NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1664 of 2025

[Arising out of order dated 16.10.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad, Court – 2) in C.P. (IB)/ 206(AHM)2024]

IN THE MATTER OF:

Ashwin Smith **...Appellant**

Versus

Invent Assets Securitisation and Reconstruction Pvt. Ltd. & Anr. **...Respondents**

Present:

For Appellant	**:**	**Mr. Abhijeet Sinha, Sr. Advocate with Mr. Malak Bhatt, Ms. Neeha Nagpal and Ms. Nitya Prabhakar, Advocates.**
For Respondents	**:**	**Mr. Krishnendu Dutta, Sr. Advocate with Mr. Jaimin Dave, Mr. Palash S. Singhai, Ms. Alina Merin Mathew and Mr. Harshal Sareen, Advocates for R-1.** **Mr. Tirth Nayak, Advocate for RP.**

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal has been filed challenging the order dated 16.10.2025 passed by the adjudicating authority (National Company Law Tribunal (NCLT), Ahmedabad Bench, Court – 2) admitting a Section 7 application filed by R-1, the financial creditor. The appellant aggrieved by this order has come up in this appeal.

2. Background facts of the case giving rise to this appeal are:

i. The CM Smith & Sons Limited is a company consisting of two groups of shareholders. A Shareholder Agreement was entered on 11.12.2014, under which the Mahendra Lodha group became 51% shareholder of the corporate debtor and 49% shareholding was retained with Smith family. The corporate debtor had obtained financial facilities from the State Bank of India (SBI) as well as the Indian Bank.

ii. On 13.07.2016, Indian Bank assigned its debt to the financial creditor, Invent Assets Securitisation & Reconstruction Pvt. Ltd., the respondent herein for a purchase consideration of Rs.17 crore. Mahendra Lodha group got transferred 26% share from appellant and his family and became shareholder of 78% in the corporate debtor.

iii. The corporate debtor had also submitted an OTS proposal to the financial creditor vide letter dated 03.10.2016. The R-1 accepted the OTS proposal on 22.12.2016. Payment of only Rs.98 lakhs was made and the corporate debtor defaulted in making the payment as per the OTS. Default was committed by the corporate debtor on 10.01.2019. Application under Section 19 was filed by R-1 before the Debt Recovery Tribunal (DRT), which is pending consideration. Ashwin Smith, the appellant who was Director of the corporate debtor, resigned from Directorship on 12.12.2022.

iv. A Section 7 application was filed by the R-1 on 16.05.2024, claiming an amount of Rs.97,54,43,527/- as on 31.03.2024. In the Section 7 application, the appellant appeared and filed a reply in the capacity of ex-Director of the company objecting to Section 7 application, prior to filing of Section 7 application being CP (IB) 206/AHM/2024 another application under Section 7 was filed being CP 135/2023 before the Tribunal which was withdrawn by the financial creditor on 28.03.2024 due to non-filing of NeSL Certificate on record.

v. The adjudicating authority after hearing the financial creditor as well as the appellant who had filed reply to the Section 7 application admitted Section 7 application finding that financial creditor has successfully proved the debt, which debt is also reflected in the record of the NeSL as well as the balance sheet of the corporate debtor.

vi. Aggrieved by the order admitting Section 7 application, this appeal has been filed.

3. We have heard learned Sr. counsel, Mr. Abhijeet Sinha appearing for the appellant as well as learned Sr. counsel, Mr. Krishnendu Datta appearing for R-1.

4. Learned counsel for the appellant challenging the order admitting Section 7 application submits that application under Section 7 has been filed by the R-1 at the instance of majority shareholder Mahendra Lodha. It is submitted that the amounts from corporate debtor as well as from the companies of Mahendra Lodha were paid to the financial creditor to buy the debt of the corporate debtor from the Indian Bank as well as the SBI. It is submitted that majority shareholder, Mahendra Lodha has done round tripping of the fund from the corporate debtor and proceeding under Section

7 are proceeding which has been maliciously initiated and not for the resolution of the corporate debtor. The financial creditor has acted at the instance of majority shareholder to initiate CIRP against the corporate debtor. The majority shareholder did not oppose Section 7 application which clearly proves that majority shareholder of the corporate debtor as well as the R-1 are hands in glove. The appellant has already filed CP 17/2023 under Sections 241 & 242 of the Companies Act, 2013 against majority shareholder where financial creditor is also one of the respondents. Issues of oppression, mismanagement, fund diversion, and fraudulent transfer of shares are issues in the said proceedings. R-1 has been arrayed as R-8 in the CP 17/2023. The appellant is also the personal guarantor of the corporate debtor and admission of Section 7 application exposes the appellant to personal insolvency, coercive recoveries and execution proceedings. It is submitted that all facts have been pleaded any materials brought on the record in company petition filed by the appellant under Sections 241 & 242 of the Companies Act, 2013. Appellant has also filed additional affidavit in this appeal on 11.11.2025, bringing relevant materials on record to prove round tripping by the majority shareholder and fraudulent filing of Section 7 application which is malicious filing by R-1 at the instance of majority shareholder. Counsel for the appellant submitted, in the written submissions which was filed by the appellant before the adjudicating authority all relevant grounds and pleadings have been taken, which has not been adverted by the adjudicating authority while admitting Section 7 application. Learned Sr. counsel Mr. Abhijeet Sinha replying the objection raised by the R-1 on the

locus of the appellant submits that appellant is shareholder of the corporate debtor through HUF. He submits that a shareholder can maintain the appeal under Section 61 of the IBC. The judgments of this Tribunal holding that appeal at the instance of shareholder cannot be entertained needs reconsideration. He further submits that appellant apart from being ex-Director is also personal guarantors hence he can very well maintain the appeal. It is further submitted that appellant having been permitted to participate in the proceeding by the adjudicating authority, the locus of the appellant cannot be questioned.

5. Learned Sr. counsel, Mr. Krishnendu Datta appearing for R-1 refuting the submissions of the appellant submits that appellant has no locus to file this appeal. It is submitted that appellant is not a shareholder of the corporate debtor. Appellant has resigned from the Directorship of the company on 12.12.2022, citing financial difficulties of the corporate debtor. Appellant is stranger to the corporate debtor and at the instance of appellant, appeal is not maintainable. It is submitted that the claim of the appellant that he is shareholder of the corporate debtor is also not correct. Appellant has transferred his shares and is no more the shareholder of the corporate debtor. It is further submitted that appeal at the instance of the shareholder is not maintainable which is a settled law laid down by this Tribunal in several cases. It is submitted that the Section 7 application which was filed by the R-1 was with regard to debt which was taken by the R-1 by assignment dated 13.07.2016 from the Indian Bank. The corporate debtor had approached the R-1 for OTS and offered to settle the dues of Indian Bank for

Rs.17,18,00,000/- vide letter dated 03.10.2016, which OTS was accepted by R-1, however, apart from paying only ₹98 lakhs no payment was made and default was committed by the corporate debtor from 10.01.2019. The R-1 has initiated proceedings under Section 19 of the Debt Recovery Tribunal Act before the DRT and has filed an application under Section 7, at the time of filing of Section 7 application by R-1. Appellant is neither Shareholder nor Director of the corporate debtor. Proceedings under Sections 241 & 242 of the Companies Act 2013, initiated by appellant are based on false allegations. Appellant did not file any document in the reply filed under Section 7 which are now sought to be filed by additional affidavit which were not before the adjudicating authority. Documents now sought to be introduced by the appellant by additional affidavit need not be looked into or considered or taken on the record in the present case. It is submitted that financial creditor has successfully proved debt and default on the part of the corporate debtor and has rightly admitted Section 7 application. In pursuance of admission of Section 7 application, Resolution Professional (RP) has made publication and claims of more than Rs.500 crore have been received by the RP.

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

7. We need to first consider the objection raised by R-1 regarding locus of the appellant.

8. Coming to the submission of the appellant that judgment of this Tribunal relied by R-1 that appeal cannot be maintained by a shareholder, suffice it to say that for the purposes of this case the above submission need not be gone into the facts of the present case.

9. We proceed to consider the locus of the appellant dehors the claim of the appellant as shareholder of the corporate debtor. As noted above, in proceeding before the adjudicating authority in Section 7, reply was filed by the appellant on behalf of the corporate debtor on 04.03.2025 which has been noticed by the adjudicating authority in paragraph 17. Paragraph 17 of the impugned order is as follows:

> *"17. Reply was filed by the Respondent/Corporate Debtor on 04.03.2025 with the Tribunal. Reply has been affirmed by one Mr. Ashwin Smith in the capacity of Ex-Director of the Company..."*

10. The adjudicating authority noticed the reply submitted by the appellant and proceeded to admit the application after finding debt and default on the part of the corporate debtor.

11. There are two reasons on which we are not persuaded to hold that appellant has no locus to file the appeal, they are:

i. Adjudicating authority permitted the appellant to participate in the proceeding by filing a reply on behalf of the corporate debtor as has been noticed in paragraph 17 of the impugned order.

ii. The appellant admittedly has given personal guarantee to secure the financial facilities extended to the corporate debtor.

In paragraph 10 of the impugned order, adjudicating authority noticed that Deed of Guarantee has been issued by the appellant. Paragraph 10 of the impugned order is as follows:

> *"10. It is stated that the Credit facilities availed from Indian Bank on 11.03.2014 was acknowledged and secured by way of execution of following documents:*
>
> > *i. Revival letter executed by the Corporate Debtor*
> >
> > *ii. Seventh Supplemental Term Loan/ Corporate Loan Consortium Agreement*
> >
> > *iii. Seventh Supplemental Joint deed of hypothecation*
> >
> > *iv. Deed of Guarantee (executed by (1) Mr. Ratilal C Smith (2) Mrs. Madhuben R. Smith & Mr. Ashwin Ratilal Smith)*
> >
> > *v. Consent letter for disclosure of name, information and data of guarantors.*
> >
> > *vi. Inter Se agreement between the lenders of SBI consortium including Indian Bank"*

12. An appeal under Section 61 can be filed by any aggrieved person. Hon'ble Supreme Court had occasion to consider the expression "any person aggrieved in Sections 61 & 62 of the IBC". Hon'ble Supreme Court in ***'GLAS Trust Company LLC' Vs. 'BYJUS Raveenderan & Ors.'*** reported in [(2025) 3 SCC 625] laid down following in paragraphs 75 & 76:

> ***"75.*** *The provision stipulates that "any person" who is aggrieved by the order of Nclat may file an appeal before the Supreme Court within the prescribed limitation period. Similar language is used in Section 61 IBC, which provides for appeals to Nclat from orders of NCLT. ["****61. Appeals and appellate authority****.—(1) Notwithstanding anything to the contrary contained under the Companies Act, 2013 (18 of 2013), any person aggrieved by the order of the adjudicating authority under this part may prefer an appeal to the National Company Law Appellate Tribunal."(emphasis supplied)] The use of the phrase*

"any person aggrieved" indicates that there is no rigid locus requirement to institute an appeal challenging an order of NCLT, before Nclat or an order of Nclat, before this Court. Any person who is aggrieved by the order may institute an appeal, and nothing in the provision restricts the phrase to only the applicant creditor and the corporate debtor. As noted above, once CIRP is initiated, the proceedings are no longer restricted to the individual applicant creditor and the corporate debtor but rather become collective proceedings (in rem), where all creditors, such as the appellant, are necessary stakeholders. The appellant is not an unrelated party to CIRP, but is in fact, an entity whose claims had been verified by the IRP vide letter dated 19-8-2024. The appellant who claims to be a financial creditor, has expressed reasonable apprehensions about the prejudice it would face if there were roundtripping of the funds, and the prioritisation of the debts of the second respondent, an operational creditor.

76. *In any event, the appellant had moved an application before Nclat seeking impleadment as a respondent and the objections of the appellant were specifically recorded and addressed in the impugned judgment. Therefore, there is no doubt that the appellant falls within the ambit of the phrase "any person aggrieved" and has the locus standi to institute the present civil appeal before this Court."*

13. Further in ***'Independent Sugar Corporation Ltd.' Vs. 'Girish Shriram Juneja & Ors.'*** reported in **[(2025) 5 SCC 209]** in paragraphs 24 & 25 following has been laid down:

"24. *Once the CIRP is initiated, the nature of proceedings are no longer in personam but rather become in rem. In light of the same, the expression "any person aggrieved" in the context of IBC has been held to be indicative of there being no rigid locus requirements to institute an appeal challenging an order of NCLT before Nclat or an order of Nclat before this Court. [GLAS Trust Co. LLC v. Byju Raveendran, (2025) 3 SCC 625 : (2024) 247 Comp Cas 687] Similarly, in the context of the Competition Act, even those persons that bring to CCI information of practices that are contrary to the provisions of the*

Competition Act, could be said to be "aggrieved". [Samir Agrawal v. CCI (Cab Aggregators Case), (2021) 3 SCC 136] Therefore, the term "any person aggrieved" appearing in Section 62 IBC and Section 53-T of the Competition Act must be understood widely and not in a restricted fashion.

***25.** In the present case, the appellant as an unsuccessful resolution applicant whose resolution plan could have otherwise been approved by CoC, satisfies the requirement of being aggrieved. This preliminary locus standi objection vis-à-vis the appellant, therefore, does not merit acceptance."*

14. In the facts of the present case as noted above, especially when appellant was permitted to participate before the adjudicating authority by filing a reply to Section 7 application and further he is a personal guarantor of the corporate debtor for the financial facilities availed from Indian Bank on 11.03.2014 which facilities are basis of initiating Section 7 application, we are of the view that appellant has locus to maintain the appeal, hence the objection of the respondent that appellant has no locus is rejected.

15. Now we come to the order of the adjudicating authority admitting Section 7 application. In paragraphs 19 & 20 of the impugned order, adjudicating authority has made following observations:

"19. Heard the submissions of Ld. Counsels of both the parties and perused the documents on record. The acceptance of loan and other facilities are not denied by the Corporate Debtor. According to the Petitioner there was a default in making payment from November-2014 and from February-2015, the Indian Bank classified account of the Corporate Debtor as "Non-Performing Asset on 12.0.2015. The Indian Bank further assigned the debt to financial creditor by Registered Deed of Assignment dated 13.07.2016. It was intimated to the Corporate Debtor therefore, Corporate Debtor has given an OTS proposal, which was accepted by the Petitioner on 22.12.2016. Accordingly, some payment was made by the

Corporate Debtor. The last payment was received 17.09.2018. The next instalment was due on 10.01.2019, which was not paid and therefore default commenced from 10.01.2019. According to the Petitioner, the Corporate Debtor acknowledged the debt on 17.12.2020 by way of letter. For nonpayment of settlement dues the OTS proposal was cancelled. The Petitioner has initiated recovery proceeding on before the Debts Recovery Tribunal.

20. The Petitioner has also filed the Audited balance sheet for the F.Y. 2020-21, wherein, the Corporate Debtor has admitted and acknowledged its liability. The Corporate Debtor further acknowledged the liability by ledger confirmation lastly on 01.04.2022. An application was initially filed on 11.04.2023 bearing CP(IB) No. 135 of 2023 before the Court-I, Ahmedabad Bench which was dismissed for want of NeSL Certificate. The Petitioner further filed this petition on 16.05.2024, even after the date of filing of this application taking into consideration it is well within the limitation of acknowledgement of debt by the Corporate Debtor. Vide order dated 27.10.2023, an earlier petition was dismissed on the ground that NeSL record of default i.e. Form-D was not filed therefore, alongwith this application the same has been attached as Annexure "X". It shows status "Deemed to be Authenticated" confirming the date of default as 10.01.2019. Thus, the earlier defect of the application has been cured. The Petitioner also produced Registered Deed of Assignment, Certificate of Registration for Modification of Charge as Annexure-"ZA". Hence, the debt as well as default is there by way of ledger confirmation. The debt was acknowledged and therefore the application is liable to be allowed"

16. There is no dispute between the parties regarding financial facilities extended by Indian Bank in favour of the corporate debtor and the assignment of such financial facilities in favour of the R-1 by Assignment Deed dated 13.07.2016. The corporate debtor itself has given an OTS proposal to the corporate debtor which was accepted on 22.12.2016. Submission of OTS is clear acknowledgment by the corporate debtor of debt and default. OTS proposal was not honoured and default was committed by the corporate debtor. In the NeSL Certificate default has been authenticated and further in the balance sheet of 2020-21, corporate debtor has admitted and acknowledged its liability. In the above facts, we do not find any error in order of the adjudicating authority admitting Section 7 application by the impugned order.

17. The submission on which counsel for the appellant much emphasised is that Section 7 application filed by R-1 was at the instance of majority shareholder Mahendra Lodha of the corporate debtor and Section 7 application has been initiated maliciously and the present case was a case where adjudicating authority ought to have exercised its jurisdiction under Section 65 of the IBC to reject Section 7 application as well as to impose penalty. Learned counsel for the appellant submitted that it was decided by Mahendra Lodha and its companies to buy the debts of Indian Bank as well as the SBI and for buying the debt of Indian Bank and SBI there was round tripping of the funds from the account of the corporate debtor and three companies of Mahendra Lodha. Learned counsel for the appellant submits that appellant has filed an additional affidavit and has pleaded that after appellant having filed CP 17/2023 for oppression and mismanagement under Sections 241 & 242 of the Companies Act, 2013, financial creditor as a counter blast filed CP 135/2023 which came to be dismissed on 27.10.2023 and thereafter the CP (IB) No.206/2024 was filed. It is submitted that in another matter of the corporate debtor in order dated 30.04.2025 passed in CP 255/2021 observation was made that it was at the instance of Mahendra Lodha that petitions were filed. Appellant's case is that in the order dated

30.04.2025 passed in CP (IB) No. 255/2021 the allegation of the corporate debtor of potential manipulation has been noticed. Learned counsel for the appellant has lastly contended that detailed written submission was filed where it was pleaded that Mahendra Lodha has undertaken massive round tripping of funds and in written submission, details of round tripping from three companies of Mahendra Lodha has been stated but adjudicating authority has not adverted to the said submission which prayed the adjudicating authority to invoke Section 65 of the IBC and impose penalty upon the financial creditor for malicious and fraudulent initiation of proceedings.

18. We have looked into the reply affidavit filed by the appellant in Section 7 application which is filed as Annexure A-20 to the appeal. The affidavit highlights dispute between the shareholders of the corporate debtor and reference of CP 17/2023 has also been made. It was pleaded in the reply that present has been filed by the petitioner for malicious purpose and not for the purpose of resolution of the corporate debtor which averments have been made in paragraph 12 of the reply.

19. Learned counsel for the appellant has placed reliance on the judgment of this Tribunal in ***'Ashmeet Singh Bhatia' Vs. 'Pragati Impex India (P) Ltd. & Anr.'*** reported in **[(2024) 243 Comp Cas 571].** This Tribunal in paragraph 16 of the above judgment laid down following:

> ***"16.*** *The power under section 65 of the Code can be exercised by the Adjudicating Authority only after satisfying that grounds as mentioned exist, if the Adjudicating Authority come to the conclusion that*

> *insolvency proceedings have been initiated fraudulently or with malicious intent for any other purpose other than for the resolution of insolvency of the corporate debtor, it can impose penalty as provided in the provision. While exercising jurisdiction under section 65, the Adjudicating Authority is also fully entitled to close the corporate insolvency resolution process and pass all consequential order. The mere fact that section 7 application has been admitted does not denude the jurisdiction of the Adjudicating Authority to examine the application under section 65 of the Code. The observations of the Adjudicating Authority are that the appellant is opposing the admission of the proceeding which admission has been affirmed by the Appellate Tribunal. The above does not denude the jurisdiction of the Adjudicating Authority to examine the allegations made in the section 65 application even after admission of the proceedings under section 7."*

20. The jurisdiction under Section 65 can be invoked by adjudicating authority at any stage of the proceeding and in event, adjudicating authority is satisfied that Section 7 application has been filed for fraudulent or malicious intent for any purpose other than the resolution, the adjudicating authority can invoke jurisdiction under Section 65.

21. We may further notice the submission of the respondent refuting all allegations of the appellant. It is submitted that various documents which are sought to be filed along with the additional affidavit were not before the adjudicating authority.

22. We make it clear that we have not proceeded to enter into submission of the appellant that Section 7 application has been filed by R-1 with fraudulent and malicious purpose. In the facts of the present case, we are of the view that ends of justice be served in giving liberty to the appellant to file an application under Section 65 before the adjudicating authority with all relevant material and it is for the adjudicating authority to examine the said application and take appropriate decision in accordance with law.

23. In view of the above discussions and our conclusions, we are of the view that no grounds have been made out to interfere with the order impugned admitting Section 7 application. We, however, grant liberty to the appellant to file an application under Section 65 of the IBC before the adjudicating authority with all relevant materials which may be considered after giving an opportunity in accordance with the law.

Appeal is dismissed subject to above liberty.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

12th December, 2025

himanshu