pleas and materials brought on record. Determining the true nature of the transaction is essential for finding the nature of transaction for coming to the conclusion whether there is financial debt or not so as to proceed for directing insolvency.

34. There is one more reason given by the Adjudicating Authority in paragraph 10(vi) that the Corporate Debtor has acknowledged the Financial Debt in Financial Statements for the period 01.04.2019 to 31.03.2020, hence, the defence taken is a moonshine defence and transaction has to be considered as a financial debt. The Corporate Debtor in its reply to Section 7 application has also pleaded that in response to balance confirmation letter dated 31.03.2017 received from Financial Creditor, there was categorical denial of above balance confirmation which letter dated 31.03.2017 was also brought on record in the reply. It is useful to notice paragraph 3 of the reply which is as follows:-

> *"3. Secondly, there has been no admission of liability on the part of the Respondent as has been sought to be portrayed by the Applicant in its petition under Section 7, and the I.A's 533/2022 and 536/2022 filed before this Hon'ble Tribunal. It is submitted that the Applicant*

has incorrectly sought to portray to this Hon'ble Tribunal that the Respondent has admitted the liability, by annexing at Page 48 of the Section 7 application paperbook a letter dated 31.03.2017. This is a clear misstatement as in the letter dated 31.03.2017, the Applicant has in fact categorically denied the debt by signing against the column which states "The balance of Rs. 38237012.00 and net interest of Rs. 3079521.00/- mentioned above is not in agreement with my/our records...". Therefore, far from acknowledging the debt, the current management of the Respondent had as far back as in 2017 denied the existence of any such liability to the Applicant in clear and categorical terms. A true copy of the communication between the parties dated 31.03.2017 is annexed herewith as ANNEXURE R-1."

35. The copy of the letter asking for balance confirmation and reply was part of the reply of Corporate Debtor which is also brought on record at page 148 of the paper book of the appeal. Letter dated 31.03.2017 was written on behalf of Religare Arts Investment Management Ltd. informing that as per the record of the Financial Creditor, amount of Rs.38237012/- is a closing balance as on 31.03.2017. The said letter was immediately replied by the Corporate Debtor disagreeing with the claim in the aforesaid letter regarding balance confirmation. It is useful to notice the letter dated 31.03.2017 of the Financial Creditor and reply sent by the Corporate Debtor which is at Annexure A-25 of the Appeal which is as follows:-

"CORPORATE LOAN BALANCE CONFIRMATION

LIGARE AVIATION LIMITED

Plot. No. 345,3rd Flr, Udyog Vihar-II, Gurgaon - 122016

Dated: 31-Mar-2017

Dear Sir's,

Our records show that your account at the close of business on 31-Mar-2017 had an unpaid Principal Balance due by you of Rs. 38237012.00/- (Closing balance as on 31-Mar-2017) and an unpaid net interest (after TDS) Balance of Rs. 3079521.00/- (Balance As on 31-Mar-2017). For the purpose of an audit of our books and accounts in the ordinary course of business, we would be obliged if you could compare the above balance with you records and confirm the balance appearing as on 31-Mar-2017. Please note that transactions subsequent to the date of the above balance should be ignored for purpose of this confirmation.

We would prefer you to use this form for the purpose of your reply, returning it intact.

Yours faithfully,

***For RELIGARE ARTS INVESTMENT MANAGEMENT LIMITED**,*

Authorized Signatory"

"Ref: LVL/31-Mar-2017/MOU1348-R

Company's Name: LIGARE AVIATION LIMITED

Address: Plot No. 345, 3rdFloor, Udyog Vihar-II, Gurgaon-122016

"As of the date mentioned above the Principal balance of Rs. 38237012.00 and net interest of Rs. 3079521.00/- is correct.

(Signed): ……

Named: ……

Designation: ……

Date: ……

**The balance of Rs. 38237012.00 and net interest of Rs. 3079521.00/- mentioned above is not in agreement with my/our records which show a balance of Rs…… The details are as follows:*

(Signed): ……

Named: ……..

Designation: ……

Date: ……

**Please strike off, whichever is not applicable*

Religare Arts Investment Management Limited"

36. We have noted that there was change in the management of the Corporate Debtor and according to the Corporate Debtor, after first opportunity they denied the balance claimed by the Financial Creditor. Adjudicating Authority has although noticed the said letter dated 31.03.2017 written by Corporate Debtor but ignored the same relying on the financial statement of the Corporate Debtor 2019-2020 where loan of Rs.38237012/- lakhs was mentioned. Entries in the financial statements although are treated to contain acknowledgment but the acknowledgment in the financial statement has to be read along with attending circumstances. In this context, we may refer to the judgment of the Hon'ble Supreme Court in ***"Asset Reconstruction Company (India) Ltd. vs. Bishal Jaiswal and Another- (2021) 6 SCC 366"*** where Hon'ble Supreme Court while considering the balance sheet for the purposes of acknowledgment of Section 18 of the Limitation Act has made following observations in paragraph 35:-

> *"**35.** A perusal of the aforesaid sections would show that there is no doubt that the filing of a balance sheet in accordance with the provisions of the Companies Act is mandatory, any transgression of the same being punishable by law. However, what is of importance is*

that notes that are annexed to or forming part of such financial statements are expressly recognised by Section 134(7). Equally, the auditor's report may also enter caveats with regard to acknowledgments made in the books of accounts including the balance sheet. A perusal of the aforesaid would show that the statement of law contained in Bengal Silk Mills [Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, 1961 SCC OnLine Cal 128 : AIR 1962 Cal 115] , that there is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission, is correct in law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis to establish whether an acknowledgment of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act."

37. When at the first opportunity, the Corporate Debtor refused to confirm the balance as claimed by Financial Creditor, the said act of Corporate Debtor cannot be ignored by relying only on the entry in the balance sheet. As noted above, the basis of plea of the Corporate Debtor in its reply was that disbursement was not a genuine financial debt but it was for other fraudulent purpose which allegations are proved with the bank statement filed by the Corporate Debtor which shows that on the same day, after receiving amount of Rs.3.6 Crores it was transmitted to subsidiary of Financial Creditor and the amount did not remain even for 24 hrs with the Corporate Debtor. Disbursement contemplated is genuine transaction where

financial debt is extended to a company to utilise for its purpose and object to give in return some more value which is treated to be time value of money to the Financial Creditor. The sequence of the events indicate that amount after coming into account of the Corporate Debtor immediately on the same day transferred to subsidiary of the Financial Creditor and the benefit of the amount claimed to be disbursed was never with the Corporate Debtor. Apart from the above transaction in the account of the Corporate Debtor, as noted above, there were more than dozen transaction apart from transaction in question where money is received from one group entity and transferred to another group entity immediately on the same day. The above transactions shows a pattern.

38. We have also noted above that Religare Finvest Ltd. to whom the amount of Rs.36 Crore was transferred to the account of the Corporate Debtor on the same day has filed a First Information Report being 50 of 2019 where the Religare Finvest Ltd. has alleged that one page MoU which was relied were all fraudulent transaction and one page MoU's were not intended to be repaid. Appellant in the Appeal has extracted certain allegations in the FIR. It is useful to notice certain extracts from FIR as quoted above, which is as follows:-

> *"**xli.** On 27.03.2019, the wholly owned subsidiary of Respondent No. 1 i.e., Religare Finvest Limited filed FIR No. 50/2019 naming Respondent No. 1 and Respondent No. 2 inter alia alleging siphoning of funds and that the m monies advanced under these one-page MoU's were not intended to be repaid. Some of statements made in the said FIR are extracted below:*

- *"Internal inquiries showed that the poor financial condition of the Complainant Company was to a large extent on account of willful defaults on significant, unsecured loans, defined for internal purposes as the Corporate Loan Book (CLB), by borrower entities either related, controlled or associated with the promoters,* ***all of who had been provided the subject loans from the Complainant Company on a non arms length basis****"*
- *"Further, on account of enquiries received from such authorities, the new management of REL/the Complainant Company became aware of the* ***SFIO and SEBI investigation into various related party and non-arms' length transactions involving REL and its subsidiaries, including the Complainant Company****"*
- *"It is evident from the conduct of these entities that they never intended to repay these purported loans to RFL..."*
- *"It appears that the* ***CLB book was used as a mechanism to fund promoter related companies****. The funds were moved from the Complainant Company upon instructions of the promoters/their associates as and when required for investment and other purposes. The funds were never paid back and actually whenever any payment was due in these loans, either they were replaced by loans to some other group companies to repay the loan of existing promoter group company (circular movement of funds)".*
- *"On 17 June, 2009,* ***Rs. 34 crores were received*** *in total from "Blue Line Finance", "GYS Real Estates",*

*"Ligare Aviation", **"Ligare Voyages"**, "Linear commercial" and "Sharan Hospitality" **and on the same very day, Rs. 54 Crores were funded to** "Dion Global", "Religare Technova Business Intellect" and "Religare Technova IT Services."*

- *"**The MoUs signed were documents created dishonestly to give the colour of genuine transactions** to sham transactions the purpose of which was only to siphon away/ misappropriate money(s) out of the Complainant Company."*
- *As REL own 85.64% equity share capital in RFL, the management of RFL is under the control of REL **and REL is accountable for the actions taken by the management of RFL**.*
- *"A sample check of corporate loans revealed **that formal loan application was not obtained by the company and loans were sanctioned on the basis of MoU only**... The loans were sanctioned to multiple companies within the same group ignoring the cross-holding and commons Directors within the companies to whom the loans were sanctioned. Thus, the corporate loan policy was not being followed..."*
- *"The CLB operations were **exclusively controlled by REL management team including the Chairman & Managing Director of REL namely**: a. Mr. Sunil Godhwani (REL Chairman), Mr. Anil Saxena (REL CFO), c. Mr. Sunil Garg (REL Treasury Head) who controlled CLB loan disbursals through RFL."*

39. The charge-sheet on the basis of above FIR has already been filed. The Respondent No.1 in its reply has filed the copy of the charge-sheet. It is useful to notice following part of the charge-sheet (filed in reference to FIR 50 of 2019):-

> *"From the investigation, it was found that the Corporate Loan Book (CLB) was created since beginning of RFL business primarily for the purpose of utilizing funds at the disposal of promoters. This was a done through loan product primarily unsecured and also through investment route in a systematic manner. The modus operandi had been inter-corporate loans to various companies under control of promoters (directly or indirectly) through which the funds were routed to the promoter/promoter owned companies being ultimate beneficiaries. Since, the due amounts were funded through new loans and also there were continuous requirement of additional funds, the CLB loan book gradually increased over the period of time. This process of CLB is going on since 2008. However, post 2016, the loan disbursed to these entities was never returned and misappropriated/siphoned off by the accused persons."*

40. Learned Counsel for the Respondent No.1 has contended that FIR or any criminal proceeding is not relevant for determining for deciding Section 7 application and has relied on certain judgments which need to be noticed.

41. Learned Counsel for the Respondent No.1 relied on the judgment of the Hon'ble Supreme Court in ***"Sheikh Hasib alias Tabarak vs. State of***

Bihar- (1972) 4 SCC 773". In the above case, the Hon'ble Supreme Court was considering an Appeal against conviction of the accused under Section 395 of the IPC. High Court in the Appeal has acquitted two accused and maintain the conviction with regard to two accused Sheikh Hasib and Ashique Mian whose conviction was maintained, has filed an Appeal. The Appeal was allowed and in the judgment of the Hon'ble Supreme Court had occasion to consider the value of the First Information Report. In paragraph 4 of the judgment, the Hon'ble Supreme Court has stated following:-

> *"The legel position as to the object, value and use of first information report is well-settled. The principal object of the first information report from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps for tracing and bringing to book the guilty party. The first information report, we may point out, does not constitute substantive evidence though its importance as conveying the earliest information regarding the occurrence cannot be doubted. It can, however, only be used as a previous statement for the purpose of either corroborating its maker under Section 157 of the Indian Evidence Act or for contradicting him under Section 145 of that Act. It cannot be used for the purpose of corroborating or contradicting other witnesses."*

42. There can be no dispute to the proposition as laid down by the Hon'ble Supreme Court in the above case. The First Information Report does not constitute a substantive evidence, however, the Hon'ble Supreme Court

itself has said that its importance as conveying the earliest information regarding the occurrence cannot be doubted. In the present case, the allegations in the FIR are not to be relied for any purpose but the fact that subsidiary of Financial Creditor itself has lodged an FIR questioning the transactions in the group companies which allegation itself has highlighted the fraudulent nature of transaction conducted in the group companies of which Religare Finvest Ltd. was part. Counsel for the Respondent has also relied on judgment of this Tribunal in ***"Neeraj Jain vs. Yes Bank Ltd. & Anr.- 2019 SCC OnLine NCLAT 175"*** where this Tribunal has held that Section 7 proceeding has nothing to do with the pendency of the criminal case relating to misappropriation of the funds. In paragraph 7 of the judgment, following was held:-

> *"7. Having heard Mr. Darpan Wadhawa, learned Senior Counsel for the Appellant and Mr. Anant A. Pavgi, learned counsel for the 'Interim Resolution Professional', we are of the view that an application under Section 7 being an independent proceeding has nothing to do with the pendency of the Criminal Case relating to misappropriation of the funds by the Chief Financial Officer of the 'Corporate Debtor' and the employees of the Banks. The Bank which is the 'Financial Creditor' is a separate entity from the Chief Financial Officer of the 'Corporate Debtor' or the individual employees of the Bank(s), if any, involved. The pendency of the investigation or trial cannot be a ground to refuse an application under Section 7 if the application is complete and there is a debt and default. The 'I&B Code' being a complete Code will prevail over the other Acts and no*

person can take advantage of the pendency of the case to stall Insolvency and Bankruptcy proceeding filed under Section 7."

43. In the present case, filing of FIR and charge-sheet is not being referred for contending that Section 7 proceeding cannot proceed. Only reference and reliance by Corporate Debtor of the above proceeding is that allegation of fraudulent transaction which is being pleaded by the Corporate Debtor is also being averred by subsidiary of the Financial Creditor by filing an FIR and making same allegations of transaction being fraudulent. MoU being entered for fraudulent purposes and transaction was not genuine transaction.

44. Another judgment relied by Learned Counsel for the Respondent No.1 is ***"Kalpesh Ramniklal Shah vs. Mundara Estate Developers Ltd. & Anr.- 2023 SCC OnLine NCLAT 1871"***. In the above case, the loan which was given to the Corporate Debtor was sought to be questioned on the ground of violation of Section 295 of the Companies Act, 1956 which provide certain restrictions for loan from Directors. This Tribunal has rejected the said objection and held that purpose and objection of the IBC is entirely different and violation of provision of Section 295 has different consequence. Paragraph 10 of the judgment is as follows:-

"10. The submission of the Appellant regarding key managerial personnel of Financial Creditor, holding majority shareholding in the Corporate Debtor and is a 'related party' and exercises substantial control in the Corporate Debtor is vehemently denied by the Respondent submitting that no transaction was entered

between the Corporate Debtor and the related party. The control by the Financial Creditor is also denied by the Respondent. It is submitted that had Financial Creditor really been in control of the Corporate Debtor, situation of non-payment of loan would not have arisen. The Corporate Debtor is under control of Girish Shah, who has 25% shareholding in the Corporate Debtor and who is a Guarantor as well as Pledgor under the Loan Agreement. With regard to control through Kava Impex Pvt. Ltd., it has been submitted that more than Rs. 15 crores out of Rs. 24 crores has been transferred to Mundara Estate Developers Ltd. even before Kava Impex Pvt. Ltd. became a partner therein. Further the submission of learned Counsel for the Appellant that loan transaction was in violation of Section 295 of the Companies Act, 1956, does not help the Appellant to deny the loan transaction and the disbursement of the amount. Even if, the allegation of violation of Section 295 of the Companies Act, 1956 may be there, that does not in any manner inhibit filing of Section 7 Application and take appropriate proceedings under the IBC. The purpose and object of the IBC is entirely different. The violation of provisions of Companies Act, 1956, for example Section 295 has different consequences, which consequences in law can take effect and remedial measures can be taken under Section 295, when the ingredients of Section 295 are proved, but that itself cannot be a ground to reject Section 7 Application filed by the Financial Creditor, where debt and default is proved."

45. Another judgment of the Counsel for the Respondent is ***"Amour Infrastructure LLP vs. Digital Integrated Technologies Pvt. Ltd.- 2023***

SCC OnLine NCLAT 727" which was a case where Section 7 application was rejected by the Adjudicating Authority on the ground of violation of Section 65. In the above case, this Tribunal has held that for proving the ingredient of Section 65 there has to be adequate pleadings and findings. In paragraph 8, following has been laid down:-

> *"8. Observations made in paragraph 26 is that Financial Creditor is trying to settle personal scores and put undue pressure on the Corporate Debtor. We are of the view that for proving the ingredient of Section 65 there has to be adequate pleadings and findings. Observations made in paragraph 26 does not fulfil the requirement of Section 65 so as to reject the Section 7 application."*

46. Learned Counsel for the Respondent further relied on judgment of this Tribunal in ***"Gets Cables Pvt. Ltd. vs. State Bank of India- 2024 SCC OnLine NCLAT 1324"*** which was a case where Section 10 application was rejected. Relying on Section 65, this Tribunal has held that for allowing Section 65 application, fraudulent and malicious intent has to be proved on some materials on record. In paragraph 33 of the judgment, following was observed:-

> *"33. As observed above, the basis of rejection of Section 10 application is the finding by the Adjudicating Authority that application has been filed with malicious and fraudulent intent to delay and halt the recovery proceedings. There mere fact that application is filed, consequent of which the recovery proceedings may be halted, cannot lead to conclusion that intent and purpose of the application is malicious and fraudulent. We, thus, are satisfied that*

Adjudicating Authority committed error in allowing Section 65 application filed by the SBI."

47. In the present case, the Adjudicating Authority has not adverted to Section 65 nor there was sufficient allegation on behalf of the Corporate Debtor to prove that proceedings are fraudulent with malicious intent. The Corporate Debtor in the present case has been impugning the transaction as not a financial transaction containing any financial debt. One more judgment of this Tribunal has been relied by Respondent is ***"New Era Propcon Pvt. Ltd. and Anr. Vs. SREI Equipment Finance Ltd. & Anr- 2024 SCC OnLine NCLAT 1551"*** where it was held that fact of pendency of Section 66 application alleging fraudulent transaction is not relevant for admission of Section 7 application when disbursement is not disputed. In paragraph 8 of the above judgment, following was observed:-

"8. The submission of the Appellant is that the transaction which is sham or collusive can only create an illusion that money has been disbursed to a borrower. The present is a case where there is no dispute raised that money has not been disbursed. The disbursement of money is not an issue raised. The filing of Section 7 application by the Administrator of SEFL was on the basis that loan was sanctioned and in pursuance of the loan amount was disbursed. Copy of the Statement of Account was also filed along with the Section 7 application which also indicate that amount was disbursed. The observation made by the Hon'ble Supreme Court in Para 48 of the judgment in "Phoenix ARC Private Limited v. Spade Financial Services Limited" that where a transaction is sham or collusive, it

would only create an illusion that money has been disbursed to a borrower is not applicable in the present case. Present is a case where disbursal is not an issue. The question whether the loan transaction is fraudulent transaction within the meaning of Section 66 is engaging attention of the Adjudicating Authority in a separate application filed by Administrator of SEFL which needs no consideration or observation in the present proceeding."

48. The present is not a case where any proceeding under Section 66 are pending or even alleged. The above judgment in no manner helps the Respondent No.1 in the facts of the present case. Learned Counsel for the Respondent has relied on two more judgments of the Hon'ble Supreme Court namely— ***"Elegna Co-op. Housing and Commercial Society Ltd. & Anr. Vs. Edelweiss Asset Reconstruction Co. Ltd. and Anr.- 2026 SCC OnLine SC 82"*** where Hon'ble Supreme Court has held that debt and default being proved, admission of Section 7 application must follow. For the similar proposition, another judgment relied by Counsel for the Respondent is ***"Power Trust vs. Bhuvan Madan & Ors.- 2026 SCC OnLine SC 248"*** where Hon'ble Supreme Court in paragraphs 33 and 34 laid down following:-

*"**33.** Reiterating the ratio in Innoventive Industries Ltd. v. ICICI Bank [(2017) 205 Comp Cas 57 (SC); (2018) 1 SCC 407; (2018) 1 SCC (Civ) 356; 2017 SCC OnLine SC 1025.] , this court in E.S. Krishnamurthy v. Bharath Hi-Tech Builders P. Ltd. [(2022) 230 Comp Cas 226 (SC); (2022) 3 SCC 161; (2022) 2 SCC (Civ) 129; 2021 SCC*

OnLine SC 1242.] held as follows [See page 245 of 230 Comp Cas.] :

> *"The Adjudicating Authority has clearly acted outside the terms of its jurisdiction under section 7(5) of the Insolvency and Bankruptcy Code. The Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application, respectively. These are the only two courses of action which are open to the Adjudicating Authority in accordance with section 7(5). The Adjudicating Authority cannot compel a party to the proceedings before it to settle a dispute."*

34. *In a similar vein, the Adjudicating Authority is not required to go into the inability of a corporate debtor to pay its debt. This is a clear departure from the scheme of winding up envisaged under section 433(e) of the erstwhile Companies Act, 1956 which required the Adjudicating Authority to come to a finding with regard to the inability of the company to pay the debt and thereby arrive at a requisite satisfaction whether it is just and equitable to wind up the company. The Code restricts the scope of enquiry for admission of an insolvency process by a financial creditor merely to the existence of default of a debt due and payable and nothing more. The legislative intent behind such prompt and summary intervention is "to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation [Swiss Ribbons P. Ltd. v. Union of India(2019) 213 Comp*

Cas 198 (SC); (2019) 4 SCC 17; 2019 SCC OnLine SC 73, paragraph 28.] .”

49. There cannot be any dispute to the proposition laid down by the Hon’ble Supreme Court in the above two cases. The present is a case where Corporate Debtor was impugning the very transaction which was claimed by the Financial Creditor as financial transaction. In event, the transaction is not a genuine financial transaction, the very proceedings for initiating insolvency against the Corporate Debtor is not maintainable.

50. We have already noticed the judgment of the Hon’ble Supreme Court in ***‘Phoenix ARC Private Limited’*** **(supra)** where Hon’ble Supreme Court has laid down that nature of transaction has to be found out. It is necessary to find out the nature of transaction and disbursement and when a transaction which is sham or collusive would only create an illusion that money has been disbursed whereas the real agreement between the parties something other financial debt. The Adjudicating Authority was required to consider all relevant materials on record to determine the nature of transaction which was impugned by the Corporate Debtor by making a specific plea in the reply as noted above. Adjudicating Authority even did not advert to the bank statement of 31.03.2009 and 31.03.2009 which reflected the transaction in the bank account of the Corporate Debtor which was nothing but layering of money for undisclosed purpose. Adjudicating Authority erred in observing that in none of the clauses of 6 MoUs it is provided that payment received was for onward transaction, hence, the contention of the Corporate Debtor is unsustainable. The above observation clearly indicate that Adjudicating Authority refused to advert to the

materials on the record and has omitted to consider the materials on record which clearly proves that transaction where the money was disbursed to the Corporate Debtor was not a financial transaction. There were dozen transactions between 30.03.2009 and 31.03.2009 as we have noted above which all clearly indicate the nature of activity in which the Financial Creditor and the Corporate Debtor and other group entities were involved. None of which indicate any transaction transfer of funds for the time value of money. Submission of the Counsel for the Respondent No.1 that when the amount is disbursed to the Corporate Debtor what use the Corporate Debtor does is not relevant for disbursement for time value of money. The present is a case where the amount which was received on 31.03.2009 on the same day was transmitted to subsidiary of Financial Creditor and present was not a case for where Corporate Debtor has been able to utilise the amount transferred for any purposes. Series of transactions as noted above all indicate that transactions were only round tripping of money which were not for the purpose of any genuine financial transaction. Corporate Debtor has brought adequate material before the Adjudicating Authority to prove its plea that there was no genuine financial debt involved in the financial debt and Section 7 application was liable to be rejected. Adjudicating Authority without adverting to pleas and all relevant materials brought on record rejected the defence observing that clauses of MoU did not mention that amount was received for onward transaction. The said observations are nothing but refusing to examine the material to find out the real nature of transaction. In view of the above observations and reasons, we answer Question Nos.(III), (IV) & (V) in following manner:-

(III) Transaction between the Religare Arts Investment Management Ltd. (**"RAIML"**) with corporate debtor by MoU dated 30.03.2009 and subsequent MoUs read with transaction in the bank account of the Corporate Debtor dated 31.03.2009 does not reflect a financial transaction entitling the financial creditor to initiate proceedings under Section 7 of the IBC against the corporate debtor.

(IV) The corporate debtor having questioned the very existence of financial debt in the transaction between the parties, the adjudicating authority was required to look into the pleadings and material to find out true nature of the transaction whereas the Adjudicating Authority failed to look into relevant pleas and materials on the record and has arrived erroneous finding that there was a financial debt.

(V) FIR 50/2019 lodged by Religare Finvest Ltd. subsidiary of the financial creditor and the allegations made therein and subsequent proceeding in reference to the FIR are not to be relied as any substantive evidence in the proceeding under Section 7 except the fact that such an FIR has been lodged by subsidiary of the Financial Creditor making allegations against erstwhile promoter of the Corporate Debtor and Financial Creditor.

Question No.(VI)

51. We having come to the conclusion that the materials on the record clearly proves that there was no financial debt which was disbursed by Financial Creditor to the Corporate Debtor for time value of money and the transaction of round tripping of money/layering of money for some

undisclosed fraudulent purposes there was no financial debt in existence in the transaction and its initiation of CIRP by the Financial Creditor could not have been made on such transaction. The order of the Adjudicating Authority admitting Section 7 application cannot be sustained.

52. In result, both the Appeals are allowed. Impugned order dated 18.07.2023 is set aside and Section 7 application C.P (IB) No.2(PB)/2022 is dismissed. All pending IAs are disposed of.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi

Anjali