

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1393 of 2025

(Arising against the Impugned order dated 14.07.2025, passed by the Hon'ble National Company Law Tribunal, Mumbai Bench-V in Company Petition (IB) No. 90 of 2024)

IN THE MATTER OF:

Peninsula Holdings and Investments Pvt. Ltd.

Through its Authorised Representative
Add:- 1401, 14th Floor, Tower-B, Peninsula
Business Park, Ganpatrao Kadam Marg, Lower
Parel, Mumbai, Maharashtra-400013.

...Appellant

Versus

JM Financial Credit Solutions Limited

Through its Authorised Representative
Add:- 7th Floor, Cnergy Appasaheb,
1 Marathe Marg Prabhadevi,
Mumbai 400025.

...Respondent No. 1

**Mr. Rajesh Jhunjunwala, Interim Resolution
Professional (IRP)**

Add:- A51, Ashit Apartment, HB Gawde Marg,
Juhi Koliwada, Mumbai-400049.
Email: Jhunjunwala.rajesh@gmail.com

...Respondent No. 2

Present:

For Appellant: Ms. Prachi Johri, Advocate.

**For Respondents: Mr. Shyam Kapadia, Mr. Aseem Chaturvedi,
Mr. Ravitej, Mr. Arpit Kumar Singh, Ms. Mihika Jalan,
Ms. Afreen Noor, Ms. Muskan Arora, Advocates.**

Cont'd..../

J U D G M E N T

(29th October, 2025)

INDEVAR PANDEY, MEMBER (T)

This appeal has been preferred by *Peninsula Holdings and Investments Pvt. Ltd.* under Section 61 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'Code') challenging the *Order dated 14.07.2025* passed by the National Company Law Tribunal, Mumbai Bench-V (Adjudicating Authority), in *Company Petition (IB) No. 90 of 2024*. By the said order, the Adjudicating Authority admitted the application filed under Section 7 of the Code by JM Financial Credit Solutions Limited (Financial Creditor) and Respondent No.1 herein, against Hem Infrastructure and Property Developers Pvt. Ltd.,(Corporate Debtor) thereby initiating the Corporate Insolvency Resolution Process (CIRP) and appointing Mr. Rajesh Jhunjhunwala as the Interim Resolution Professional (IRP). The Appellant, being a shareholder of the Corporate Debtor, has approached this Appellate Tribunal on the grounds that the order of admission suffers from grave factual and procedural errors; that no legally enforceable financial debt or valid guarantee existed; and the Adjudicating Authority failed to consider the commercial futility of initiating CIRP against a non-operational Special Purpose Vehicle (SPV) incapable of resolution under the Code. Mr. Rajesh Jhunjhunwala, IRP is the Respondent No.2 in this appeal.

2. The brief facts of the case are given below:
- (i) This appeal arises out of the order dated 14.07.2025 passed by the NCLT, Mumbai Bench-V, in *C.P. (IB) No. 90 of 2024*, whereby the petition under Section 7 of the Code filed by *JM Financial Credit Solutions Ltd.* (Respondent No.1) against *Hem Infrastructure and Property Developers Pvt. Ltd.* (the Corporate Debtor) was admitted by the Adjudicating Authority initiating CIRP. The Adjudicating Authority appointed *Mr. Rajesh Jhunjhunwala* as the Interim Resolution Professional (IRP).
- (ii) The origin of the dispute lies in a series of six financial facilities sanctioned by Respondent No.1 between 2017 and 2022, aggregating to Rs. 288.20 crore, which were extended not to the Corporate Debtor, but to an unincorporated Association of Persons (AOP) known as *M/s. Hem Bhattad*. This AOP was constituted under an agreement dated 06.09.2006 for the development of five real estate parcels located at Tokersey Jivraj Road, Parel–Sewree, Mumbai.
- (iii) The AOP comprised four members, namely (a) *M.B. Development Corporation (MBDC)*, (b) *M.B. Construction (MBC)*, (c) *R.M. Bhuther & Co. Ltd. (RMB)*, and (d) *Hem Infrastructure and Property Developers Pvt. Ltd.*, (Corporate Debtor). The Corporate Debtor held a 35.5% share in

the distributable income of the AOP and had been nominated by *IL&FS Investment Managers Ltd.* (IIML) to participate in the said AOP.

- (iv) In furtherance of the above loan facilities, the Corporate Debtor executed six separate *deeds of corporate guarantee* between 14.12.2017 and 27.12.2021 to secure the said loans.
- (v) The borrower AOP, M/s. Hem Bhattad, began defaulting in repayment obligations from January 2023, failing to pay instalments of principal and interest as per repayment schedules. The borrower also defaulted in remittance of TDS dues between August 2022 and March 2023.
- (vi) Owing to these defaults, the accounts of the borrower were classified as Non-Performing Assets (NPA) on 01.05.2023, and Respondent No.1 issued demand notices dated 24.05.2023 under Section 13(2) of the SARFAESI Act, 2002, recalling the entire outstanding amounts from the borrower and other obligators, including the Corporate Debtor as guarantor of the facilities.
- (vii) Respondent No.1 on 10.08.2023, addressed six notices of demand to the Corporate Debtor, seeking payment of the outstanding sum of INR 242.82 crore. However, no payment was made by the Corporate Debtor/Guarantor.

- (viii) Thereafter, Respondent No.1 filed Company Petition (IB) No. 90 of 2024 before the Adjudicating Authority under Section 7 of the Code, seeking initiation of CIRP against the Corporate Debtor, on the basis of the guarantees executed by the CD.
- (ix) The Corporate Debtor filed Interlocutory Application (IA) No. 2071 of 2024 dated 29.04.2024 before the Adjudicating Authority, objecting to the maintainability of the petition on the ground that it was incomplete and defective for want of foundational documents, and prayed for dismissal of the petition. Corporate Debtor also filed reply to the company petition on 30.04.2024, denying the existence of any financial debt, disputing the validity of the alleged guarantees, and highlighting the absence of commercial purpose behind initiating CIRP against a dormant SPV.
- (x) The Adjudicating Authority, by order dated 06.06.2024, dismissed the aforesaid IA, but allowed liberty to the Corporate Debtor to raise all its objections during final arguments.
- (xi) Respondent No.1 subsequently filed an Additional Affidavit dated 18.11.2024 before the NCLT, complete set of copies of the loan and guarantee documents. The Corporate Debtor objected to this belated filing through a Reply dated 19.04.2025, asserting that the documents

were inadmissible, unreliable, and could not cure the original incompleteness of the petition.

(xii) During the intervening period, the parties also explored the possibility of settlement, which led to adjournments being sought on 13.01.2025 and 20.02.2025. However, the negotiations did not lead to any settlement.

(xiii) The matter was heard finally on 06.06.2025, following which both parties filed written submissions. The Corporate Debtor's Written Submissions dated 23.06.2025 reiterated that no financial debt existed, no valid guarantee had been executed, and that the Corporate Debtor was an inactive SPV, incapable of undergoing a viable resolution process.

(xiv) The Adjudicating Authority passed the Impugned Order dated 14.07.2025, admitting the Section 7 petition and initiating CIRP against the Corporate Debtor solely on the basis of the guarantees.

(xv) Aggrieved by the said order of admission, the Appellant has preferred the present appeal before this Appellate Tribunal, seeking that the *Impugned Order dated 14.07.2025* be quashed and set aside as being legally unsustainable, procedurally flawed, and contrary to the objectives of the Insolvency and Bankruptcy Code.

Submissions of the Appellant

3. Ld. Counsel for the Appellant submits that the present Appeal has been filed under Section 61 of the Code challenging the Order dated 14.07.2025 passed by the Adjudicating Authority allowing the Section 7 petition and admitting the Corporate Debtor in CIRP. The Appellant submits that the impugned order is fundamentally flawed, as it proceeds on an incorrect appreciation of the relationship between the financial creditor, the borrower, and the CD, thereby necessitating interference by this Appellate Tribunal.

4. Ld. Counsel contends that the Corporate Debtor is a Special Purpose Vehicle (SPV) with no independent assets, income, operations, or employees, and was incorporated merely to hold a minority stake in the AOP. He further submits that the initiation of CIRP against such a non-operational entity serves no resolution objective and constitutes an abuse of the insolvency process, particularly when Respondent No.1 is already pursuing recovery measures under the *SARFAESI Act, 2002* against the principal borrower.

5. Ld. Counsel submits that the borrower in relation to the financial creditor is not the Corporate Debtor, but rather an Association of Persons ("AOP") viz. M/s Hem Bhattad, which was constituted under an Agreement dated 06.09.2006. This AOP was formed by four entities, including the Corporate Debtor, which holds a 35.5% share in the distributable income of

the AOP. The Corporate Debtor served only as a guarantor to the facilities availed by the AOP. It is, therefore, incorrect to treat the CD as the principal borrower for the purpose of Section 7 proceedings under the IBC.

6. Ld. Counsel further submitted that the Respondent has objected to the maintainability of the Appeal on the ground that the Appellant is only a "shareholder." However, the Appellant has filed the present submissions to clarify that its status, rights, and control over the CD are such that it qualifies as an aggrieved person entitled to maintain the present Appeal.

7. It is the submission of the Appellant that the reliance placed by the Respondent on the judgment of this Appellate Tribunal in '*Park Energy Pvt. Ltd. v. State Bank of India, Company Appeal (AT) (Insolvency) No. 62 of 2023*', is wholly misconceived and inapplicable to the present case. In the Park Energy case this Tribunal barred a "mere shareholder" i.e., a person who only participates in the profits of a company, without any control or operational involvement, from filing an appeal. The Appellant herein is distinctly situated and cannot be treated as a "mere shareholder."

8. Ld. Counsel submits that the Appellant is the 51% equity shareholder of the Corporate Debtor and holds administrative control over its affairs. The Corporate Debtor, in turn, has declared in its Guarantee Deed that it exercises, both direct and indirect control over the borrower AOP, M/s Hem Bhattad. Therefore, the Appellant, by virtue of its controlling stake and

governance powers over the CD, effectively exercises indirect control over the borrower AOP.

9. Ld. counsel further submits that in paragraph 18 of Park Energy (supra), this Tribunal has clarified that an “aggrieved person” is the one who is affected by an order and has no alternative forum to seek redress. The Appellant submits that its rights, as a controlling shareholder and preference shareholder of the CD, and as an indirect controller of the borrower AOP, stand directly affected by the admission of the CD into CIRP. These rights, involving administrative control, management, and participation in a valuable property-holding AOP, cannot be safeguarded elsewhere. Thus, the Appellant squarely falls within the ambit of an *aggrieved person* under Section 61 of the IBC.

10. Ld. Counsel submits that it is an undisputed fact that the Appellant holds both equity shares and redeemable optionally convertible preference shares in the Corporate Debtor, carrying an internal rate of return (“IRR”) of 20%. It is correct that the Appeal, at paragraph 1.4 of the pleadings, discloses that it has been filed in the capacity of a shareholder. However, it is crucial to note that nowhere does the Appellant assert that its grievance arises only from its position as an equity shareholder. Paragraph 1.4, which sets out the nature of the grievance, does not restrict the basis of the Appeal to equity shareholding alone. Hence, at the highest, there has been an

inadvertent omission in explicitly stating that the Appellant holds both equity and preference shares. Such an omission is purely a matter of form and hyper-technicality, not affecting the substance of the right to appeal.

11. The Appellant further submits that the Respondent cannot be permitted to artificially restrict or reinterpret the Appellant's shareholding status by inserting words not found in the pleadings. The deponent on behalf of the Appellant is also a Director of the Corporate Debtor, and thus, in the alternative, could have maintained this Appeal in that capacity as well, should this Appellant Tribunal so permit.

12. The Appellant States that under settled jurisprudence, a preference shareholder, whose investment carries the commercial effect of borrowing qualifies as a financial creditor within the meaning of Section 5(8) of the IBC. This Tribunal has held in '*Sanjay D. Kakade v. HDFC Ventures Trustee Company Ltd., Company Appeal (AT) (Insolvency) No. 481 of 2023*' that preference shares, under certain contractual terms, have the nature of a financial debt. In that case, this Tribunal examined the Amended and Restated Share Subscription-cum-Shareholders Agreement dated 14.05.2008 and held that such instruments, requiring the company and promoters to repurchase the shares at a price ensuring an internal rate of return (IRR) of 15% per annum compounded annually or fair market value, whichever is higher, have the commercial effect of borrowing.

13. Ld. Counsel states that applying the ratio of *Sanjay Kakde (supra)*, the Appellant's Redeemable Optionally Convertible Preference Shares in the present case, carrying a fixed IRR of 20%, also have the commercial effect of borrowing. Hence, the Appellant qualifies as a financial creditor of the Corporate Debtor. If such an instrument can confer the status of a financial creditor for initiating Section 7 proceedings, it must necessarily confer the same status for determining who can be an *aggrieved person* entitled to file an appeal under Section 61 of the IBC.

14. Ld. Counsel further submitted that even in *Park Energy Pvt. Ltd.* (*supra*) itself (para 14 and 18), reference is made to the judgment of the Hon'ble Supreme Court in '*Glas Trust Company LLP v. Byju Raveendran*, [Civil Appeal No. 21023 of 2024]', wherein the Hon'ble Court held that creditors are "aggrieved persons" and therefore have locus to challenge adverse orders. Accordingly, the Appellant, being a creditor of the Corporate Debtor, falls squarely within the definition of an aggrieved person.

15. Without prejudice to the above submissions, Ld. Counsel submits that even assuming, *arguendo*, that the Respondent's objection regarding absence of supporting documentation for the preference share subscription is accepted, the same would constitute at best, a curable defect. The Appellant undertakes to immediately cure the said defect by placing the relevant documents on record if this Tribunal, so directs.

16. Finally, Ld. Counsel submits that the nature of the Appellant's grievance is not limited to its rights as an equity shareholder. It arises from its position as a financial creditor having issued preference shares with commercial effect of borrowing, and as a controlling shareholder with administrative control over both the Corporate Debtor and the borrower AOP. Hence, the Appellant's grievance is financial and managerial in nature, and the Appeal has been correctly filed as that of an *aggrieved person* under Section 61 of the IBC.

Submissions of Respondent No.1

17. Ld. Counsel for Respondent No.1/JM Financial Credit Solutions Limited/Financial Creditor stated that his submissions are confined to the issue of maintainability of the present appeal filed by the Appellant, *Peninsula Holdings and Investments Pvt. Ltd.*, who has admittedly approached this Hon'ble Tribunal only in its capacity as a shareholder of the Corporate Debtor, HEM Infrastructure and Property Developers Pvt. Ltd. The impugned order under challenge is the admission Order dated 14 July 2025, passed by the NCLT, Mumbai Bench, in CP No. 90 of 2024, whereby the Company Petition filed by the Financial Creditor was admitted under Section 7 of the Code, initiating the CIRP against the said Corporate Debtor.

18. Ld. Counsel submits that the Appellant itself has unequivocally admitted throughout its pleadings that it has filed the appeal "*being a*

shareholder of the Corporate Debtor.” References to this effect appear in paragraphs 1.1, 1.4, and F(iv) of the Appeal Memo (pages 34, 35, and 63). Furthermore, in paragraph 2A of the Stay I.A. (page 27), the Appellant has stated on oath that it *“has no independent business, revenue, employees, or assets and functions solely as a passive investor.”* The Appellant also repeatedly describes the Corporate Debtor as a passive conduit for AOP participation [para-E(i) and E(i)(c), pages 59–60 of the Appeal]. Therefore, two undisputed facts emerge, firstly the Appellant has approached this Tribunal purely in its capacity as a shareholder of the Corporate Debtor; and secondly, that it plays no role whatsoever in the management or affairs of the Corporate Debtor.

19. Ld. Counsel on behalf of the Financial Creditor, submits that the present appeal is not maintainable in law. Section 61 of the IBC restricts the right of appeal to a *“person aggrieved”* by an order of the Adjudicating Authority. A shareholder, whose only interest is reflective or derivative in nature, cannot be treated as a *“person aggrieved”* under this provision. This principle stands conclusively settled by the Three-Member Bench of this Hon’ble Tribunal in *‘Park Energy Pvt. Ltd. v. State Bank of India, 2025 SCC OnLine NCLAT 1289*, which held that proceedings or appeals at the behest of shareholders are not maintainable. The relevant observation, forming the ratio, reads as follows:

"The sustainability of proceedings at the behest of the shareholder would not be a reasonable proposition... permitting shareholders to pursue such proceedings would run contrary to the object of the Code, besides leading to multiplicity of proceedings. When the interest of shareholders stands protected through the agents appointed by the Tribunal, and when shareholders have profit interest only in the company and no administrative control, proceedings at their behest will not be maintainable."

In view of this categorical pronouncement by a larger Bench, any appeal filed purely in the capacity of a shareholder, as in the present case, is legally untenable.

20. Ld. Counsel submits that the Appellant has itself characterised its role in the Corporate Debtor as *"a passive investor"* and further described the Corporate Debtor's 35.5% interest in the Borrower (the AOP known as M/s Hem Bhattad) as a *passive participation* [para 7.13, page 46 of the Appeal]. Such admissions demonstrate that the Appellant's interest is neither direct nor legally prejudiced by the impugned admission order. The law laid down in *Park Energy* (supra) squarely applies to such cases, where an appeal is premised solely on shareholding, without proof of direct legal injury. Consequently, the appeal deserves to be dismissed as non-maintainable.

21. Ld. Counsel submits that it was argued on behalf of the Appellant that, unlike in *Park Energy* (supra), the Appellant is not merely an equity

shareholder, but also a preference shareholder, which allegedly makes it a "creditor" of the Corporate Debtor. The Appellant has relied upon the decision of this appellate Tribunal in '*Sanjay D. Kakade v. HDFC Ventures Trustee Company Ltd., Company Appeal (AT)(Insolvency) No. 481 of 2023*', which held that shareholders holding convertible preference shares with assured returns could, in limited circumstances, be treated as financial creditors. The Counsel submitted that such reliance is wholly misconceived for the following reasons:

- (i) The Appellant's entire appeal is premised upon its shareholding status. Nowhere in the pleadings is it stated that it is a creditor of the Corporate Debtor. A party cannot alter its foundational case or capacity at the stage of oral submissions. Having consciously approached this Tribunal as a shareholder, the Appellant cannot now introduce a new case of being a financial creditor.
- (ii) The judgment in *Sanjay D. Kakade* (supra) concerned a Section 7 application by preference shareholders against the company itself, based on specific contractual guarantees and assured returns under a *Share Subscription-cum-Shareholders Agreement (SSSHA)*. The present matter concerns the maintainability of an appeal under Section 61, not initiation under Section 7. Hence, the factual and

legal contexts are entirely different. Moreover, *Park Energy* (supra), being a larger bench decision, governs the present issue.

- (iii) In '*EPC Constructions India Ltd. (Company Appeal (AT)(Ins.) No. 1424 of 2023*)', this Appellate Tribunal clarified that *Sanjay D. Kakade (Supra)* was not a case of simple preference shares, but one involving specific financial arrangements and indemnities that amounted to financial debt under Section 5(8) of the Code. The Tribunal expressly held that "*preference shares being part of the company's share capital do not constitute financial debt.*" Hence, the Appellant's case, based merely on shareholding, cannot fall within the scope of financial debt.

22. The Respondent further relies on judgements in "*Asit v. Golden Line Studio Pvt. Ltd., 2018 SCC OnLine ITAT 23108*" (paras 2 & 9), and "*Commissioner of Gift Tax v. Raghu Hari Dalmia & Ors., 2021 SCC OnLine Del 1406*" (para 14), which unequivocally hold that preference shareholders do not possess voting rights on ordinary business matters and cannot claim managerial participation. Their rights are limited to priority in dividends. Hence, even lesser rights than equity shareholders cannot bestow upon them any locus to challenge insolvency admission orders.

23. Ld. Counsel states that the Appellant has failed to provide particulars to demonstrate how it is *aggrieved* by the admission order. There is no

pleading or proof that its preference shares represent a financial debt or confer creditor status. It is settled law that preference shares form part of the share capital and not the liability structure of a company. Hence, holders of such shares cannot claim to be financial creditors under the Code. The appeal, therefore, remains non-maintainable.

24. Ld. Counsel submits that during arguments, the Appellant also sought to contend that since the Corporate Debtor holds 35.5% equity in the Borrower (the AOP *M/s Hem Bhattad*), the Appellant indirectly challenges the admission order "on behalf of the Borrower." This contention is entirely beyond the pleadings and devoid of legal foundation. The Appeal nowhere discloses any authorization, legal right, or contractual basis empowering the Appellant to represent the Borrower. The Borrower itself is a separate legal entity, and the Appellant, being a shareholder of one of its members, cannot assume representational standing. Facts not pleaded cannot be relied upon, as consistently held in '*Union of India v. Ibrahim Uddin [(2012) 8 SCC 148]*'. Hence, this argument is liable to be rejected outright.

25. Summing up, Ld. Counsel states that in the light of the above facts and the settled position of law affirmed in *Park Energy (Supra)*, the present appeal, filed by a mere shareholder of the Corporate Debtor, having no managerial role; no direct financial exposure; and no legally recognized grievance under Section 61 of the IBC, is not maintainable. The attempt to

alter capacity from shareholder to creditor, or to claim representational right over the Borrower, is impermissible and contrary to the pleadings and record. Accordingly, the Financial Creditor respectfully prays that the Appeal be dismissed in limine, as not maintainable.

Analysis and Findings

26. We have heard learned counsels and perused the pleadings, documents, and authorities relied upon and based on the same, we frame the following two issues for determination:

(i) Whether the present Appeal filed under Section 61 of the Code by the Appellant, who claims to be a shareholder and preference shareholder of the Corporate Debtor, is maintainable in law?

(ii) Whether the order dated 14.07.2025 passed by the Adjudicating Authority (NCLT, Mumbai) admitting the Corporate Debtor into CIRP suffers from any legal infirmity?

27. The Appellant, *Peninsula Holdings and Investments Pvt. Ltd.*, has argued that this Appeal is maintainable under Section 61 of the Code as it is an *aggrieved person* within the meaning of that provision. It is submitted that the Appellant is not a mere investor or passive shareholder, but holds 51% of the equity shares in the Corporate Debtor, thereby exercising effective control over its management and affairs. The Appellant contends

that its rights as the controlling shareholder have been directly affected by the impugned order of admission dated 14.07.2025, through which the Corporate Debtor has been pushed into insolvency proceedings.

28. The Appellant further submits that it is also a holder of Redeemable Optionally Convertible Preference Shares (ROCPS) in the Corporate Debtor, which carry an Internal Rate of Return (IRR) of 20%. On that basis, it is contended that the Appellant stands not only as an equity investor, but also as a *creditor* having a financial interest in the Corporate Debtor. Relying on the judgment of this Tribunal in '*Sanjay D. Kakade v. HDFC Ventures Trustee Co. Ltd.*, [Company Appeal (AT) (Insolvency) No. 481 of 2023]', it is argued that preference shareholders, whose shares carry return obligations or buy-back rights, can qualify as *financial creditors*. Therefore, according to the Appellant, it should be treated as a "person aggrieved" entitled to challenge the order of admission.

29. It is further argued that the defect pointed out by the Respondent, that the Appeal does not specifically attach the preference share subscription documents is only a *curable defect*. The Appellant submits that the nature of its shareholding and control, as well as its financial exposure, give it a legitimate and direct interest in preventing an unnecessary or erroneous insolvency admission, which could irreversibly affect the value of its investment.

30. Lastly, the Appellant contends that the decision of the larger Bench in '*Park Energy Pvt. Ltd. v. State Bank of India (2025 SCC OnLine NCLAT 1289)*' cannot be mechanically applied to its case. It is argued that *Park Energy* (supra) dealt with a "mere shareholder" having no managerial control, whereas the present Appellant has both control and financial exposure, thereby standing on a different footing.

31. The Respondent, *JM Financial Credit Solutions Ltd.*, has strongly opposed the maintainability of this appeal. It submits that under Section 61(1) of the IBC, only a "*person aggrieved*" by an order of the Adjudicating Authority may prefer an appeal before this Appellate Tribunal. A person becomes "aggrieved" only when the impugned order causes a direct legal injury to their rights, and not merely because it affects them financially or commercially.

32. The Respondent points out that the Appellant's own pleadings and affidavits in the Appeal describe it as a shareholder of the Corporate Debtor and a passive investor with no independent business, assets, or employees. The Appellant has clearly stated that it functions solely as an investment vehicle. Thus, by its own admission, the Appellant has no managerial or operational role in the Corporate Debtor's affairs.

33. Relying on the authoritative three-member Bench judgment of this Tribunal in *Park Energy Pvt. Ltd. v. State Bank of India* (supra), the

Respondent submits that shareholders, whether minority or majority, cannot file or maintain an appeal under Section 61 against an order admitting insolvency proceedings. The larger Bench in *Park Energy* (supra) categorically held that shareholders are *not* “persons aggrieved” within the meaning of Section 61, as their interest is merely reflective of the company’s interest, and they do not suffer any direct legal injury, when CIRP is initiated.

34. The Respondent also submits that the Appellant’s reliance on *Sanjay D. Kakade* (supra) is misplaced. That case was decided in an entirely different factual setting, wherein the preference shareholders sought to initiate insolvency proceedings against the company based on a specific “Share Subscription-cum-Shareholders Agreement”, which contained a binding buy-back obligation and payment clause, creating a financial debt. The present case, however, concerns an appeal under Section 61, and the Appellant has neither pleaded nor produced any document showing that its preference shares confer a similar debt-like right.

35. The Respondent further refers to several decisions of this appellate tribunal subsequent to *Sanjay D. Kakade (Supra)*, viz. *EPC Constructions India Ltd. v. Matrix Fertilisers & Chemicals Ltd.* (2023); *Clarion Health Foods LLP v. Goli Vada Pav Pvt. Ltd.* (NCLAT, 2024), and *Nirej Vadakkedathu Paul v. Sunstar Hotels and Estates Pvt. Ltd.* (2023), all of which reaffirm that

shareholders, whether ordinary or preference, have no locus to challenge the admission of insolvency proceedings, as their remedy lies within the corporate insolvency framework and not outside it. Accordingly, the Respondent submits that the present appeal is a classic example of a shareholder seeking to interfere with the CIRP to protect its investment, which is not permissible in law.

36. The issue of whether a shareholder can maintain an appeal under Section 61 of the IBC has been conclusively settled by a three-member Bench of this Appellate Tribunal in '*Park Energy Pvt. Ltd. v. State Bank of India* (2025 SCC OnLine NCLAT 1289)'. The larger Bench examined conflicting earlier judgments and laid down a uniform principle that the proceedings at the behest of a shareholder, being merely an investor with profit interest, but without administrative control or direct legal injury, are not maintainable under the IBC. The term 'person aggrieved' under Section 61 cannot be expanded to include shareholders or investors.

37. The Judgement in *Park Energy (Supra)* also clarified that allowing shareholders to challenge insolvency orders would defeat the object of the IBC, which emphasizes *speedy resolution* and *finality of proceedings*. If shareholders were permitted to intervene or appeal, it would lead to multiple litigations and delays, contrary to the Code's objectives.

38. Once the Corporate Debtor is admitted into CIRP, Section 17 of the IBC automatically transfers the management and control of the company to the Interim Resolution Professional (IRP). The Board of Directors, and consequently all shareholders, lose their authority over the affairs of the company. The IRP/RP is the protector of the interests of the shareholders in such a situation. Thus, even if the Appellant had prior administrative control, that control ceased upon admission. The mere fact of holding 51% shares or being a "majority owner" does not confer a separate or superior locus under Section 61. The Appellant's attempt to distinguish *Park Energy* (supra) on the basis of being a majority shareholder or holding preference shares cannot succeed.

39. Regarding the control of Appellant on Corporate Debtor, the submission of the appellant in the stay application I.A. No. 5448/2025 in para 2A is relevant and the same is extracted below:

"2A. The Corporate Debtor is a non-operational Special Purpose Vehicle (SPV) holding a 35.5% interest in an unincorporated Association of Persons (AOP) known as M/s. Hem Bhattad, formed for real estate development. The Appellant has no independent business, revenue, employees, or assets and functions solely as a passive investor."

(emphasis supplied)

The claim of appellant that he exercised control over the Corporate Debtor in view of his 51% holding and through CD on AOP, which was the principal

borrower. How can a company without any employees or assets and which functions solely as passive investor can exercise any control over another entity is beyond comprehension. We ask ourselves, what is the instrument of control in this case? its neither operational/ management nor financial as it is clear from the submission of the appellant.

40. We now have a look at para 7.13 of the appeal which shows the relationship between Corporate Debtor and AOP. Para 7.13 is extracted below:

“7.13 That, the Corporate Debtor is a Special Purpose Vehicle (SPV) with no independent operations, income, employees or assets. It was incorporated solely to hold passive interest in the AOP and does not function as a going concern. As such, the Corporate Debtor is not capable of sustaining CIRP or generating resolution value.”

It is clear from the above admissions by Appellant that both the Appellant and Corporate Debtor are passive investors, incapable of exercising any management or operational control over AOP, contrary to the claims of the Appellant. This was one of the major arguments by appellant for maintainability of their appeal.

41. We now have a look at relevance of preference shares in this case. The kind of share capital and the difference between equity and preference share capital has been given in section 43 of the Companies Act 2013. The same is extracted below:

“43. **Kinds of share capital.**

The share capital of a company limited by shares shall be of two kinds, namely: -

(a) equity share capital--

(i) with voting rights; or

(ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and

(b) preference share capital:

Provided that nothing contained in this Act shall affect the rights of the preference shareholders who are entitled to participate in the proceeds of winding up before the commencement of this Act.

Explanation. - For the purposes of this section, -

(i) equity share capital, with reference to any company limited by shares, means all share capital which is not preference share capital;

(ii) preference share capital, with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to

(a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and

(b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;

(iii) capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:--

(a) that in respect of dividends, in addition to the preferential rights to the amounts specified in sub-clause (a) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;

(b) that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified in sub-clause (b) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.”

42. We note from section 43 of the Companies Act 2013 that the preference shares form part of the share capital of a company along with equity shares. The key difference between Equity and Preference shares being that the preference shareholders have preferential rights to dividends and capital repayment upon winding up. The Companies Act does not treat the preference shareholders as Creditors of the company. It is also clear that preference shareholders do not enjoy creditor status, unless there is a specific contractual clause converting their investment into a debt obligation. No such clause or document has been produced in the present case.

43. In ‘*EPC Constructions India Ltd. v. Matrix Fertilisers & Chemicals Ltd.* (2023)’, this Tribunal expressly clarified that *Sanjay D. Kakade (Supra)* was an exceptional case, based on a detailed contractual arrangement,

containing buy-back and IRR obligations, and cannot be applied generally to all preference shareholders. The judgment distinguished between *capital infusion* and *financial debt*, emphasizing that unless a transaction embodies a repayment obligation with interest or assured return, thus having the "commercial effect of borrowing" under Section 5(8) of the IBC; it does not constitute a financial debt. This precedent supports the Respondent's submission that the Appellant, as a preference shareholder without a repayment clause, lacks both creditor status and appellate locus.

44. We also find merit in the Respondent's submission that the Appellant has not pleaded anywhere in its appeal that it is a *creditor* of the Corporate Debtor. The entire appeal proceeds on the footing that the Appellant is a shareholder seeking to protect its investment. A new case cannot be built at the stage of arguments to change the capacity of the Appellant from a shareholder to a creditor. Such an exercise would amount to altering the very foundation of the appeal, which is impermissible in law.

45. Even otherwise, the right to appeal under Section 61 is a statutory right, not an equitable one. It must be exercised strictly within the scope of the statute. The IBC restricts appellate jurisdiction to those "*persons aggrieved*" whose legal rights under the Code are directly affected by the impugned order. A shareholder's financial loss or dilution of value does not

constitute such a right; it is merely a consequence of the insolvency process, which affects all investors uniformly.

46. Therefore, the Appellant, being a shareholder or a preference shareholder without any contractual debt rights, does not fall within the category of "person aggrieved" under Section 61. Its interests are adequately represented through the Resolution Professional and the mechanisms provided under the IBC. Allowing such appeals by shareholders would undermine the purpose of the Code by introducing multiplicity and delay.

47. Based on the discussion above, we observe the following:

- (i) The Appellant has filed the present appeal purely in its capacity as a shareholder of the Corporate Debtor, as admitted in its pleadings. It is also admitted in the pleadings that the Appellant as well as Corporate Debtor were passive investors, without any assets or personnel. In such a situation, it is not possible for such entities to exercise control over the AOP as claimed;
- (ii) The Appellant has not demonstrated any *direct legal injury* caused by the admission order, apart from a reflective or derivative loss to its investment;
- (iii) Preference shareholding, without an explicit debt-creating agreement, does not confer the status of a financial creditor or aggrieved person;

(iv) The decision of the 3-member Bench of this Tribunal in '*Park Energy Pvt. Ltd. v. State Bank of India* (2025 SCC OnLine NCLAT 1289)' and *EPC Constructions (2023)* squarely applies to the present case.

48. Accordingly, we hold that the present appeal is not maintainable, as the Appellant is not a "person aggrieved" under Section 61 of the code. The Appellant's shareholder status, whether equity or preference, does not confer any locus to challenge the admission of the Corporate Debtor's insolvency.

ISSUE 2: Whether the impugned order dated 14.07.2025 admitting the Corporate Debtor into CIRP suffers from any legal infirmity?

49. The Appellant has also assailed the order dated 14.07.2025 passed by the Adjudicating Authority (NCLT, Mumbai) primarily on the ground that the admission of insolvency proceedings against the Corporate Debtor, '*Hem Infrastructure and Property Developers Pvt. Ltd.*', was erroneous both in fact and law. It is argued that the Adjudicating Authority failed to appreciate the true nature of the transaction and the role of the Corporate Debtor therein. It is submitted that the principal borrower of Respondent 1/Financial Creditor was an Association of Persons (AOP) named *M/s Hem Bhattad*, formed under an Agreement dated 06.09.2006. The Corporate Debtor, according to the Appellant, was one of the participants in that AOP, holding a 35.5% share in the distributable income and acting as a *passive conduit* or

financial participant. The Appellant contends that the Adjudicating Authority erroneously treated the Corporate Debtor as a direct obligator, whereas its liability, if any, was derivative or contingent on the obligations of the AOP.

50. The Appellant further argues that the Corporate Debtor's involvement was limited to providing a corporate guarantee for the credit facilities extended to the AOP. It is submitted that such a guarantee, without an independent disbursement of debt to the Corporate Debtor itself, cannot give rise to a *financial debt* within the meaning of Section 5(8) of the IBC. Therefore, initiation of CIRP against the Corporate Debtor, when the primary default was by the AOP, is claimed to be legally untenable.

51. Additionally, it is argued that the Adjudicating Authority failed to appreciate that the AOP was a functioning entity having assets of its own, and that the Financial Creditor could have proceeded against it directly. According to the Appellant, the Financial Creditor's selective invocation of guarantee and initiation of CIRP against the Corporate Debtor, without exhausting remedies against the AOP, demonstrates *mala fides* and an attempt to strategically gain control over valuable real estate held by the Corporate Debtor.

52. The Appellant has also attempted to suggest that the NCLT failed to consider whether there existed any pre-existing dispute regarding the quantum of default or the enforceability of the guarantee, which would have

warranted dismissal of the petition at the threshold. On these grounds, it is contended that the order admitting the petition was mechanically passed and deserves to be set aside.

53. Per contra, learned counsel for the Respondent-Financial Creditor has submitted that the order of admission passed by the Adjudicating Authority is perfectly valid, well-reasoned, and in consonance with the settled principles under Section 7 of the IBC. He submitted that the Corporate Debtor had executed an unequivocal corporate guarantee in favour of JM Financial Credit Solutions Ltd. securing the credit facilities granted to the AOP *M/s Hem Bhattad*. The default committed by the AOP constituted a default under the guarantee as well, thereby triggering the Corporate Debtor's co-extensive liability under Section 128 of the Indian Contract Act, 1872. The existence of debt and default, therefore, stood conclusively established before the Adjudicating Authority.

54. It is further contended that under the scheme of Section 7 of the IBC, a financial creditor is entitled to proceed either against the principal borrower or against the corporate guarantor, or simultaneously against both, since the liability of the guarantor is independent and coextensive. The Adjudicating Authority was thus not required to await exhaustion of remedies against the principal borrower/ AOP before initiating CIRP against the Corporate Debtor.

55. The Respondent points out that the Appellant has not disputed the execution of the corporate guarantee or the occurrence of default. Once these two conditions stood satisfied, the Adjudicating Authority was bound to admit the application, as held by the Hon'ble Supreme Court in '*Innoventive Industries Ltd. v. ICICI Bank* [(2018) 1 SCC 407]'. The IBC being a summary and time-bound code, the Adjudicating Authority cannot enter into collateral or extraneous questions concerning business structure, internal participation, or equitable considerations.

56. Respondent also argued that the argument of the Corporate Debtor being merely a "passive investor" is factually incorrect and legally irrelevant. Once a guarantee is executed by a company, it assumes the character of a financial obligation enforceable against the company as a "corporate person" under the IBC. The Appellant, being merely a shareholder, has no right to re-litigate the admission order by questioning the commercial wisdom of the Financial Creditor's decision to proceed against the guarantor. The Respondent therefore submits that the NCLT's order, being based on correct appreciation of debt, default, and guarantee, calls for no interference by this Tribunal.

57. We have carefully perused the impugned order dated 14.07.2025. The scope of inquiry at the stage of admission under Section 7 of the IBC is limited, the Adjudicating Authority is required to ascertain only (a) the

existence of a financial debt, and (b) occurrence of a default. If both are proved on record, admission is mandatory; no equitable discretion lies to reject a petition on other grounds. This position has been repeatedly emphasized by the Hon'ble Supreme Court in '*Innoventive Industries Ltd. v. ICICI Bank* [(2018) 1 SCC 407]' and '*E.S. Krishnamurthy v. Bharath Hi-Tech Builders Pvt. Ltd.* [(2022) 3 SCC 161]'.

58. In the present case, it is undisputed that JM Financial Credit Solutions Ltd. extended certain financial facilities to *M/s Hem Bhattad (AOP)*, and that the Corporate Debtor stood as a corporate guarantor for those facilities. The guarantee deed is not denied. Upon default by the AOP in repayment, the liability of the guarantor immediately crystallized. Section 128 of the Indian Contract Act, 1872, makes the liability of a surety coextensive with that of the principal debtor, unless the contract provides otherwise. There is nothing on record to show that the guarantee was conditional or limited.

59. The Appellant's plea that the Corporate Debtor was only a "passive conduit" and not actively involved in the AOP's operations cannot dilute the legal effect of the executed guarantee. Once a corporate entity voluntarily binds itself as a guarantor, it becomes independently answerable for the debt, and such liability constitutes a financial debt within the meaning of Section 5(8)(i) of the Code, as recognized by the Hon'ble Supreme Court in

'Laxmi Pat Surana v. Union Bank of India [(2021) 8 SCC 481]'. The Adjudicating Authority, therefore, rightly admitted the Section 7 petition upon satisfaction that (i) financial debt existed by virtue of the guarantee, and (ii) default had occurred.

60. The contention that the Financial Creditor should have first proceeded against the AOP has no legal foundation. The IBC does not impose such a condition. On the contrary, the judgements of Hon'ble Supreme Court in both *'Laxmi Pat Surana (supra)* and in *'State Bank of India v. Athena Energy Ventures Pvt. Ltd. [(2021) 11 SCC 309]'* affirm that a creditor has the choice to initiate proceedings either against the borrower or the guarantor. The liability of both is concurrent, and the creditor's choice to proceed against the guarantor cannot be questioned by the guarantor or its shareholders.

61. It is also relevant to observe that the Adjudicating Authority's order discloses clear satisfaction regarding the existence of debt and default, supported by documentary evidence. There is no material irregularity or perversity in its reasoning. The arguments advanced by the Appellant are essentially attempts to reopen factual findings or to question the commercial rationale behind the creditor's choice of proceedings, both of which are impermissible in appellate jurisdiction under Section 61.

62. Further, the claim that the Corporate Debtor's assets or its participation in the AOP were not directly linked to the default is immaterial,

for the purpose of admission. The law contemplates a *summary adjudication* at that stage; detailed inter-se-disputes relating to claims or restructuring of liabilities fall within the domain of the resolution process under the supervision of the Resolution Professional and Committee of Creditors.

63. We also note that there is no allegation of fraud, collusion, or procedural irregularity in the conduct of the proceedings before the NCLT. The Appellant's grievance essentially arises from its desire to protect its investment interest in the Corporate Debtor and the underlying AOP, which does not amount to a legal injury under the IBC. Once insolvency is admitted, the management of the Corporate Debtor vests in the IRP, and the Code provides a structured process for all stakeholders, including shareholders, to lodge their claims or participate through statutory mechanisms. The Appellant cannot, therefore, substitute itself for the Corporate Debtor or the IRP and contest the admission.

64. For the foregoing reasons, we hold that the impugned order dated 14.07.2025 admitting '*Hem Infrastructure and Property Developers Pvt. Ltd.*' into CIRP under Section 7 of the IBC was passed in conformity with statutory requirements. The Adjudicating Authority correctly concluded that (i) a financial debt existed by virtue of a valid corporate guarantee, and (ii) default had occurred. The Appellant's arguments regarding the AOP's role, alleged passive participation, or business equities are irrelevant in the

context of Section 7 adjudication. Hence, the impugned order suffers from no legal infirmity, procedural defect, or misapplication of law. The challenge to the same is devoid of merit.

65. In view of the findings above, the appeal is dismissed. Pending IAs if any are closed. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Mr. Indevar Pandey]
Member (Technical)

SA/Pragya (LRA)