NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1686 of 2023

[Arising out of order dated 12.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court – II) in C.P. (IB) No. 21/ND/2021]

IN THE MATTER OF:

Ajit Kumar Gupta **...Appellant**

Versus

Uniexcel Ltd. & Anr. **...Respondents**

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Saurabh Kalia, Mr. Ateendra Saumya Singh, Ms. Heena Kochar, Ms. Tanu, Mr. Anuj Tiwari, Mr. Kaanchi Ahuja and Ms. Palak Kalra, Advocates.

For Respondents : Mr. Gaurav Mitra, Mr. Rachit Batra, Mr. Rachit Khandelwal and Ms. Isha Bhalla, Advocates

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal by a suspended director of the corporate debtor – Uniexcel Developers Pvt. Ltd. has been filed challenging the order dated 12.12.2023 passed by the National Company Law Tribunal (NCLT), New Delhi Bench, Court – II in C.P. (IB) No. 21(ND)/2021. Adjudicating authority by the impugned order has admitted Section 7 application filed by the R-1 Uniexcel Ltd., aggrieved by which order, this appeal has been filed.

2. Background facts of the case necessary to be notice for deciding the appeal are:

i. The corporate debtor Uniexcel Developers Pvt. Ltd. was established in 2007 as private company engaged in the business of construction. The corporate debtor was to set up a project for the information technology sector on the part of land allotted by Noida Authority.

ii. The R-1 is a company registered under the International Business Companies Act, Territory of the British Virgin Island. The R-1 hereinafter referred to as the financial creditor remitted a sum of US $ 1,24,000/- on 05.05.2008 to the corporate debtor and other sum of US $ 1,42,000/- was remitted by a company to corporate debtor on 22.09.2008. The aforesaid amount was remitted on agreement with the financial creditor shall be allotted shares in the corporate debtor's company.

iii. Due to dispute with Noida Authorities the project could not materialise on request made on behalf of the financial creditor allotment of shares was put on hold. The financial creditor in the year 2015, wrote to the corporate debtor to refund the amount remitted by financial creditor.

iv. The corporate debtor wrote to the HDFC Bank to refund the share application money to R-1. Bank informed that application of refund was to be made by R-1.

v. The financial creditor wrote to the corporate debtor to refund the money and also sent a letter dated 03.07.2025 to the corporate debtor. The money which was remitted by the financial creditor to the corporate

debtor having not been refunded as stated by the corporate debtor, the financial creditor filed a Section 7 application on 13.02.2019 being IB 403(ND)/2019 claiming default of financial debt.

vi. In the said petition, reply was filed by corporate debtor to which rejoinder was filed. Adjudicating authority heard the application framed three questions for consideration i.e., **(a)** whether the applicants claim is barred by limitation? **(b)** whether the share application can be categorised as financial debt? **(c)** whether there is a default on behalf of the respondent in payment of the amount claimed?

vii. The adjudicating authority heard the parties and answered question No. (a) & (b) in favour of the financial creditor. On question No. (c) adjudicating authority held that respondent willing to refund the money even now and required letter from the applicant dated 03.07.2015 is not proved to be delivered to the respondent thus the applicant is directed to fulfil the formalities to get the refund within three months and in event respondent failed to refund the money, applicant has the liberty to revive the application.

viii. The R-2 company filed an appeal being Comp. App. (AT) (Ins.) No. 962/2019 challenging the order insofar as liberty was granted to the financial creditor to revive Section 7 application, in which appeal the finding that amount remitted by company to a financial debt was not questioned.

ix. This Tribunal by judgment dated 26.11.2019 set aside the portion of paragraph 11 of the judgment by which liberty was granted to revive the application. This Appellate Tribunal while setting aside the aforesaid part of the paragraph 11, however, disposed of the appeal with liberty to financial creditor to take necessary steps and file fresh application under Section 7, if so advised. Question of limitation was left open.

x. After the judgment of this Tribunal 26.11.2019, the financial creditor sent communication dated 06.12.2019 to R-2 furnishing the requirement as desired by letter dated 02.07.2015 for remitting the amount in favour of the financial creditor. In spite of sending the desired letter dated 06.12.2019 amount was not remitted by financial creditor.

xi. A Section 7 application was filed by financial creditor on 12.01.2021 which was registered as IB 21/2021. The application came to be dismissed by adjudicating authority *in limine* by order dated 10.02.2021 on the ground that application is barred by limitation.

xii. Comp. App. (AT) (Ins.) No. 771/2021 was filed by financial creditor challenging the order dated 10.02.2021, which appeal was allowed on 21.11.2022 holding that application under Section 7 filed by the financial creditor is well within limitation and the appeal was allowed, order dated 10.02.2021 was set aside and matter was remitted for a fresh consideration.

xiii. In pursuance of the order dated 21.11.2022 the Section 7 application was heard by the adjudicating authority and by impugned order dated 12.12.2023 the application has been admitted. Adjudicating authority held the application to be well within time. Adjudicating authority by impugned order has held that the findings returned by earlier order of the NCLT in paragraph 10 of the order dated 25.07.2019 has not been interfered with and only part of the order in paragraph 11 has been interfered with by which, liberty was given to revive the application.

xiv. Adjudicating authority further held that corporate debtor has accepted his liability to refund the amount. Adjudicating authority admitted Section 7 application, aggrieved by which order, this appeal has been filed.

xv. Appeal came to be heard on 21.12.2023. Appellant to show his *bona fide* offer to deposit the amount of ₹1,14,02,640/- with the Registrar NCLAT. This Tribunal permitting the appellant to deposit the said amount pass an interim order directing that no further steps shall be taken in pursuance of impugned order dated 12.12.2023. Interim order passed by this Tribunal has continued from time to time. We have heard learned counsel for the parties on 19.08.2025, on which date, the judgment was reserved.

3. We have heard learned Sr. counsel Mr. Abhijeet Sinha appearing for the appellant and learned counsels Mr. Gaurav Mitra with Mr. Rachit Batra for respondent No. 1.

4. Learned Sr. counsel Mr. Abhijeet Sinha appearing for the appellant submits that the money advanced by the financial creditor for allotment of share in the company of corporate debtor is not a financial debt. Learned counsel for the appellant in support of his submissions relies on the judgment of this Tribunal in **[Comp. App. (AT) (Ins.) No.426/2022]** ***'Pramod' Vs. 'M/s. Karanaya Healthcare Pvt. Ltd.'*** and judgment of this Tribunal in **[Comp. App. (AT) (Ins.) No.1334/2024]** ***'Murlidhar Vincom Pvt. Ltd.' Vs. 'M/s Skoda (India) Pvt. Ltd.'*** decided on 26.11.2024. It is submitted that for requiring a share application money to be deposited within a meaning of Section 42(6) of the Companies Act, 2013, there has to be statutory compliance required. There are no material proofs that there was any statutory compliance regarding private placement hence due to non-refund of the amount, the amount shall not become deposit. It is submitted that there was no default on the part of the corporate debtor hence the corporate debtor could not have been put to insolvency proceeding. The money remitted by financial creditor was not against consideration for time value of money hence it was not a financial debt. It is submitted that adjudicating authority has despite holding that it is not open for the adjudicating authority to rule on the proposition that share application money with financial debt has admitted Section 7 application. The binding judgment of this Tribunal in ***'Pramod Sharma' (supra)*** has after being noticed has not been followed by the adjudicating authority. Judgment of this Tribunal in ***'Sree Bhadra Parks & Resorts Limited' Vs. 'Sri Ramani Resorts & Hotels Pvt. Ltd.'*****, [Comp. App. (AT) (CH) (Ins.) No. 95/2021]** was not applicable which has been relied by

adjudicating authority for passing the impugned order. The share application money disbursed was only equivalent to ₹1,14,02,640/- and no amount above, the said amount could have been claimed in Section 7 application. Adjudicating Authority has erroneously proceeded on the premise that R-2 has admitted his liability and committed default. The allotment was put on hold on the request of the financial creditor through its then director, Sh. Suresh Kumar Chauhan. Appellant to show his *bona fide* already deposited the amount of ₹1,14,02,640/–.

5. Learned counsel Mr. Gaurav Mitra appearing for the respondent refuting the submissions of the counsel for the appellant submits that issue as to whether the amount advanced by financial creditor is a financial debt or not has already been concluded and decided in favour of the financial creditor in the earlier application which was filed by the financial creditor under Section 7 i.e., C.P. IB No. 403/2019 and the said issue that amount advanced is the financial creditor operates as res judicata and cannot be allowed to be questioned by appellant. Submission of the appellant that the amount is advanced is not financial debt cannot be accepted as is barred by principle of res judicata. It is submitted that in the Section 7 application earlier filed in 2019 by financial creditor on the ground raised by the R-2 that R-2 is ready to refund the amount "adjudicating authority rejected the application holding that no default is committed". It is submitted that finding returned by adjudicating authority in its order dated 25.07.2019, that amount advanced by financial creditor was a financial debt within meaning of Section 5(8) of the

IBC was not even questioned, and the said finding was not interfered with by this Appellate Tribunal in its judgment dated 26.11.2019, thus the amount advanced was financial debt and initiation of Section 7 proceeding by the adjudicating authority is in accordance with law. It is submitted that on the earlier round by denial of the letter dated 03.07.2025, which was sent by financial creditor for refund of the money, adjudicating authority found no default after the order dated 26.11.2019. The R-1 again send necessary letter and communication to the corporate debt for refund of the amount equivalent to US $ 2,66,000/–. Letter dated 06.12.2019 was delivered to the corporate debtor but in spite of said request made by financial creditor amount was not refunded and as per liberty granted by this Tribunal in its judgment dated 26.11.2021, Section 7 application being C.P. IB NO.21ND/2021 was filed on 12.01.2021, which has been admitted by the impugned order. It is submitted that R-2 has dishonestly did not refund the amount back to the financial creditor and has been engaging the financial creditor in litigation by raising untenable pleas. The application was well within the time. The liability has been acknowledged by financial creditor in its financial statement which has been noticed by the adjudicating authority. Default has been committed by corporate debtor in refunding the amount of financial debt. The amount paid advanced by the financial creditor is financial debt, which has become final between the parties and cannot be allowed to be re-agitated. The issue which has become final between the parties cannot be allowed to be raised by the appellant. The finding of financial debt has become final by judgment and

order dated 26.11.2019 of this Tribunal, which judgment was not challenged or questioned by corporate debtor any further.

6. We have considered the submissions of the counsel for the parties and perused the records.

7. From the facts which has been brought on the record, following facts are undisputed between the parties:

i. The amount of US $ 1,24,000/- was remitted by financial creditor to the corporate debtor on 05.05.2008 and another amount of US $ 1,42,00,000/- was remitted on 22.09.2008 to the corporate debtor. The said amount was remitted for as a share application money for allotment of share in the R-2 company.

ii. On a request made on behalf of financial creditor, the allotment of share was put on hold due to dispute of R-2 company with the Noida Authority with regard to plot which was allotted where project had to come. On 27.04.2015, request was made on behalf of the financial creditor to refund money advanced by the financial creditor.

iii. The money advanced by financial creditor was reflected in the balance sheet of the corporate debtor as on 31.03.2015. The financial creditor made a request by letter dated 03.07.2015 to the corporate debtor for refund of the money advanced by the financial creditor.

8. Section 7 application was filed by financial creditor on 13.02.2019 on which C.P. IB No.403/2019 was registered. Reply was filed by the R-2 company in the said proceedings.

9. The first Section 7 application which was filed by the financial creditor came to be decided by the adjudicating authority by judgment and order dated 25.07.2019, which decision was rendered after exchange of pleadings between the parties. Adjudicating authority in its order while deciding the earlier Section 7 application has framed three issues to be decided which are noticed in paragraph 5 of the judgment which are as follows:

> *"a. Whether the Applicant's claim is barred by limitation?*
>
> *b. Whether the share application money can be categorized as financial debt?*
>
> *c. Whether there is a default on behalf of the Respondent in payment of the amount claimed?"*

10. Issue No. (a.) which was on the limitation was answered by adjudicating authority holding that application is not barred by limitation. In paragraph 6 of the judgment following has been held:

> *"6. With regard to the issue of limitation raised by the Respondent it is sufficient to say that the balance sheet of the Respondent for 2015-16 reflects the amount claimed by the Applicant under the head 'Other Liabilities', which amounts to a written acknowledgment of the liability by the Respondent extending the limitation period. This means that the limitation period will be calculated from 31.03.2016 and the present application was filed before the expiry of three years from such date. Thus, the application is not barred by limitation."*

11. Issue number (b.), whether share application money can be categorised as the financial debt answer has been given in paragraph 10 of the adjudicating authority holding that the said amount is financial debt. Finding in paragraph 10 of the judgment are as follows:

> *"10. It is clear from a reading of Section 42 of the Act and the Deposit Rules that if the shares are not allotted within 60 days of the receipt of the money the share application money has to be refunded and of the refund does not take place within 15 days from the expiry of the 60 days' time limit, then the share application money will be treated as a deposit. On the non-allotment of shares, after the expiry of the time limit of 75 (60+15) days the share application money will be a deposit advanced to the company, which has to be returned by the company at the rate of 12% per annum from the expiry of the 60th day. The person applying for the shares will get compensation for the time vale of the share application money given by him to the company, which makes the money advanced a financial debt to be repaid by the company. Thus, the Respondent's plea that the nature of the money given will not change into a loan does not stand as the Act itself allows such recategorization. In the present case the money was transmitted in 2008 and the allotment has not been made till date, thus, the money transmitted is a deposit and can be treated as a financial debt."*

12. Adjudicating authority, however, observed that respondent (R-2 company) has been ready to refund the money after it received the required letter from applicant. Applicant claimed that letter dated 03.07.2025 was sent by financial creditor, receipt of which letter was denied by the corporate debtor. Adjudicating Authority held that in absence of anything to show the delivery of such letter, it cannot be said that respondent (R-2) has faulted in refund of the money. In paragraph 11 making the observation as above the application was rejected with liberty to the financial creditor to revive the

application. Findings returned in paragraph 11 of the judgment which are as follows:

> *"11. However, the third issue cannot be answered in favour of the Applicant as a perusal of the documents show that the Respondent has been ready to refund the money after it receives the required letter from the Applicant. Although the Applicant has placed on record a letter dated 03.07.2015 signed by the Applicant's representative, there is nothing to show that the said letter was actually delivered to the Respondent. Even if it was delivered by hand as claimed by the Applicant, there should have been an acknowledgment of receipt by the Applicant on the copy of the letter. In the absence of anything to show that the delivery was actually made and that the Applicant has fulfilled all its formalities, it cannot be said that it is the Respondent's fault that the refund of the money has not been made. Allowing this application in such circumstances would amount to allowing the Applicant to take the benefit of its own wrong. Since the Respondent is willing to refund the money even now provided the procedure as prescribed by RBI is followed, the Applicant is hereby directed to fulfil the formalities to get the refund, within three months from the date of this order. If the Respondent fails to refund the money, the Applicant has the liberty to revive this application. Thus, the application is dismissed, with liberty to the Applicant to revive the application if the refund is not made even after the Applicant complies with the required formalities."*

13. The R-2 company filed a Comp. App. (AT) (Ins.) 962/2019, challenging the last part of the impugned order in paragraph 11 of the order dated 25.07.2019. This Appellate Tribunal decided the appeal on 26.11.2019 after hearing the parties. In paragraph 2 of the judgment dated 26.11.2019, following has been noticed:

> *"2. Thus, this appeal has been filed by the Corporate Debtor mainly challenging the last part of the*

impugned order in paragraph-11 of the impugned order."

14. Paragraph 11 which is under challenge in the appeal has been noticed in paragraph 5 of the judgment which is as follows:

> *"5. Thereafter the Adjudicating Authority in paragraph-11 which is mainly disputed in this appeal has observed as under:*
>
> > *"11. However, the third issue cannot be answered in favour of the Applicant as a perusal of the documents show that the Respondent has been ready to refund the money after it receives the required letter from the Applicant. Although the Applicant has placed on record a letter dated 03.07.2015 signed by the Applicant's representative, there is nothing to show that the said letter was actually delivered to the Respondent. Even if it was delivered by hand as claimed by the Applicant, there should have been an acknowledgement of receipt by the Applicant on the copy of the letter. In the absence of anything to show that the delivery was actually made and that the Applicant has fulfilled all its formalities, it cannot be said that it is the Respondent's fault that the refund of the money has not been made. Allowing this application in such circumstances would amount to allowing the Applicant to take the benefit of its own wrong. Since the Respondent is willing to refund the money even now provided the procedure as prescribed by RBI as followed, the Applicant is hereby directed to fulfil the formalities to get the refund, within three months from the date of this order. If the Respondent fails to refund the money, the Applicant has the liberty to revive this application. Thus, the application is dismissed, with liberty to the Applicant to revive the application if the refund is not made even after the Applicant complies with the required formalities."*
>
> *(Emphasis supplied)"*

15. This Appellate Tribunal ultimately has set aside the marked portion of order of the adjudicating authority in paragraph 11. This Tribunal, however,

held that finding in paragraph 10 that amount to the financial debt is not agitated and the Appellate Tribunal did not find any reason to disturb the finding. Paragraph 9 of the judgment of this Tribunal is as follows:

> *"9. We do not want to go into these necessities whether the application making claim is properly made or whether the Appellant has justification for not refunding the money. Once the Adjudicating Authority came to the conclusion that default has not been proved, the only option it had was to reject the application and the conditional offer could not have been gone into. We find that the underlined portion of impugned order (referred supra) where it gives directions to fulfil requirements and liberty to revive cannot be maintained. We set aside the portion of the impugned order in paragraph-11 which reads:*
>
> > *"Since the Respondent is willing to refund the money even now provided the procedure as prescribed by RBI as followed, the Applicant is hereby directed to fulfil the formalities to get the refund, within three months from the date of this order. If the Respondent fails to refund the money, the Applicant has the liberty to revive this application."*
>
> *The reasons and finding as recorded in paragraph -10 of the Impugned Order regarding it being financial debt, is not agitated before us and we find no reason to disturb the finding."*

16. The appeal was disposed of by the Appellate Tribunal following the order in paragraph 10 and 11:

> *"10. We are disposing this appeal with liberty to the Respondent - Financial Creditor to take necessary steps (which were found wanting in paragrqaph-11 of the Impugned Order) and it may file fresh application under Section 7 of IBC, if so advised. In the circumstance, we keep question of limitation open for consideration when such application is moved.*
>
> *11. Disposed accordingly. No costs."*

17. From the judgment of this Appellate Tribunal, following two findings can be culled out:

i. Appellate Tribunal did not interfere with the finding of the adjudicating authority recorded in paragraph 10 of the order dated 25.07.2019 that amount advanced by the financial creditor is a financial debt;

ii. The order of the adjudicating authority dated 25.07.2019 passed in paragraph 10, the observation giving liberty to appellant to revive the application was set aside (as noted in para 9 above);

iii. Appellate Tribunal, however, gave liberty to the financial creditor to file fresh application, if so, advised.

18. Subsequent to the aforesaid order dated 26.11.2019, Section 7 application being C.P. IB No.21/ND/2021 has been filed which has been admitted by the impugned order dated 12.12.2023. The submission which has been pressed by learned Sr. counsel for the appellant Mr. Abhijit Sinha challenging the order is that adjudicating authority committed error in accepting the money advanced by financial creditor of US $ 1,24,000/- and US $ 1,42,000/- as financial debt within meaning of Section 5(8). Submission is that the said amount was given towards the share application money, hence the said cannot be a financial debt. Learned counsel for the appellant has relied on the judgment of this Tribunal in ***'Pramod Sharma' (supra),*** where this Tribunal has held that share application money cannot be treated to be

a financial debt. Further, another judgment of this Tribunal in ***'M/s. Muralidhar Vincom Pvt. Ltd. (supra),*** taking the same view has been relied.

19. On the other hand, learned counsel for the respondent has contended that the amount advanced by the financial creditor was a financial debt has become final between the parties and operates as res judicata, since the findings returned by the adjudicating authority in its judgment dated 25.07.2019, holding the amount of financial debt has not been questioned by R-2. We have already noticed the relevant part of the judgment dated 25.07.2019, by which earlier Section 7 application filed by financial creditor has been rejected. In paragraph 10 of the judgment of this Tribunal, the issue was decided in favour of the financial creditor that amount advanced by financial creditor of US $ 1,24,000/- and US $ 1,42,000/- are financial debt, which findings have been returned in paragraph 10 as extracted above. We have also noticed the judgment of this Tribunal in Comp. App. (AT) (Ins.) No.962/2019 dated 26.11.2019, which was passed in the appeal filed by R-2 company. We have noted paragraph 9 of the judgment of this Appellate Tribunal where although part of the order in paragraph 11 of the adjudicating authority was set aside, but finding of financial debt was not disturbed. Appeal was disposed of on 26.11.2019. The order of this Tribunal dated 26.11.2019 having not been agitated any further the said judgment has become final between the parties. We have noticed that specific issue No. (b.) was framed by adjudicating authority in its order dated 25.07.2019, which was answered in favour of the financial creditor, which finding were not

disturbed by this Appellate Tribunal vide its judgment dated 26.07.2019. Thus, the issue as to whether the amount advanced by financial creditor to the R-2 company of US $ 1,24,000/- and US $ 1,42,000/- is a financial debt has become final between the parties and cannot be allowed to be questioned by appellant in the proceeding emanating from C.P. IB No.21/ND/2021. It is submitted that in the earlier proceeding of Section 7 arising from C.P. IB No.403/2019, liberty was granted by this Appellate Tribunal to file a fresh Section 7 application.

20. We need to notice judgment of the Hon'ble Supreme Court in the matter of ***'Neelima Srivastava' Vs. 'State of Uttar Pradesh & Ors.'*** reported in **[(2021) 17 SCC 693].** Hon'ble Supreme Court in the above case had occasion to consider finality of judgment between the parties and the principle of res judicata. It was held by the Hon'ble Supreme Court that once a judgment between the parties have attained finality, it was not permissible for the parties to reopen concluded judgment. Hon'ble Supreme Court in the above judgment from paragraph 31 to 35, laid down following:

> ***"31.*** *The Division Bench of the High Court proceeded as if it was hearing an appeal against the judgment dated 23-1-2006 [Neelima Srivastava v. State of U.P., WP (SS) No. 7890 of 2003, order dated 23-1-2006 (All)] of the learned Single Judge which had already attained finality. The appeal filed under the Rules of the Court was filed against the judgment dated 15-5-2014 rendered in Neelima Srivastava v. State of U.P. [Neelima Srivastava v. State of U.P., 2014 SCC OnLine All 16618] It is a well-settled principle of law that a letters patent appeal which is in continuation of a writ petition cannot be filed collaterally to set aside the judgment of the same High Court rendered in an*

earlier round of litigation ignoring the principles of res judicata and doctrine of finality.

32. *By a majority, the decision in Naresh Shridhar Mirajkar v. State of Maharashtra [Naresh Shridhar Mirajkar v. State of Maharashtra, 1966 SCC OnLine SC 10 : AIR 1967 SC 1] has laid down the law in this regard as under : (AIR p. 11, para 38)*

> *"38. … When a Judge deals with matters brought before him for his adjudication, he first decides questions, of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate court."*

33. *In Rupa Ashok Hurra v. Ashok Hurra [Rupa Ashok Hurra v. Ashok Hurra, (1999) 2 SCC 103] , while dealing with an identical issue this Court held that reconsideration of the judgment of this Court which has attained finality is not normally permissible. The decision upon a question of law rendered by this Court was conclusive and would bind the Court in subsequent cases. The Court cannot sit in appeal against its own judgment.*

34. *In Union of India v. S.P. Sharma [Union of India v. S.P. Sharma, (2014) 6 SCC 351] , a three-Judge Bench of this Court has held as under : (SCC p. 389, para 76)*

> *"76. A decision rendered by a competent court cannot be challenged in collateral proceedings for the reason that if it is permitted to do so there would be 'confusion and chaos and the finality of proceedings would cease to have any meaning'."*

35. *Thus, it is very well-settled that it is not permissible for the parties to reopen the concluded judgments of the court as the same may not only tantamount to an abuse of the process of the court but would have far-reaching adverse effect on the administration of justice."*

21. The law laid down by the Hon'ble Supreme Court in the above judgment is fully attracted in the above case. In earlier proceeding between the parties under Section 7 of the IBC, the issue was decided in favour of the financial creditor that amount of US $ 1,24,000/- and US $ 1,42,000/- remitted by financial creditor to the corporate debtor as a financial debt. The said issue cannot be allowed to be reopened by the appellant by raising precedents of this Tribunal.

22. When issue between the parties has become final and has been decided, the parties to reopen the issue is clearly impermissible by principle of res judicata and further permitting agitation of such issues is *akin* to abuse of process of a court as has been held by the Hon'ble Supreme Court in paragraph 35 of the judgment in ***'Neelima Srivastava' (supra).*** In the earlier proceeding initiated by financial creditor under Section 7 decided on 25.07.2019 application was rejected by adjudicating authority, relying on the case set up by R-2 that R-2 was ready to refund the amount, but the relevant letter 03.07.2015, which is claimed by financial creditor to be sent to the R-2 company has never been delivered. 03.07.2015 was a letter, by which request was sent by financial creditor to refund of the amount and due to only on the said ground the application was rejected with a liberty to revive. Order of the adjudicating authority granted liberty to revive was set aside and substituted by Appellate Court judgment dated 26.07.2019, giving liberty to file a fresh application under Section 7 and the application under Section 7 being C.P. IB 21/2021 was filed as a fresh petition. After the judgment of this Tribunal

dated 26.11.2019, the financial creditor claimed to have been send again the request at 06.12.2019 for remitting the amount in favour of the financial creditor, which letter was also filed along with Section 7 application as Annexure P-18.

23. Thus, request was again sent by financial creditor to the corporate debtor for refund of the amount which was pleaded in Section 7 application C.P. IB 21/2021. Earlier proceedings were concluded on 26.11.2019 by decision of this Appellate Tribunal and thereafter more than after a year amount was not refunded, the financial creditor had to file Section 7 application being C.P. IB 21/2021 on 12.01.2021, which could be decided on 12.12.2023, admitting Section 7 application. The amount which was remitted by financial creditor to corporate debtor having not been refunded, there is clear default on the part of corporate debtor and adjudicating authority has not committed any error in admitting Section 7 application. The statement of the corporate debtor that he was ready to refund the amount as recorded in the earlier Section 7 proceeding is clearly a statement without any intention to refund. The fact is that even after closure of the earlier proceeding in the year 2019 R-1 did not refund the amount leading to filing of Section 7 application 21/2021.

24. In view of the foregoing discussions and our conclusion, we are of the view that no grounds have been made out to interfere with the order of the adjudicating authority dated 12.12.2023, admitting Section 7 application against the corporate debtor. There is no merit in the appeal. The appeal is

dismissed. The interim order stands discharged. The amount deposited under the interim order dated 21.12.2023 be refunded to the appellant. By dismissing the appeal, we leave it open for the appellant to remit the amount of US $ 1,24,000/- and US $ 1,42,000/- totalling to US $ 2,66,000/- to the financial creditor and financial creditor after having received the amount can take recourse to the proceeding under Section 12-A read with Regulation 30A of the CIRP Regulations, 2016. The period from 23.12.2023, till date is excluded from the CIRP. The RP may proceed with the CIRP in accordance with the law.

The appeal is dismissed subject to the above. Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

03rd September, 2025

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