

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

**Company Appeal (AT) (Insolvency) No. 1382 of 2025
& I.A. No. 5379 of 2025**

In the matter of:

Future Consumer Ltd.

....Appellant

Vs.

Aussee Oats India Ltd.

...Respondent

For Appellant

Mr. Darpon Wadhwa, Sr. Advocate with Ms. Petrushka Das Gupta, Mr. Mridul Yadvy, Mr. Kewal Buddhev, Mr. Anand Singh Sengar, Advocates.

For Respondent

Mr. Kunal Kanungo, Ms. Tanushree Sogani, Mr. Atishay Jain, Advocates.

ORDER

(Hybrid Mode)

23.09.2025: **I.A. No. 5379 of 2025:-** This is an application for condonation of re-filing delay of 75 days. We find sufficient cause for condonation of re-filing delay of 75 days. Re-filing delay is condoned.

Company Appeal (AT) (Insolvency) No. 1382 of 2025:-

Heard Learned Counsel for the Appellant and Counsel for the Respondent.

2. This Appeal has been filed against the order dated 01.05.2025 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Court-I, by which order application under Section 7 filed by the Appellant has been rejected. Appellant has filed the application under Section 7 claiming a debt of Rs.1,00,12,157/-. Appellant case was that amount of Rs.2

Crore in the form of an Inter-Corporate Deposit was given to the Corporate Debtor out of which only Rs.1,35,00,000/- has been paid and Rs.65,00,000/- plus interest is due totalling to Rs.1,00,12,157/- to which the Corporate Debtor is in default proceedings be initiated.

3. The Adjudicating Authority has rejected the application relying on the Corporate Debtor's financial statement which reflected that NIL amount to the Financial Creditor and set-off as claimed by the Corporate Debtor has been accepted by the Adjudicating Authority and findings has been returned that there are no debt and further it was held that in view of the dispute between two groups, the application is not for the purpose of resolution of the Corporate Debtor.

4. Counsel for the Appellant submits that under the term sheet under which the ICD was sanctioned, no set off was permissible and the Corporate Debtor unilaterally has claimed set off from receivables from the Financial Creditor which is not permissible. It is further submitted that the Adjudicating Authority has relied on equitable principles which are not relevant for the IBC.

5. Counsel for the Respondent opposing the submissions of the Counsel for the Appellant submits that the financial statement of the Corporate Debtor in which set off was claimed was signed by the nominee director of the Financial Creditor itself who have signed the balance sheets, hence, the objection is meritless that set off cannot be made.

6. We have considered the submissions of the Counsel for the parties and perused the record.

7. It is useful to extract paragraphs 21, 22 and 23 of the impugned order in which following observations have been made:-

“21. Though the Corporate Debtor has challenged the genuineness of Term Sheet, however, the receipt of Rs. 2 Crores as an advance is not disputed. The Term Sheet has been relied upon by the Corporate Debtor to evidence the repayment obligation, liability of interest and the absolute obligation to repay the loan dehors any other transaction. There is no dispute that the said amount to the extent of Rs. 1.35 Crore was repaid and the balance amount is claimed to have been adjusted against the amount receivable from the Financial Creditor under other ledger accounts. The Corporate Debtor has accounted for any interest on the amount received from the Financial Creditor and this fact is clearly discernible from the note no.23 of its audited financial statements for the Financial Year ended on 31.03.2021 wherein an interest expense amounting to Rs.20,548/- is stated to be paid to the Financial Creditor. Accordingly, the fact whether the Term Sheet is genuine or not is relevant only for determination of right of Corporate Debtor to set off the amount of loan or any part thereof against the amount receivable from the Financial Creditor under any other transaction.

22. Note no.9 "Borrowings" of the audited financial statement for the Financial Year ended on 31.03.2021 reflects NIL amount due to related party on account of loan as on 31.03.2021 and a sum of Rs. 76,28,296/- due to related party as on 31.03.2020. Further, note 23 of the said Financial Statement provides the related party transaction and disclosures therein, wherein an

amount of Rs. 7,51,131/- is stated to be receivable from the Financial Creditor as on 31.03.2021 and the said further states that a sum Rs. 76,28,296/- was repaid to the Financial Creditor during the relevant year. These Financial accounts are duly audited and approved by the shareholders, one of whom is the Financial Creditor's associate company holding majority shares therein. This clearly indicates that no debt is due and payable to the Financial Creditor as on 31.03.2021 and this fact is within the knowledge of Mr. Shailesh Kedawat, being one of the signatories to the said audited financial statement in the capacity of director who was then CFO of the Financial Creditor as well.

23. The Financial Creditor has canvassed that Corporate Debtor's obligation to "repay" the outstanding amount of the ICD and interest thereon to the Financial Creditor is "absolute and unconditional and is not dependent or linked to any other transaction (past, present or future as may be)" and it could not have claimed set off of amount payable under the transaction of loan with any amount receivable under any other transaction. However, in our considered view, this averment in the term sheet does not take away the right of Corporate Debtor to claim appropriation of the amounts receivable from the Financial Creditor against the amount payable under the alleged term sheet. It would be unequitable to seek insolvency of a debtor alleging default in payment of a financial debt when such creditor owes more than the amount claimed to be in default to such debtor, more particularly when the Debtor has appropriated the receivables from the creditors against amount payable

to such creditor and disclosed such appropriation in its audited financial statements which is signed by Mr. Shailesh Kedawat, the Nominee Director of the Financial Creditor. It is also relevant to note that the Financial Creditor, despite a specific requisition by the Corporate Debtor to provide ledger statements of all accounts in their books had not provided the same even though the Corporate Debtor vide its email dated 09.09.2021 had clearly communicated that there is no loan outstanding in their books as on date in response to email dated 07.09.2021 sent by Mr. Shailesh Kedawat on behalf of the Corporate Debtor. The defence taken by the Financial Creditor that the financial statements were signed subject to further reconciliation has no substance as the Financial Creditor has not placed on record any details of disagreement on the amounts claimed to be receivable by the Corporate Debtor from the Financial Creditor, except challenging the right of set off as exercised by the Corporate Debtor.”

8. The submission which has been much pressed by the Appellant is that unilateral set off is not permissible and the term sheet specifically provided that no set off can be granted. Present is a case where Adjudicating Authority has looked into the facts which have been brought before the Court including the financial statement of the Corporate Debtor which financial statement as on 31.03.2021 i.e. much before the proceedings under Section 7 was initiated. Proceedings under Section 7 has been initiated only in the year 2024. The financial statement of the Corporate Debtor when reflects ‘NIL’ amount to the related party and which also shows receivables from the Financial Creditor to the Corporate Debtor, we are of the view that the Adjudicating Authority did

not commit any error in relying on the said financial statement for coming to the conclusion that there is no debt for which insolvency can be proceeded. It is further relevant to notice that there is dispute between the Financial Creditor and Corporate Debtor's shareholders which has already been noticed by the Adjudicating Authority. We, thus, are of the view that in the facts of the present case, refusal of Adjudicating Authority to initiate insolvency in the facts cannot be faulted.

9. We do not find any error in the order of the Adjudicating Authority. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Anjali/nn