



IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT-IV

Restored Company Petition (IBC) /22/ND/2024

(Old Case CP (IB)/60/ND/2023)

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

IN THE MATTER OF:

PRUDENT ARC LIMITED

(PRUDENT TRUST 58/22)

... Financial Creditor/Applicant

Versus

KARAN AUTOMOTIVES

PRIVATE LIMITED

... Corporate Debtor/Respondent

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on: 15.07.2025

PRESENT:

**For the Applicant : Mr. Sumeet Raj, Mr. Siddharth
Shankar, Ms. Akanksha, Mr. Sharique
Ajmal, Advs.**

For the Respondent : Mr. Rishabh Arora, Adv.



ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. The present Company Application is filed by PRUDENT ARC LIMITED ('Applicant') under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with the following prayer with a prayer to trigger Corporate Insolvency Resolution Process in respect of Respondent Company Karan Automotives Private Limited (**'Corporate Debtor'**) for default in repayment of financial debt of Rs.3,17,64,312/- (Rupees Three Crores Seventeen Lakhs Sixty Four Thousand Three Hundred Twelve Only).
2. PRUDENT ARC LIMITED (PRUDENT TRUST 58/22) (**hereinafter referred to as the 'Financial Creditor' / 'Applicant'**) is an Asset Reconstruction Company, a company incorporated under the Companies Act, 1956, and registered as Securitisation and Asset Reconstruction Company pursuant to Section 3 of SARFAESI Act, 2022. The authorised officer of Financial Creditor Sh. Amar Jit Kochar has been empowered and authorised to sign, file and verify the present application vide Board Resolution dated 17.06.2021.
3. The Corporate Debtor i.e., Karan Automotives Private Limited having CIN: U34300DL200PTC118971 was incorporated on 14.02.2003 under the provisions of the Companies Act, 1956 having its registered office situated at H.No. 7, Ground Floor ,Vill. Tekhand Mavi Mohalla, 1 E, Campa Cola Factory New Delhi New Delhi 110020. Since the registered



office of the Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

4. Briefly stated facts of the case as mentioned in the Company Application, which are relevant to the issue in question, are as follows:-

- a) That the present insolvency application is preferred by Prudent ARC Limited (hereinafter referred to as the "Financial Creditor" or "Assignee" or "applicant"), under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against Karan Automotives Private Limited. It is submitted that the Financial Creditor is a private limited company under the Companies Act, 2013 and is also registered as an Asset Reconstruction Company (ARC) under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act").
- b) That UGRO Capital Limited (**hereinafter referred to as "Ugro" or "Assignor"**) is a leading Non-Banking Financial Company (NBFC), which had originally sanctioned and disbursed the loan facility to the Corporate Debtor, pursuant to execution of various agreements, sanction letters and related documentation. That subsequently, by way of an Assignment Deed dated 29.09.2021,



Ugro (Assignor) transferred and assigned the entire debt, along with all underlying rights, interests, entitlements and security documents, including the right to initiate legal proceedings and take all necessary actions in respect of recovery of the said financial debt from the Corporate Debtor, in favour of Prudent (Assignee).

- c) The Applicant submitted that Ugro (Assignor), vide Sanction Letter dated 07.10.2019, sanctioned a loan facility with a credit limit of Rs. 2,00,00,000/- (Rupees Two Crores only) in favour of the Corporate Debtor, whereby the Corporate Debtor was entitled to draw amounts up to the aforesaid sanctioned limit by way of loan credit facilities, subject to repayment of each drawing/tranche on its respective maturity, being 90 days from the date of each disbursement.
- d) The Applicant submitted that the sanctioned loan facility was classified as a "Supply Chain Facility" and structured as a revolving credit facility, extended exclusively to the Corporate Debtor for the limited purpose of facilitating transactions pertaining to the supply of goods by the Corporate Debtor to Hema Engineering Industries Limited (**hereinafter referred to as "HEMA" or "Hema Engineering"**). In accordance with the Sanction Letter dated 07.10.2019, the Facility Agreement dated 11.10.2019, and the Supplemental Agreement dated 19.12.2020, Ugro Capital Limited (the "Assignor") disbursed funds to the



Corporate Debtor after deducting upfront interest at the rate of 13% per annum, in accordance with the terms and conditions mutually agreed under the aforementioned agreements.

- e) As per the repayment mechanism stipulated under the agreements, the Corporate Debtor was obligated to repay each disbursed tranche upon the expiry of the respective credit period (usually 90 days). To ensure timely repayment, the Corporate Debtor had issued a prior written instructions to HEMA to deposit the sale receivables directly into the Designated Account of Ugro Capital Limited. It may be noted that the repayment of loan facility by HEMA, being buyer of goods, was done on behalf of the Corporate Debtor.
- f) Pursuant thereto, HEMA regularly deposited the receivable amounts into the Designated Account, which were duly appropriated by Ugro Capital towards repayment of the revolving credit facility extended to the Corporate Debtor. However, in the event of any default or failure on the part of HEMA to deposit such receivables within the stipulated credit period, the liability to repay the outstanding amounts devolved upon the Corporate Debtor, in accordance with Clause 5 of the Facility Agreement. Clause 5 unequivocally stipulated that the Corporate Debtor shall remain unconditionally liable to repay the entire outstanding amount to the lender, irrespective of any payment default, delay, or omission on the part of the buyer entity, i.e., HEMA. The



relevant provisions of the Facility Agreement are reproduced hereinbelow for ready reference:

"5. REPAYMENT

5. 1 *"The Borrower shall repay the Facility as a bullet payment on the last day of the credit period being the tenor, unless extended by the Lender as its sole discretion. In this regard, the Borrower shall issue irrevocable instructions to the principal to deposit' the receivables to the designated account. The lender shall appropriate the receivables credited to the designated account towards repayment of facility.*

5.2 *"In the event the principal fails to deposit the receivables into the designated account on the last day of the credit period, the borrower shall be liable to deposit all the Outstanding Amounts (together with additional interest) into the designated account no later than 1 (one) business day from the expiry of the credit period ("Extended Repayment Period"). It is clarified that no notice or reminder shall be given by the Lender either to the borrower or the Principal to repay the Facility as per the agreed time lines.*

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10. 1 (a) *' failure by the principal to repay the outstanding Amounts on the last day of credit period, or failure by the borrower to repay the outstanding Amounts before expiry of the extended repayment period".*

- g) The Applicant submitted that the Financial Creditor, through its Counsel, issued a Demand Notice dated 28.11.2022 to the Corporate Debtor, seeking repayment of ₹3,17,64,312/- as on 15.11.2022 under



the Finance Agreement. The notice was duly served, but the Corporate Debtor neither responded nor repaid the amount, giving rise to the present cause of action. It further submitted that though it is not mandatory under Section 7 of the Insolvency and Bankruptcy Code, 2016, the Demand Notice was issued to provide the Corporate Debtor an opportunity to repay the debt.

- h) The Applicant submitted that it had filed an application under Section 7 of the Code, bearing Case No. IB/601/ND/2023. However, the Corporate Debtor was admitted into CIRP vide order dated 31.07.2023 by this Adjudicating Authority in the matter of Bhushan Power & Steel Ltd. v/s Karan Automotives Pvt. Ltd. and accordingly, was directed to submit its claim before the Interim Resolution Professional (IRP) appointed in IB-238/ND/2022, the Tribunal also granted liberty to revive IB/601/ND/2023 in the event the CIRP in IB-238/ND/2022 was terminated or set aside.
- i) In compliance, the Financial Creditor instructed its counsel to file the claim before the IRP, Mr. Shailesh Dayal. However, before the claim could be filed, an application bearing IA/4965/ND/2023 was filed in IB-238/ND/2022 under Section 12A of the Code, read with Regulation 30A(1)(b) of the CIRP Regulations and Rule 11 of the NCLT Rules, 2016, seeking withdrawal of CIRP pursuant to a Settlement Agreement and CoC meeting held on 16.09.2023. Subsequently, this Adjudicating Authority, vide order dated 19.09.2023 allowed the withdrawal of CIRP in IB-238/ND/2022.



- j) Accordingly, the Financial Creditor filed a restoration application bearing No. Restoration Application (IBC)/81(ND)/2024, seeking revival of Company Petition CP(IB)/60/ND/2023. The Hon'ble Tribunal, vide order dated 07.10.2024, allowed the said application and directed the Registry to assign a new number to the petition. Accordingly, the petition was renumbered as Restored Company Petition (IBC)/22/ND/2024 (Old No. CP(IB)/60/ND/2023). Pursuant thereto, vide order dated 28.01.2025, the Hon'ble Tribunal issued notice to the Corporate Debtor. Subsequently, vide order dated 03.04.2025, it was recorded that counsel for the Corporate Debtor had entered appearance and filed a reply on its behalf.

5. Submissions of the Ld. Counsel appearing for the Respondent/Corporate Debtor are:

- a) The Respondent submitted that the transaction in question, originally between UGRO Capital Limited (the 'Assignor') and now assigned to Prudent ARC Limited, involves a structured supply chain financing facility implemented among UGRO, Hema Engineering Industries Limited, and the Corporate Debtor, Karan Automotives Private Limited. This facility was governed by the Master Service Agreement dated 02.07.2019 and the Service Agreement dated 31.08.2020, both executed between UGRO and HEMA, as well as the Sanction Letter dated 07.10.2019 issued in favour of the Corporate Debtor, the Facility Agreement dated 11.10.2019 executed between



UGRO and the Corporate Debtor, and the Supplemental Agreement dated 19.12.2020.

- b) Under the aforesaid transaction, the Corporate Debtor, acting as a supplier to Hema Engineering Industries Limited, would raise invoices on HEMA and subsequently upload them on the UGRO platform. Upon confirmation and verification of the said invoices by HEMA, UGRO would disburse the invoice value, after deducting a fixed discounting rate of 13% into the designated account of the Corporate Debtor, in accordance with the terms of the Facility Agreement executed between UGRO and the Corporate Debtor.
- c) The following clauses from the Master Service Agreement dated 02.07.2019 between UGRO and HEMA are produced here-below:

*“4.1. e) [...] The Principal shall ensure that it credits the total invoice amount mentioned in the invoice raised by its Suppliers & discounted by the URGRO, on or prior to its due date into the Escrow Account/ Designated Account in the manner specified under this Master Service Agreement, which shall be appropriated and utilized by UGRO solely towards repayment of the Facility granted by UGRO to such Supplier and other Outstanding Amounts payable in respect thereof, in terms of the Master Service Agreement, Facility Documents and the Escrow Agreement (if applicable). **It is hereby clarified that, once invoice raised by Supplier is accepted by Principal, it shall be construed as delivery of the product has happened, quality check of the goods is done and payment terms including the due date have been acknowledged, agreed and accepted by the Supplier and the Principal. Also, it is clarified that once the acceptance of the invoices along with acknowledgement of the goods received has been provided to UGRO, then notwithstanding any dispute/ disagreement between the Principal and the Supplier, the Principal shall credit the total invoice amount specified in the Invoice raised by its Suppliers on or***



prior to its due date into the Escrow Account/ Designated Account. Further, notwithstanding anything contained herein, in the event, the Principal fails to credit the Escrow Account/Designated Account with such amounts that are payable pursuant to Supplier's Invoice, on or before such date/ within such time period as stipulated under the Facility Agreement, then such Borrower shall repay the relevant Facility together with other Outstanding Amount, directly to UGRO on or before the date/ time period stipulated under the Facility Documents for such repayment.”

“4.1. f) Recovery of Outstanding Amounts

a) The Principal shall ensure that in case of an event default under the relevant Facility Agreement, the Principal shall forthwith credit the outstanding amount under the relevant Facility Agreement into the Escrow Account/ designated Account in the manner specified under this Master Service Agreement.

b) Upon receipt of a request from UGRO, the Principal may use commercially reasonable effort to assist UGRO in recovering the Outstanding Amounts from the Prospective Borrowers in accordance with this Master Service Agreement and the relevant loan/ facility agreement.

c) If required by UCRO, the Principal shall make efforts to organize/ arrange meetings between UGRO and the Prospective Borrowers, in respect of resolving any differences pertaining to recovery of Outstanding Amounts from the Prospective Borrowers”

“11. Termination

11.2 The Master Service Agreement cannot be terminated by either Party till such time any of the Facility extended by UGRO to Principal's Suppliers, the Outstanding Amounts pertaining to such Facility remain unpaid. Termination of the present Agreement while any of the Facility to the Suppliers are unpaid and outstanding, shall be permissible only if both Parties agree to terminate the Agreement in writing, on such terms and conditions as they mutually agree in respect of the same”

“Annexure II

Term Sheet

General Conditions

7. Repayment not realized within 7 days to be highlighted to M/s

Hema Engineering Ind us tries Ltd. and M/s Hema Engineering

Page | 10



Industries Ltd. limit will be frozen and Step Supply from the supplier would be initiated.”

Hence, it is evident that the current facility is essentially a bill discounting arrangement presented in the form of a supply chain agreement. Moreover, it is important to note that the primary obligation to make the payment was on HEMA.

- d) The Respondent submitted that the Service Agreement dated 31.08.2020 between UGRO and HEMA delineated the nature and flow of obligations under the transaction. It established a tripartite structure involving the Corporate Debtor, HEMA, and UGRO, wherein the Corporate Debtor availed a bill discounting facility based on confirmed invoices raised on HEMA. Under the terms of the agreement, HEMA was contractually obligated to deposit the corresponding invoice amounts into UGRO's designated account. In the event of default, the liability to repay the facility amount rested with Hema Engineering, as per the contractual arrangements. This clearly indicated that the primary liability to repay the dues of UGRO Capital Limited which now assigned to the Petitioner was, with Hema Engineering, as the essence of the transaction revolved around the supply of goods.
- e) To substantiate its claim the respondent has relied upon Orders passed by coordinate bench at NCLT, Mumbai Bench in the matter of “Prudent ARC Ltd. (Prudent Trust -44/20) vs. Blackstone Multi Trading Ltd.” bearing C.P. (IB) No. 919/MB/C-1/2020 vide dated



24.01.2023 dealt with a similar factual matrix and made pertinent observations wherein the Bench noted that the situation was unjust, as the Corporate Debtor had already parted with the goods and was still being held liable for payment—an outcome contrary to the principles of natural justice. The relevant excerpt from the judgment is reproduced below:

“In the instant case, after the amounts have been remitted to the Corporate Debtor under irrevocable Letters of Credit, the same stand recoverable only against the issuer of the Letters of Credit. There can be no scenario in which the amounts stand recoverable from the Corporate Debtor, who is a seller of goods, as the same would lead to an ex-facie unjust scenario where the Corporate Debtor has parted with the goods and will also have to make repayments of the amounts under the Bills of Exchange on behalf of the purchaser of the goods.”

- f) The Respondent further submitted that the original lender, UGRO Capital Limited, had already exercised its rights under the financing arrangement by filing a claim in the CIRP of Hema Engineering Industries Limited, the principal obligor under the tripartite financing structure. Hema Engineering was admitted into CIRP by the Hon’ble Adjudicating Authority vide order dated 05.04.2021 in C.P. (IB) No. 900/(ND)/2020 titled *M/s P.R. Rolling Mills Private Limited vs. M/s Hema Engineering Industries Limited*. UGRO Capital initially submitted a claim of approximately ₹16.89 crores as a Financial Creditor, which was later reclassified as an Operational Creditor in the updated list of creditors dated



16.08.2021, with the claim admitted to the extent of ₹15.12 crores. This classification was reiterated in the subsequent list dated 31.01.2022, where UGRO was listed at Serial No. 712. Following the liquidation order dated 17.05.2022 against Hema Engineering, neither UGRO Capital Limited nor the present Petitioner, Prudent ARC Limited, filed any claim in the liquidation proceedings, indicating an express or implied waiver and abandonment of the said claim.

- g) The Respondent submitted that as per Section 21(5) of the Code, operational debt retains its character even when assigned to a financial creditor. Clauses 5.1 and 5.2 of the Facility Agreement further clarify that repayment was to be made from receivables to be deposited by HEMA into the Designated Account, and the Corporate Debtor's liability would arise only upon HEMA's failure to deposit the said amounts within the credit period. Clause 6 governs appropriation of payments from either HEMA or the Corporate Debtor, and Schedule II explicitly states that the facility was "to fund the invoices raised to Hema". In light of the above, the present petition constitutes a second attempt to recover the same debt from a different party, despite the creditor having already elected to pursue its claim against HEMA.
- h) The Respondent submits that the present petition arises from a vendor invoice discounting arrangement and does not qualify as a financial debt under Section 5(8) of the Insolvency and



Bankruptcy Code, 2016. The Facility Agreement dated 11.09.2019 clearly identifies the Corporate Debtor as a supplier of goods to Hema, with disbursements made only upon invoices raised and acknowledged by HEMA. Clause 5 of the Assignment Agreement dated 29.09.2021 characterizes the facility as "Vendor Bill Discounting," and Serial No. 12 of the Term Sheet to the Master Service Agreement dated 02.07.2019 refers to it as "Invoice Level Discounting," with interest deducted upfront from the acknowledged invoice value. These documents confirm that the disbursement was directly tied to the supply of goods and receivables due from HEMA. Crucially, the Petitioner has proceeded under Section 7 of the Code against the supplier, the Corporate Debtor even though the goods were delivered and the payment obligation rested with HEMA. As an assignee of UGRO, the Petitioner cannot transform an operational receivable from HEMA into a financial claim against the supplier.

- i) Further it has been alleged by the Respondent that the Supplemental Agreement dated 19.12.2020 was strategically executed to bypass the bar under Section 10A of the IBC. The original Facility Agreement was from 2019, and any default would have occurred during the COVID-19 period, attracting the Section 10A protection. The revised repayment schedule, set to begin post 24.03.2021, immediately after the moratorium, suggests the restructuring was not commercially driven but



aimed at resetting the default date. This undermines the intent of Section 10A, and the petition, based on such a manipulated default, is liable to be dismissed at the outset.

6. Rejoinder on behalf of the Applicant

- a) The Applicant in its rejoinder submitted that the Corporate Debtor's claim that the transaction is operational is misplaced. The Facility Agreement is a receivables discounting arrangement with recourse and qualifies as 'financial debt' under Section 5(8)(e) of the Code. The CIRP of Hema Engineering is irrelevant to the Corporate Debtor's independent liability. Funds were disbursed to the Corporate Debtor, and HEMA's default does not absolve its repayment obligation.
- b) The Corporate Debtor's reliance on Section 10A is misconceived and factually incorrect. The Supplemental Agreement dated 19.12.2020 was a bona fide restructuring under the RBI's COVID-19 Resolution Framework, involving no fresh disbursement which was only an extension of the repayment schedule during financial stress. The alleged default occurred after 25.03.2021, beyond the Section 10A moratorium. Judicial precedents confirm that Section 10A applies only to defaults within the specified period and does not grant post-period immunity. The present petition is thus fully maintainable.
- c) The assertion that HEMA bears the "primary liability" is not only factually incorrect but is also contrary to the contractual documents which expressly record the repayment liability of the Corporate



Debtor. It is submitted that while HEMA was involved as the buyer of goods and a confining party under the structured vendor financing arrangement, the Corporate Debtor is the borrower and is contractually obligated to repay the financial facility availed under the Facility Agreement. The relevant clauses (Clause 5.1 and 5.2 of the Facility Agreement) clearly provide that in the event of non-deposit by Hema Engineering, the Corporate Debtor is liable to repay the facility amount including additional interest, within the extended Repayment Period.

- d) The Applicant submitted that, there is no exoneration of liability upon failure of HEMA to deposit the invoice amount; rather, the Corporate Debtor assumes the full repayment obligation under a "**with recourse**" facility. Needless to say, the disbursal of funds to the Corporate Debtor was not made on the basis of any payment guarantee from Hema Engineering. Instead, the disbursal was made directly to the Corporate Debtor's account, on the strength of its own application, acceptance of terms, and binding obligations under the Facility Agreement. Hence, any attempt to shift the repayment burden entirely on Hema Engineering is legally untenable and contrary to the express stipulations of the tripartite contractual matrix.
- e) The Applicant has further stated that Corporate Debtor's reliance on *Prudent ARC Ltd. vs. Blackstone Multi Trading Ltd.* is entirely misplaced. That case had dealt primarily with a non-recourse bill



discounting arrangement backed by irrevocable Letters of Credit, where the seller of goods had no repayment liability. In contrast, the present case involves a recourse-based facility, under which the Corporate Debtor is the principal borrower and has contractually undertaken an unconditional repayment obligation along with interest by virtue of executing various documents/instruments. The disbursement was made directly to the Corporate Debtor, and it remains liable irrespective of any failure by Hema Engineering. Therefore, the facts and legal principles in the aforesaid *Blackstone Case* have no application here.

ANALYSIS AND FINDINGS

7. We have heard the Ld. Counsel on behalf of the Applicant/Financial creditor and further perused the averments made in the Application, Reply filed by the Corporate Debtor, and rejoinder filed by the Applicant.
8. On perusal of the record, this Adjudicating Authority notes that CIRP was already initiated against the Corporate Debtor herein in the matter of Bhushan Power & Steel Limited vs. Karan Automotives Private Limited bearing IB-238/ND/2022 by order dated 31.07.2023. Accordingly, the Financial Creditor was directed to submit its claim before the IRP appointed in that matter, and the present petition (IB/60/ND/2023) stood closed. However, in the event the CIRP in IB-238/ND/2022 was terminated or set aside, the Financial Creditor was given liberty to revive the present petition under Section 7 of the IBC, 2016.



- 9.** The Applicant submitted that before it could file its claim, a withdrawal application bearing IA/4965/ND/2023 was filed in IB-238/ND/2022 under Section 12A of the IBC, read with Regulation 30A(1)(b) of the CIRP Regulations and Rule 11 of the NCLT Rules, 2016, seeking withdrawal of CIRP pursuant to a Settlement Agreement and CoC meeting held on 16.09.2023. This Adjudicating Authority allowed the withdrawal on 19.09.2023. Thereafter, the Financial Creditor filed Restoration Application (IBC)/81(ND)/2024 for revival of CP(IB)/60/ND/2023, which was allowed vide order dated 07.10.2024. The petition was renumbered as Restored Company Petition (IBC)/22/ND/2024.
- 10.** The Master Service Agreement was executed on 2nd July 2019, was between UGRO Capital Limited (formerly Chokhani Securities Limited) and Hema Engineering Industries Limited (HEMA), a company engaged in manufacturing sheet metal and tubular components. HEMA sourced raw materials and components from a network of suppliers for its automotive and allied products. To improve business operations and cash flow, the HEMA facilitated its suppliers in obtaining financial assistance from UGRO to finance their receivables arising from supplies made to HEMA.
- 11.** Based upon the Facility agreement entered UGRO agreed to discount the invoices raised by the Corporate Debtor upon HEMA. We are inclined to refer to the Disbursement of Facility clause of the aforesaid agreement.



Subject to the terms of the Facility Documents, the Borrower shall be entitled to submit a Disbursement Request for each Facility to the Lender, along with (as stipulated by the Lender

- (i) a copy of the purchase order issued by the principal to place orders for purchase of Goods from the Borrower and in respect of which the Accepted Invoice was issued, and /or*
- (ii) a copy of the Accepted Invoice in respect of which the Borrower intends to obtain a Facility, and /or*
- (iii) a copy of the Material Receipt Note. The Disbursement Request shall be issued by the Borrower no later than the Availability Period and I (one) Business Day prior to the proposed date of drawdown.*

12. We are also inclined to refer to the definition of operational debt, Financial debt and Financial Creditor as provided in the Code which are as follows

(7)“Financial Creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

(8)“Financial Debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-

- (a) Money borrowed against the payment of interest;*
- (b) Any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*



(c) *Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*

(d) *The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*

(e) *Receivables sold or discounted other than any receivable sold on non-recourse basis;*

(f) *Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing.*

(g) *any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*

(h) *any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*

(i) *the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;*

(21) “operational debt” *means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;*

13. Coming to the factual matrix of the present case, it is evident that the underlying purpose of the arrangement was to enable the principal,



namely Hema Engineering Industries Limited (HEMA), to secure uninterrupted supply of raw materials, components, equipment, and other goods from its approved suppliers on a deferred payment basis. This was achieved by facilitating financial assistance to such suppliers from UGRO Capital Ltd., against their confirmed receivables from HEMA. The structure not only ensured timely procurement for HEMA, thereby strengthening its supply chain and production capacity, but also improved HEMA's cash flow management and working capital efficiency by deferring immediate outflows, while preserving the suppliers' liquidity through timely payments from UGRO.

14. Based on 11.10.2019 Facility Agreement was executed between UGRO and the Corporate Debtor, whereby UGRO agreed to discount the invoices raised by the Corporate Debtor upon HEMA on 07.10.2019 UGRO issued a sanction letter in favor of the Corporate Debtor. Thus, we see that the funding the entire commercial substratum of the transaction was that the Corporate Debtor was engaged in a supply relationship with HEMA, and UGRO merely acted as a financier facilitating that supply. The funds were not extended for time value of money in isolation, but rather were tied to a commercial transaction concerning the provision of goods or services. Thus, the essential character of the transaction remains operational.
15. We are inclined to refer to the Order passed by the Hon'ble NCLAT in the matter of **Minions Ventures Pvt. Ltd. v. TDT Copper Ltd. Bearing Company Appeal (AT) (Ins) No. 572 of 2022**



“5. The moot issue in this case is thus as to whether the Appellants in the second appeal (Financiers) are the Financial Creditors as against the Corporate Debtor or have stepped in to shoes of the Seller as an Operational Creditors and as such application filed by the Appellants in the second appeal under Section 7 of the Code has rightly been held to be not maintainable and were rightly relegated to avail their remedy of filing the application under Section 9 of the Code.

16. *Counsel for the Appellant has submitted that the Appellants are the Financial Creditors of the Corporate Debtor in view of Section 5(7) of the Code and the amount disbursed by them constitutes financial debt under Section 5(8)(e) of the Code.*

7. Before proceeding further, it would be relevant to refer to Section 5(7) and 5(8)(e) of the Code. Section 5(7) ‘Financial Creditor’ means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to. Section 5(8)(e) ‘Financial Debt’ means a debt alongwith interest if any which is disbursed against the consideration for the time value of money and includes (e) receivables sold or discounted other than any receivables sold on non-recourse basis.

8. *It is argued that Section 5(8)(e) is exclusionary and excludes any receivables sold or discounted on a non-recourse basis from the ambit of a financial debt and on the other hand any receivables which are discounted on a recourse or limited recourse basis would constitute a financial debt within the meaning of Section 5(8)(e) of the Code. It is further submitted that recourse referred to in Section 5(8)(e) of the Code means that in case of a default by the assignor (Corporate Debtor), the financiers have a legal right to demand payment from the person who has assigned the debt.*



9. According to the Appellants, they had reversed discounted receivables (invoices) on recourse basis for the benefit of the Corporate Debtor and thus they are the Financial Creditors vis a vis the Corporate Debtor. Therefore, the debt owed by the Corporate Debtor to the Appellant fulfils the essential condition of a financial debt, namely, a debt which has been disbursed against the consideration for the time value of money squarely falls within the definition of Financial Creditors.

10. On the other hand, Counsel for Respondent has submitted that the financial debt defined in the IBC contemplates disbursement against the time value of money whereas no such disbursement has

been made to the Corporate Debtor by the Appellants/Financiers. It is submitted that the case is not covered by Section 5(8)(e) but Section 5(20) and 21(5) of the Code. Section 5(20) and 21(5) of the Code are reproduced as under:-

“5(20). “operational creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

21(5). Where an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer.”

11......In this regard, he has relied upon a decision of the Hon'ble Supreme Court in the case of Jaypee Infratech Ltd. Interim Resolution Professional Vs. Axis Bank Ltd., (2020) 8 SCC 401, to contend that disbursal against the consideration for the time value of money is a pre-requisite for declaring transaction as a financial debt. He has also relied upon a decision of this Tribunal in the case of Cooperative Rabobank W.A. Singapore Branch Vs. Shalindra Ajmera, 2019 SCC



Online NCLAT 812, in which similar controversy was decided and it has been held that it would be termed as an Operational debt. It is further argued that it has been averred by the Appellant that upon the execution of COR agreements, discounted the invoice and deposited the amount into escrow/nodal account maintained by KredX agent, namely, Yes Bank Limited who had disbursed the said amount into the bank account of the Seller in accordance with clause 5.2 of the COR agreements and upon receiving such amount, the Seller transferred its right to receive the amount under the invoice in favour of the Financiers/Appellants. It is submitted that at no point of time the amount in question was disbursed to the Corporate Debtor as a loan to pay of the debts of the Seller rather Financiers took the invoices of the Seller at a discounted price and had stepped into shoes of the Seller who is a Operational Creditor. It is also submitted that in Clause 4(c) of the Creation of Rights Agreement it is mentioned that 'pursuant to the mutual agreement between the parties, the Seller has agreed for discounting of invoices of the Customer for the creation of the right and interest in the invoice receivables in favour of the Financier. He has further referred to Clause 2.1 wherein it has been mentioned that the Seller has consented to the creation of the right and interest in the invoice receivables in favour of the Financier for the consideration

13. *The Agreement (COR) was entered into between the Seller, Financier and the Corporate Debtor (As customer). As per the agreement, the Seller had agreed for discounting of invoice of the customer (CD) for the creation of the right and interest in the invoice receivables in favour of the Financier (Appellant). Upon execution of agreement of COR, the Appellant as a Financier discounted the invoice and deposited the amounts into an escrow/nodal account maintained by KredX*



with an escrow/nodal agent, namely, Yes Bank Limited who further transferred the said amount to the account of the Seller and on receiving, the Seller transferred its right to receive the money under the invoices in favour of the Financiers/Appellants. In this transaction, the money was never disbursed much less for the time value as a financial debt to the Corporate Debtor and by virtue of discounting the invoice of the Seller of an amount of Rs.3,42,03,903/- for amount of Rs.1,75,23,133/- the Financiers/Appellants entered into shoes of the Seller and had become Operational Creditors in terms of Section 5(20) as well as 21(5) and Section 5(7) and 5(8)(e) of the Code is not at all applicable.

14. *Thus, in view thereof, there is no error in the order of the Adjudicating Authority who has though rejected the application filed under Section 7 of the Code but relegated the Appellants (Financiers) to avail their remedy under Section 9 of the Code in accordance with law. Hence, the appeal is hereby dismissed.*

- 17.** It has been submitted that the original lender, UGRO Capital Ltd., had already exercised its rights under the same financing arrangement by filing a claim in the Corporate Insolvency Resolution Process (CIRP) of Hema Engineering Industries Ltd., the Principal under the financing structure. HEMA was admitted into CIRP by order dated 05.04.2021 passed in C.P. (IB) No. 900/(ND)/2020. UGRO Capital Ltd. submitted its claim for an amount of approximately ₹16.89 crores, which was initially admitted as a financial debt by the Resolution Professional. However, upon verification and classification, the said claim was subsequently reclassified as an operational debt to the extent of ₹15.16 crores, as reflected in the updated list of creditors dated 16.08.2021. It has also



been submitted that this classification was never challenged by UGRO and, therefore, has attained finality. Moreover, UGRO did not file any claim during the liquidation proceedings of Hema, thereby signifying either a waiver or abandonment of its rights under the said facility in respect of the principal.

18. It is therefore manifest that the financial assistance extended by UGRO was intrinsically and directly linked to a supply transaction. The funds were not advanced for any capital expenditure, project financing, or for the Corporate Debtor's general financial needs, but specifically to bridge the payment cycle between the delivery of goods/services by the Corporate Debtor and the receipt of payment from HEMA. This structured supply chain financing arrangement squarely falls within the ambit of operational debt and not as a financial debt.

19. In view of the above, this Adjudicating Authority is of the considered opinion that the present Company Petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, is not maintainable and is accordingly liable to be dismissed. Therefore, instant application

Restored Company Petition (IBC) /22/ND/2024 stands disposed of.

All pending Applications, if any, connected with the present Company Petition shall also stand disposed of having become infructuous in terms of the above order.

Sd/-

ATUL CHATURVEDI
MEMBER (TECHNICAL)

Sd/-

MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)