

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1069 of 2025

(Arising out of Order dated 10.06.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Guwahati Bench, Guwahati in Inv. Pet.(IBC)/1/GB/2024 in CP (IB)/8/GB/2024)

IN THE MATTER OF:

Anil Singh

...Appellant

Versus

SREI Equipment Finance Ltd. & Anr.

...Respondents

Present:

For Appellant : Mr. Krishnendu Dutta, Sr. Advocate with Ms. Aakansha Prasad, Ms. Kirti and Mr. Harsh Gurbani, Advocates.

For Respondents : Mr. Sanjiv Sen, Sr. Advocate with Mr. Surjadipta Seth, Mr. Aditya Kanodia, Ms. Suparna Sarda, Ms. Anjali Singh and Mr. Prahalad Balaji, Advocates for R-1.

Mr. Sanjay Batt and Mr. Sarthak Bhandari, Advocates for R-2.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed challenging order dated 10.06.2025 passed by National Company Law Tribunal, Guwahati Bench, Guwahati rejecting Intervention Petition No.(IBC)/1/GB/2024 filed by the Appellant in Section 7 proceedings initiated by Respondent No.1 against Respondent No.2.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:

- (i) A Section 7 application has been filed by SREI Equipment Finance Ltd. against the Corporate Debtor (“**CD**”) – Kitply Industries Ltd., on which CP(IB)/8/GB/2024 has been registered. The CD – Kitply Industries Ltd. was admitted to Corporate Insolvency Resolution Process (“**CIRP**”) by an order dated 01.05.2018 passed in company petition filed by IDBI Bank Ltd., in which CIRP a Resolution Plan was approved.
- (ii) Kitply Industries Ltd. – CD was taken over by one Plytinum Marketing Ltd. through Special Purpose Vehicle formed and owned by SREI Multiple Asset Investment Trust. The CD after having taken over by Plytinum Marketing Ltd. is alleged to have taken financial facilities from Respondent No.1 - SREI Equipment Finance Ltd. and SREI Equipment Finance Ltd. has alleged default against Respondent No.2 in Section 7 application. SREI Equipment Finance Ltd. – Respondent No.1 itself underwent CIRP and a Resolution Plan proposed by National Asset Reconstruction Ltd. (“**NARCL**”) was approved on 11.08.2023.
- (iii) In SREI Equipment Finance Ltd. an Administrator was appointed by the Reserve Bank of India (“**RBI**”). The Administrator filed an application under Section 66 of the IBC in the CIRP of Respondent No.1, seeking avoidance of various transactions, including transactions entered by Respondent No.1 with Respondent No.2. Section 7

application was filed by Respondent No.1 against Respondent No.2 on 04.05.2024.

- (iv) On 17.09.2024, the Appellant filed an Intervention Application being Inv. Pet.(IBC)/1/GB/2024 on behalf of himself as well as representative of another 129 workers of Kitply Industries Ltd. – the CD. Intervention Petition was filed by the Appellant under Section 65 of the IBC read with Rule 11 of the NCLT Rules, 2016 praying for dismissal of Section 7 application and to impose cost on Respondent No.1 for fraudulently filing itself Section 7 petition. The said Intervention Petition was opposed by both Respondent Nos.1 and 2. The Adjudicating Authority by the impugned order rejected the Intervention Petition. Aggrieved by which order, this Appeal has been filed.

3. We have heard Shri Krishnendu Dutta, learned Senior Counsel appearing for the Appellant and Shri Sanjiv Sen, learned Senior Counsel appearing for Respondent No.1.

4. Shri Krishnendu Dutta, learned Senior Counsel appearing for the Appellant submits that the Adjudicating Authority committed error in not considering the application filed by the Appellant under Section 65. The Appellant as well as 129 workers of the Kitply Industries Ltd. – CD being stakeholders of the CD, have moved an application alleging fraudulent and collusive initiation of CIRP, which application deserved to be considered on merits. The Adjudicating Authority relying on the

judgment of this Tribunal in ***Deb Kumar Majumder & Ors. vs. State Bank of India – Company Appeal (AT) (Ins.) No.44 of 2019***, which has no application, has held that Appellant has no locus. The Appellants being the stakeholders of the CD, have every right to bring it to the notice of the Court about the malicious and fraudulent initiation of CIRP. It is submitted that Respondent Nos.1 and 2 are related party and Respondent No.1 controlled Respondent No.2 through Resolution Applicant in the earlier CIRP initiated against the CD. It is submitted that Section 65 application is maintainable pre-admission stage. It is submitted that this Tribunal as well as the Hon'ble Supreme Court in large number of cases have held that considering the provisions of Section 65 of the IBC, it is necessary by Adjudicating Authority to consider the application, if allegations of malicious and fraudulent initiation has been made. The Adjudicating Authority committed error in holding that in Section 7 proceedings, necessary parties to be heard are limited to the Financial Creditor and CD. Third parties do not possess any locus to be heard at the preliminary stage. The Adjudicating Authority further held that allegations under Section 65 relating to fraudulent and malicious initiation must be raised, if at all by the CD, through its authorized representative. The Adjudicating Authority held that Appellant, who is workmen through CD, neither proper nor necessary party for want of locus standi in the case. It is submitted that Adjudicating Authority took completely erroneous view of the matter in refusing to adjudicate the application filed by the Appellant under Section 65. The Adjudicating

Authority erroneously distinguished the judgment of the Hon'ble Supreme Court in ***Beacon Trusteeship Ltd. vs. Earthcon Infracon Pvt. Ltd. & Anr. - (2020) SCC OnLine SC 1233*** and other cases relied by the Appellant. Shri Krishnendu Dutta further submits that Administrator of Respondent No.1 has already filed an application under Section 66 of IBC, where transaction in question, which are basis for Section 7 application are alleged to be fraudulent and have been prayed to be avoided, which application is still pending consideration.

5. Shri Sanjiv Sen, learned Senior Counsel appearing for Respondent No.1 opposing the submission of the Appellant submits that an application filed by a lone workers of the CD has rightly not been entertained by the Adjudicating Authority. The purpose of application for intervention was only to derail the CIRP. The Adjudicating Authority has rightly taken the view that the Appellant, who is a lone workers of the CD has no locus to file any intervention petition in Section 7 proceedings. Shri Sen submits that pendency of Section 66 application filed by the Administrator of Respondent No.1 has no bearing on Section 7 application filed by Respondent No.1, which needs to be proceeded irrespective of pendency of Section 66 application.

6. Learned Counsel for the parties have placed reliance on various judgments of this Tribunal and the Hon'ble Supreme Court, which we shall refer to while considering the submissions in detail.

7. Section 7 application was filed by Respondent No.1 against Respondent No.2 on 04.05.2024 and Intervention Petition has been filed

by the Appellant on 17.09.2024. The Adjudicating Authority has passed order on Intervention Petition, we thus need to notice certain facts and pleadings of the Intervention Petition to appreciate the respective submissions of the parties. The Intervention Petition has been filed by the Appellant and 129 other workers of the CD – Kitply Industries Ltd. The 129 workers have authorized the Appellant Anil Singh to file an application on their behalf. The copy of the Intervention Petition is filed as Annexure A-8 to the Appeal. At page 176 of the Appeal, names of 130 workers of the CD have been mentioned, on whose behalf the intervention is claimed. The Applicants pleaded in the application that they are workers engaged by Kitply Industries Ltd. at different locations and units and are presently working at the addresses mentioned in the cause title. In paragraph 1(iv), following is pleaded:

“1.iv. The Applicants are vitally interested in the present proceedings as their livelihood depends on Kitply and any misconceived, collusive and untenable insolvency resolution process that may be initiated therein shall seriously affect the Applicants. The Applicants have locus to intervene in the Section 7 Petition and deserve to be heard before further Orders are passed therein.”

8. Under the heading facts of the case, the Applicant has pleaded the relevant facts for consideration. Referring to earlier CIRP against the CD in paragraphs-10, 16, 17, 18 and 19, following have been pleaded:

“10. Ultimately the resolution plan proposed by SREI VIF was approved by this Hon'ble Tribunal by Order dated December 7, 2018. SREI VIF incorporated a 100% owned Special Purpose Vehicle in the name and style of Plytinum

Marketing Private Limited ("Plytinum") for taking over the 100% share capital of Kitply under the Resolution Plan.

16. Further, Plytinum, acting on the instructions and control of Trinity, appears to have caused the approval/sanction of ostensible financial assistance to Kitply from SEFL and SIFL for a limit of Rs. 130 Crore and Rs.120 Crore respectively.

17. Upon directions of Trinity, Kitply appears to have allegedly withdrawn a total sum of Rs.96.27 Crore from SEFL and Rs.81.65 Crore from SIFL, both of which are related to Trinity, and therefore also related to Kitply.

18. In other words, for financing and implementing the Said Plan, Plytinum allegedly infused only a sum of Rs.1 Crore as equity in Kitply and caused SEFL and SIFL to ostensibly provide loan of the alleged sum of Rs.177.92 Crore. From the said alleged sum of Rs.177.92 Crore, approximately Rs.165.00 Crore appears to have been fraudulently routed back to SIFL on the same day.

19. The said ostensible loans from SEFL and SIFL were fraudulently and collusively approved because Plytinum and Kitply are related entities and the ostensible loan allowed SEFL/SIFL to show unreal book profits. From the enquiries made by the Applicants, it is evident that the said transactions were fraudulent and circular transactions for the wrongful gain of SEFL and SIFL.”

9. The Applicant further pleaded that loan from SEFL and SIFL to Kitply was a fraudulent circular transaction. In paragraph 22 of the application, following has been pleaded:

“22. It is of utmost importance to note that the Administrator of SEFL, appointed during the CIRP of SEFL, filed an application under Section 66 of IBC against Kitply and the erstwhile promoters of SEFL, alleging that the loan

from SEFL and SIFL to Kitply were fraudulent circular transactions wherein the money from SEFL/SIFL was fraudulently routed back to SIFL. In other words, in the RBI initiated CIRP against SELF/SIFL the administrator nominated by RBI has come to a categorical finding regarding the fraudulent nature of the transaction.”

10. There are several other averments in the Intervention Application.

11. The Memo of Intervention Petition mentions that “*Application for intervention and further reliefs under Section 65 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016*”. The Intervention Application was supported by an affidavit of Anil Singh, the Appellant, where he claimed that he is the authorized signatory to the Applicant Nos.2 to 130. In paragraph-1 of the affidavit, following has been stated:

“1. I am the Authorised Signatory of the Applicant Nos.2 to 130 herein. I am aware of the facts of the present case and I am competent to make, affirm and file the instant affidavit on my behalf and on behalf of Applicant Nos.2 to 130.”

12. The Intervention Application was also supported by documents, power of attorney, which contained the signatures of 129 workers, on whose behalf the application is stated to be filed. In the impugned order, the Adjudicating Authority in the very first paragraph has noted that application is under Section 60, sub-section (5) read with Rule 11 of NCLT Rules, 2016. In paragraph-1 of the impugned order, prayers made in the Intervention Application have also been noticed. It is useful to note paragraph 1 of the order, which is as follows:

“1. The present Intervention Petition has been filed by the Petitioners under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (“Code”) read with Rule 11 of NCLT Rules, 2016 seeking the following reliefs:

- a) CP(IB)/8/GB/2024 be dismissed in limine,
- b) Penalty of Rs. 1 Crore be imposed on the Respondent No. 1 in the instant Application, for fraudulently filing the collusive section 7 petition against Kitply;
- c) Issue notice to the Reserve Bank of India before proceeding any further with the hearing of CP(IB)/8/GB/2024
- d) Stay of further proceedings in CP(IB)/8/GB/2024 till the disposal of the instant Application;
- e) The Applicants be permitted to intervene in CP(IB)/8/GB/2024;
- f) Ad interim order in terms of prayer (c) above;
- g) Costs;
- h) Any other order/directions that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances as mentioned above.”

13. It is relevant to notice that although Intervention Application clearly mentions in the Memo that it is an application for intervention and further reliefs under Section 65 of the IBC read with Rule 11 of the NCLT Rules, 2016, but the Adjudicating Authority while referring to the application in paragraph-1 has mentioned the application under Section 60, sub-section (5) read with Rule 11 of the NCLT Rules, 2016. The Adjudicating Authority failed to notice that application specifically mentions relief under Section 65 of the IBC. Upto paragraph-1 to

paragraph-5, the Adjudicating Authority has noticed the submissions and case laws related to the parties. In paragraph-6, the Adjudicating Authority has observed that Tribunal is to first examine whether the Intervention Petition is maintainable. In paragraph-6, following has been observed:

“6. Heard the learned counsel for the parties and perused the available records. This Tribunal is of the view that we should first examine whether the present Intervention Petition is maintainable?”

14. In paragraph-9, the contentions of the Appellant/ Applicant has been noticed, which are as follows:

9. The present Intervention Petition filed by the employees/workers seeks dismissal of the main petition under Section 7 of the Code filed by Respondent No. 1 against Respondent No. 2. They allege that the initiation of CIRP is fraudulent, collusive, and based on nonexistent debt, aimed at legitimizing sham transactions and adversely impacting their employment and livelihood. The Petitioners submit that the matter warrants determination under Sections 65 and 66 of the Code, and that fraud must be adjudicated before any admission under Section 7.

15. In paragraph-12, the Adjudicating Authority has relied on the judgment of ***Deb Kumar Mujumdar Vs. State Bank of India***. In paragraph 14, it has been held by the Adjudicating Authority that workmen of Respondent No.1 are neither the proper nor the necessary parties for want of locus standi in this case. In paragraphs 12 to 16, following has been observed:

“12. Reliance is placed on the judgment of the Hon’ble NCLAT in Deb Kumar Mujumdar Vs. State Bank of India Company Appeal (AT) (Ins.) No. 44/2018 wherein it was held that at the stage of admission of an application under Section 7 of the IBC, only the Corporate Debtor is entitled to be heard, and no other financial or operational creditor has a right to intervene or be heard.

13. It is a settled position that at the stage of admission of a petition under Section 7 or Section 9 of the Code, the necessary parties to be heard are limited to the Financial Creditor and the Corporate Debtor. Third parties, including intervenors, do not possess any locus to be heard at this preliminary stage. Allegations under Section 65 of the Code, relating to fraudulent or malicious initiation of proceedings, must be raised, if at all, by the Corporate Debtor through its authorised representative. Entertaining multiple representations in such proceedings would defeat the objective of a time-bound insolvency resolution framework, as the transactions in question are between the Corporate Debtor and the Financial Creditor.

14. Therefore, the Petitioners, who are workmen to the Respondent no. 2 are neither the proper nor the necessary parties for want of locus standi in this case. Their interest is well guarded by the Code, irrespective of the outcome of Section 7 application before us. We have noted the submission of Respondent No. 2 carefully that it is a solvent entity actively engaged in its operations.

15. In view of the above, the application filed by the Petitioners does not rebut the basic ingredients under Section 7 of the Code, i.e. existence of a financial debt and default thereof. Hence, the intervention petition is not maintainable

16. Accordingly, this intervention petition, i.e. Inv. Pet. (IBC)/1/GB/2024 in CP(IB)/8/GB/2024 filed by the

Petitioners is hereby rejected. List the main CP(IB)/8/GB/2024 for further consideration of the on 21.07.2025.”

16. We need to first notice the judgment in **Deb Kumar Mujumdar Vs. State Bank of India** (supra) relied by the Appellant. Copy of the judgment has been placed at page 404 Vol.-2 of the Appeal. In the above case, in section 7 proceedings, intervention was sought, which was rejected by the Adjudicating Authority, where it was held that Intervenor has no locus and the matter was adjourned for argument on 17.01.2019. This Tribunal held that at the stage of application under Section 7, no person has right to claim for hearing except the ‘Corporate Debtor’. Following has been observed by this Tribunal:

“We agree with the observations made by the Adjudicating Authority at the stage of application filed under Section 7 that no person has right to claim for hearing except the ‘Corporate Debtor’. No other ‘Financial Creditor’ or ‘Operational Creditor’ or any other creditor is required to be heard except the ‘Financial Creditor’ who has filed an application under Section 9 of the I&B Code. The Adjudicating Authority is required to notice whether there is a ‘debt’ and ‘default’ committed by the ‘corporate debtor’ if the application under Section 7 is filed. On the other hand, if the application is under Section 9, the Adjudicating Authority is to notice whether there is a ‘debt’ and ‘default’ and whether there is a ‘pre-existing dispute’. However, the Adjudicating Authority should also keep in mind the provisions of Section 11 whereunder application under Section 7 or 9 is not maintainable if winding up proceedings has been initiated against the ‘corporate debtor’ as decided by this Appellate Tribunal in “***M/s. Unigreen Global Private Limited vs. Punjab National Bank & Ors. – Company***”

Appeal (AT)(Insolvency) No. 81 of 2017". In the aforesaid background while we do not allow the appellants to oppose or support the application at the stage of admission, direct the Adjudicating Authority to decide the matter taking into consideration the fact brought by the appellant to its notice to find out whether a winding up proceedings has already been initiated against the 'corporate debtor' or not. If so required, the State Bank of India and M/s. Tantia Construction Limited should be asked to clarify the same.

If the appellants are aggrieved by the order passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, in such case, the appellants will challenge the same before this Appellate Tribunal and raise all the issues as raised in this appeal. The appeal stands disposed of with the aforesaid directions and observations. No cost."

17. The present is a case where application was filed under Section 65 of the IBC alleging fraudulent and malicious intent for initiation of Section 7 application. The Applicants were not only seeking intervention in Section 7 application but prayed for dismissal of Section 7 application under Section 65. Learned Counsel for the Appellant has relied on the judgment of the Hon'ble Supreme Court in **Beacon Trusteeship Ltd. vs. Earthcon Infracon Pvt. Ltd. & Anr. – (2020) SCC OnLine SC 1233**, where Section 65 of IBC came for consideration. The Hon'ble Supreme Court held that it is necessary for the Adjudicating Authority in case such an allegation is raised to go into the same. After noticing Section 65 of the IBC, following has been observed in paragraphs 7 and 8:

"7. Considering the provision of section 65 of the IBC, it is necessary for the Adjudicating Authority in case such an

allegation is raised to go into the same. In case, such an objection is raised or application is filed before the Adjudicating Authority, obviously, it has to be dealt with in accordance with law. The plea of collusion could not have been raised for the first time in the appeal before the National Company Law Appellate Tribunal or before this court in this appeal. Thus, we relegate the appellant to the remedy before the Adjudicating Authority.

8. In case, a proper application is filed, aspect whether the proceedings have been initiated in collusive manner will be looked into, in accordance with law and the appropriate orders have to be passed, considering the facts and circumstances of the case. We have made it clear that we have not commented on the merit of the case. We set aside the impugned order passed by the National Company Law Appellate Tribunal [See *Beacon Trusteeship Ltd. v. Earthcon Infracon P. Ltd.*, (2020) 10 Comp Cas-OL 551(NCLAT).] and dispose of the appeal in accordance with the aforesaid direction.”

18. Learned Counsel for the Appellant has relied on several judgments of this Tribunal in support of his submission. The ***Hytone Merchants Pvt. Ltd. vs. Satabadi Investment Consultants Pvt. Ltd. – (2021) SCC OnLine NCLAT 598***, was a case where Section 7 application was rejected by the Adjudicating Authority. The said order was challenged in this Tribunal. This Tribunal has noticed provisions of Section 65 of the IBC and held that if any person initiate CIRP fraudulently or with malicious intent, the application can be rejected. In paragraphs 38 and 39, this Tribunal held following:

“**38.** Therefore, the Code prescribes penalties under Section 65 and 75. Furthermore, Section 65 explicitly says that if

any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for resolution of Insolvency or liquidation, as the case may, the Adjudicating Authority may impose a penalty.

39. Thus, it is clear that the Adjudicating Authority should be very cautious in admitting the Application so that Corporate Debtor cannot be dragged into Corporate Insolvency Resolution Process with mala fide for any purpose other than the resolution of the Insolvency. Therefore, to protect the Corporate Debtor from the mala fide Initiation of CIRP, the law has provided a penalty under sections 65 and 75 of the Code. Before admitting the Application, every precaution is necessary to be exercised so that the insolvency process is not misused for any other purposes other than the resolution of Insolvency.”

19. Another judgment of this Tribunal, which has been relied by learned Counsel for the Appellant is in ***Company Appeal (AT) (Ins.) No.1406 of 2023 in Devashree Developers Pvt. Ltd. & Ors. vs. Aravali Cylinders Pvt. Ltd.***, where this Tribunal held that application under Section 65 is maintainable after filing of the application under Section 7, 9 or 10 of the IBC. In paragraphs 11 and 12, following have been held:

“**11.** The answer to the aforesaid question is captured in para 16 where this order as this Court has held that the application filed under Section 65 of the Code is maintainable after the application is filed either under Section 7, 9 or 10 of the Code and not after the admission.

12. Thus, in view of the aforesaid discussion and law laid down by the Hon’ble Supreme Court and this court dismissal of the application by the Tribunal only on this

ground that the application has been filed before the admission of the application under Section 7 is not sustainable.”

20. In the above case also, an application filed under Section 65 was rejected, which was revived by this Tribunal for fresh consideration.

21. Another judgment relied by learned Counsel for the Appellant is ***Airwill Intellicity Social Welfare Society through its President vs. M/s. Ascot Projects Pvt. Ltd. – (2023) SCC OnLine NCLAT 2112***, where application for intervention was rejected, which was filed under Section 65. This Tribunal laid down following in paragraphs 19 and 20:

“**19.** In the light of the above, we are of the considered view that when an allegation of fraud being played on the financial creditors and unit buyers of Intellicity Business Park was brought to the notice of the Adjudicating Authority through IA No. 739(ND)/2021 when it was considering section 7 application CP (IB) No. 2356(ND)/2019 with regard to corporate debtor Ascot Projects it ought to have been taken note of by the Adjudicating Authority and the Appellant should have been provided an opportunity to present its case in the Section 7 proceedings of Ascot Projects Pvt. Ltd. in view of the requirement of natural justice and to avoid miscarriage of justice to the Appellant who could have been adversely affected by the admission of section 7 application. We are conscious of the fact that a CIRP initiated through fraud and malicious intent would be a nullity before law.

20. Hence we are therefore of the clear opinion that the Adjudicating Authority should have allowed IA No. 739(ND)/2021 and permitted the Appellant to intervene and participate in the Section 7 proceedings with relation to the corporate debtor Ascot Projects Pvt. Ltd. This was necessary

to avoid miscarriage of justice and would have allowed the Appellant to substantiate its allegation regarding ground as pleaded in IA No. 739(ND)/2021.”

22. There are other judgments relied by learned Counsel for the Appellant, where same proposition has been laid down, which needs no repetition.

23. Learned Counsel appearing for Respondent No.1 has placed reliance on judgment of this tribunal in ***Company Appeal (AT) (Ins.) No. 228 of 2021 in Dharam Vir Malhotra vs. M/s Kaur Sain Spinners Ltd. & Anr.***, which was a case where intervention was sought in Section 7 proceedings initiated by Central Bank of India against the CD. The application was rejected, against which an Appeal was filed, which too was dismissed. It is useful to notice paragraph 15 of the judgment, where following was held by this Tribunal:

“15. After hearing the parties and going through the pleadings made on behalf of the parties, we observe that the application under Section 7 by a Financial Creditor against the Corporate Debtor was pending for consideration and for admission and in the meanwhile, the Appellants are seeking intervention, not on the ground that the Corporate Debtor defaulted in payment of amounts to them, but, on the ground that the Company Petition filed by the Central Bank of India, the Respondent No. 2 herein was not for legitimate reasons but it is a malicious prosecution that falls under Section 65 of the IBC. We have considered the submissions of Respondent No. 2 Bank herein and observe that the Appellants have been ostensibly setup by the Respondent No. 1 Company for the purpose of derailing the lawful action of the Respondent Bank under Section 7 of the IBC. Keeping

in view of the aforementioned facts, we do not find any merit in the Appeal to interfere with the order impugned passed by the Adjudicating Authority. The impugned order dated 19.02.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench, Chandigarh) in IA No. 1/2021 in CP (IB) No. 351/Chd/Pb/2018 is hereby affirmed. The instant Appeal is hereby dismissed. No order as to costs.”

24. In the above case this Tribunal held that the Appellants have been ostensibly setup by the CD for the purpose of derailing the lawful action of the Bank under Section 7. Thus, the rejection of the application was on the aforesaid ground. Further, it is not clear from the application, whether the application filed by the Appellant was also under Section 65 or not. Be that as it may, the said rejection was on the findings as noted above, hence, is clearly distinguishable and does not help the Respondent in the present case.

25. Another judgment relied by learned Counsel for the Respondent No.1 is ***Company Appeal (AT) (Ins.) No.246 of 2024 – New Era Propcon Pvt. Ltd. & Anr. vs. SREI Equipment Finance Ltd.***, where an order of admission under Section 7 was challenged by the Applicant. One of the submissions raised by the Applicant was that the transaction, which is basis of Section 7 application is already pending adjudication before Adjudicating Authority in Section 66 application filed by Administrator of the SEFL. This Tribunal dismissed the Appeal holding that mere pendency of Section 66 application does not impede the hearing of Section 7 application. In paragraphs 8 and 11, this Tribunal observed following:

8. The submission of the Appellant is that the transaction which is sham or collusive can only create an illusion that money has been disbursed to a borrower. The present is a case where there is no dispute raised that money has not been disbursed. The disbursement of money is not an issue raised. The filing of Section 7 application by the Administrator of SEFL was on the basis that loan was sanctioned and in pursuance of the loan amount was disbursed. Copy of the Statement of Account was also filed along with the Section 7 application which also indicate that amount was disbursed. The observation made by the Hon'ble Supreme Court in Para 48 of the judgment in "Phoenix ARC Private Limited vs. Spade Financial Services Limited & Ors." that where a transaction is sham or collusive, it would only create an illusion that money has been disbursed to a borrower is not applicable in the present case. Present is a case where disbursal is not an issue. The question whether the loan transaction is fraudulent transaction within the meaning of Section 66 is engaging attention of the Adjudicating Authority in a separate application filed by Administrator of SEFL which needs no consideration or observation in the present proceeding.

11. The above facts makes it clear that the debt and default is not denied only by the Corporate Debtor but the Appellants also. We fail to see any valid ground on which Appellants can question order of Adjudicating Authority admitting the Section 7 application."

26. There can be no dispute to the proposition that pending of Section 66 application, questioning the transaction, does not impede the proceedings of Section 7 application. The above judgment of this Tribunal was on its own facts. The present is not a case where the Appellant is relying only on fact of pendency of Section 66 application filed by the

Administrator of SIFL questioning the transaction. Rather, the Appellant in their application has given other facts, pleading that Respondent No.1 has control on Respondent No.2 through its related entities and the transaction, which is basis of Section 7 application is a circular transaction. Respondent No.2 once has already undergone CIRP and was taken over by related party of Respondent No.1 and the application under Section 7 has been maliciously initiated. We have noticed relevant observation of the Adjudicating Authority in the impugned order. The Adjudicating Authority has not proceeded to consider Section 65 application, it has only observed that the Appellant has no locus, it being neither proper nor necessary party in Section 7 application. Insofar as, Section 7 proceedings are concerned, there can be no quarrel to the observation that an Intervenor, who may not be necessary party or proper party, cannot intervene, but in a case where prayer of the Applicant under Section 65 regarding pleading to initiation of CIRP with fraudulent and malicious intent, the Adjudicating Authority ought to have looked into the allegations carefully. The IBC clearly prohibits any malicious or fraudulent initiation of CIRP and when in an application, it has been brought into notice by the stakeholders, the said application deserves consideration on merits. Rejection of the application only on the ground that Applicant has no locus, is unsustainable.

27. Shri Sanjiv Sen, learned Senior Counsel for Respondent No.1 submits that Intervention Application was filed by a lone workers, who cannot be allowed to scuttle the CIRP. We have already noticed that the

Appellant filed the application and the application contained the names of 130 workers, who have authorized the Appellant to file the application on their behalf and whose signatures were there in the application. Thus, 130 workers who are stakeholders in the CIRP have come up with the application. The application was not filed by any stranger or third party, who has no stake in the CIRP. The 130 workers, who sought to file application were all workers of the CD - Kitply Industries Ltd. and were stakeholders.

28. Learned Counsel for Respondent No.1 further contended that it is open for the CD to raise the issue pertaining to fraudulent initiation of CIRP, which can be considered by the Adjudicating Authority. It is further submitted that allegations, which have been made by the CD, are the same, which are being sought to be raised by the Appellant/Applicant. Be that as it may, the Appellant, who are stakeholders and workers of the Kitply Industries Ltd., when have raised the issues by filing Section 65 application, the said issues need consideration, as has been held by the Hon'ble Supreme Court in **Beacon Trusteeship Ltd.** (supra). It is not a case that Adjudicating Authority has returned any finding that Intervention Application has been filed to derail the CIRP. It was open for the Adjudicating Authority to consider the application under Section 65 on merits even at the time of hearing of Section 7 application.

29. In view of the foregoing discussions and our conclusions, we are of the view that order impugned cannot be sustained. In result, the impugned order dated 10.06.2025 rejecting Intervention Petition

(IBC)/1/GB/2024 is set aside. The Intervention Petition (IBC)/1/GB/2024 is revived, which may be heard by the Adjudicating Authority and decided in accordance with law. It shall be open for the Adjudicating Authority to hear the Intervention Petition (IBC)/1/GB/2024 simultaneously with CP (IB)/8/GB/2024. We make it clear that we are not expressing any opinion on the merits of the Intervention Petition (IBC)/1/GB/2024 and it is for the Adjudicating Authority to consider the application and decide the same in accordance with law. The Appeal is disposed of accordingly. Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

25th August, 2025

Ashwani