NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 66 of 2025

[Arising out of the Impugned Order dated 14.11.2024 passed by the Adjudicating Authority, National Company Law Tribunal, Kolkata Bench in C.P.(IB) No. 1593/KB/2018]

In the matter of:

Bahadur Ram Mallah, Ex-Director,
Uniworth Textiles Limited,
Aged about 62 years,
R/ o Village & Post - Azmatgrah,
District - Azamgarh Uttar Pradesh
Email: uniworthtextileslimited@gmail.com

...Appellant

Versus

1. **Assets Reconstruction Company (India) Limited**
The Ruby, 10th Floor 29, Senapati
Bapat Marg, Dadar (West),
Mumbai - 400 028
Email: cs@arcil.co.in

...Respondent No.1

2. **Uniworth Textiles Limited (under CIRP),**
Through its Insolvency Professional Entity,
M/s. Kanchansobha Debt Resolutions
Advisors Private Limited,
Address - Unit No. 1507, 15th Floor,
B wing, ONE BKC Plot No. C-66,
G-Block, BKC, Bandra (East),
Mumbai-400051
Email: contact@kanchansobha.com

...Respondent No. 2

Present:

For Appellant : Mr. Arvind Nayar Sr. Advocate with Mr. Narendra M Sharma, Mr. Ankur Sood, Ms. Shubhangi Tiwari, Mr. Shubham and Ms. Sahana Sathija Narayanan, Advocates.

For Respondent : Mr. Abhirup Dasgupta, Mr. Ishaan Duggal and Ms. Ruchi Goyal, Advocates for R1.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 14.11.2024 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench-I) in C.P.(IB) No.1593/KB/2018. By the impugned order, the Adjudicating Authority has admitted the Section 7 petition filed by the Financial Creditor admitting the Corporate Debtor into Corporate Insolvency Resolution Process (**"CIRP"** in short). Aggrieved by the impugned order, the present Appeal has been preferred by the Suspended Director of the Corporate Debtor.

2. The salient facts of the case which are relevant to be noticed for deciding this appeal are as briefly outlined below:

- ICICI Bank and IFCI Ltd. sanctioned certain loan facilities to the Corporate Debtor-Uniworth Textiles Ltd. (**"UTL"** in short).
- In the year 2004, proceedings under Sick Industrial Companies Act, 1985 (SICA) was initiated by the Corporate Debtor. The account of Corporate Debtor was declared NPA on 31.08.2007.
- The loan of ICICI and IFCI was assigned in favour of the Asset Reconstruction Company (India) Ltd. (**"ARC"** in short) on 31.03.2004 and 12.01.2007 respectively. The SICA proceedings were however abated by the Appellate Authority (AAIFR) in 2013.

- On 05.09.2014, the ARC had filed an Original Application No. 162 of 2014 before the DRT for initiation of SARFAESI proceedings. On 04.12.2018, the DRT decided OA No. 162 of 2014 in favour of ARC and directed the Corporate Debtor to pay a sum of Rs 211.86 Cr. This order has been challenged before the DRAT.
- On 19.09.2016, the Uniworth Group of Companies made a Global offer of Settlement (**"GSA"** in short) to the ARC for an amount of Rs 75 Cr. Acting upon the terms of the GSA, Uniworth Group paid Rs 51.10 Cr. to the ARC.
- On 22.11.2018, ARC issued a letter for revocation of the terms of settlement on ground of default in the payment of debt by the Corporate Debtor.
- On 27.11.2018, the ARC filed a Section 7 petition against the Corporate Debtor for Rs 205 Cr.
- On 17.03.2020, the Adjudicating Authority dismissed the Section 7 application by holding it as time-barred.
- On 10.07.2023, this Tribunal set aside the order of the Adjudicating Authority. Holding the Section 7 petition filed by the ARC as not time-barred, this Tribunal remanded the matter back to the Adjudicating Authority for decision on merit.
- The appeal filed by the Corporate Debtor against the order of this Tribunal dated 10.07.2023 was dismissed by the Hon'ble Supreme Court on 13.10.2023.
- On 14.12.2024, the Adjudicating Authority after hearing the matter afresh admitted the Corporate Debtor into CIRP.

- Aggrieved by the impugned order, the present Appeal has been preferred by the Suspended Director of the Corporate Debtor.

3. Assailing the impugned order, Shri Arvind Nayar, the Ld. Sr. Counsel for the Appellant submitted that the Adjudicating Authority has admitted the Section 7 application without going into the merits of the matter at a time when this Tribunal had remanded the matter back to the Adjudicating Authority on 10.07.2023 to decide the matter on merit un-influenced by any observations made by this Tribunal. The Adjudicating Authority rather than applying its mind independently has instead adjudicated upon the matter merely by adopting the same rationale followed by this Tribunal in its order of 10.07.2023. It was further submitted that the Section 7 petition had been filed by the ARC while suppressing the material fact that a GSA proposal had been entered into between the Corporate Debtor and ARC, which GSA had been acted upon by both the parties with ARC having already accepted settlement amount of Rs 51.10 Cr. However, the Financial Creditor-ARC revoked the GSA unilaterally. Though this revocation of GSA was contested by the Corporate Debtor in their letter dated 14.12.2018, the Adjudicating Authority erroneously misconceived this letter to be an acknowledgement of debt and default. Thus, rather than endeavouring to examine the facts to undertake determination of the issue of debt and default, instead, the Adjudicating Authority has summarily concluded the issue of debt and default. It was also stated that even though the amount due in terms of the GSA exceeded Rs 1 Cr., the Section 7 petition was not maintainable, since the claim of the ARC arose on account of default in payment of settlement amount which was not in the nature of financial debt as defined under the provisions of

IBC. The nature and character of outstanding liability on account of violation of the GSA proposal had altered the character of the original debt. Furthermore, since both the parties had entered into a GSA, the original debt had ceased to exist and therefore the ARC was estopped from claiming the original amount of debt. It was also contended that while for the purposes of considering the issue of limitation, an acknowledgement in the Balance sheet can be construed as an admission of the jural relationship between debtor and creditor but for purposes of considering admission of Section 7 application, the admission of liability requires to be unambiguous and unequivocal. It was asserted that since the Annual Reports of the Corporate Debtor in the Balance sheets contained specific denial of any liability qua the ARC, it was wrong on the part of the Adjudicating Authority to have concluded that the Corporate Debtor had admitted debt liability qua the ARC.

4. Refuting the contentions raised by the Appellant, Shri Abhirup Dasgupta, Ld. Counsel for the Respondent submitted that the Adjudicating Authority had not committed any error in admitting the Section 7 application since there was a clear incidence of debt and default for an amount exceeding the minimum threshold criteria of Rs 1 Cr. prescribed under Section 4 of the IBC. It was also pointed out that when the Section 7 application came up for hearing before the Adjudicating Authority in the first instance, the Appellant had given up all other defences except the ground of limitation. While looking into the limitation aspect, this Tribunal in the exercise of its appellate jurisdiction had also noticed that the Balance sheet of the Corporate Debtor contained acknowledgment of debt and default. The Adjudicating Authority thus cannot be said to have erred by

having relied on the Balance sheet of the Corporate Debtor of 2018-19 to conclude that loans taken by the Corporate Debtor had been acknowledged therein and that the loan had become due for repayment. It was further pointed out that the DRT in its order dated 04.12.2018 in O.A. No. 162 of 2014 had also decreed in favour of the ARC directing the Corporate Debtor to pay a sum of Rs 211.86 Cr. with future interest towards the outstanding liability. This decree of DRT also clearly established debt and default. It was emphatically asserted that the orders of the DRT had also been noticed by the Hon'ble Supreme Court in its order dated 13.10.2023. Even though the order of the DRT has been challenged by the Corporate Debtor before the DRAT, there being no stay on the decree of the DRT, the debt and default is subsisting. The Corporate Debtor has also not been able to controvert that there has been a default in discharging the debt obligations. That only part payment of GSA has been made has also not been disputed. That the liability arising out of the GSA still needs to be discharged has neither been denied. In such circumstances, merely by contesting that the revocation of GSA was unilateral and that there was breach of settlement obligations by the Financial Creditor, is not sufficient ground for disallowance of the Section 7 application.

5. We have duly considered the arguments advanced by the Learned Counsel for both the parties and perused the records carefully.

6. The short issue for our consideration is whether in the given set of facts and circumstances, the Adjudicating Authority was correct in holding that the Financial Creditor-ARC has been able to set out a case of debt and default

above the threshold level and that the Section 7 application was maintainable for the original amount of debt prior to the GSA.

7. The first issue for our consideration is whether there was a debt and default by the Corporate Debtor qua ARC which had arisen on account of the breach of the GSA.

8. It is the case of the Appellant that the Adjudicating Authority had wrongly admitted the Section 7 application filed by the ARC basis the purported failure of the GSA and alleged default in payment of settlement amount as claimed by ARC. Submission was pressed that it was wrong to contend that the GSA had been breached by the Corporate Debtor when substantial payment of Rs 51.10 Cr. had been made by them to the ARC in terms of the GSA entered into by the Uniworth Group of Companies which included the Corporate Debtor. When the ARC had accepted a hefty sum as part of the GSA, the ARC was estopped from resiling from the contractual term laid down under the GSA. Moreover, as the ARC had accepted settlement amount of Rs 51.10 Cr. beyond the cut-off date of 25.02.2017, the ARC had voluntarily waived the date of performance. Moreover, it was the ARC which had failed to comply to the GSA obligations for not withdrawing the legal proceedings against the Corporate Debtor; failure to keep the reciprocal promise of release of security besides non-issue of No Dues Certificate (NDC). It was vehemently contended that though the GSA was a binding contract between the two parties, the ARC had unilaterally revoked the GSA on 22.11.2018. This revocation was contested by the ARC on 14.12.2018. Yet the Adjudicating Authority mistakenly construed this letter to be an acknowledgement of debt on the part of the Corporate Debtor.

9. Per contra, it is the contention of the Respondent that the GSA entered into with the Uniworth Group of Companies was a company wise settlement. Hence, the acknowledgment letter issued by the Uniworth Group of Companies was as much an acknowledgement of liability on the part of the Corporate Debtor. It was submitted that the contention of the Appellant that ARC had breached the GSA obligations is baseless. The security interest in terms of GSA was to be released by ARC only after full payment in terms of GSA was received. Since only part payment was made by the Corporate Debtor, it tantamount to non-compliance on the part of the Corporate Debtor to fulfil their obligation under the GSA. Since the GSA had failed, ARC had revoked the GSA vide letter dated 22.11.2018 and the default amount having crossed the threshold limit of Rs 1 Cr., the Adjudicating Authority committed no mistake in admitting the Section 7 application.

10. At this juncture, we may notice the findings returned by the Adjudicating Authority on the breach of the GSA and the resultant default. The relevant excerpts of the impugned order are as extracted below:

> ***"18.2*** *Against the Settlement offered for an amount of Rs.75 crores for 5 group companies, the amount payable under the terms of settlement is more than 1 crore which crosses the minimum threshold.*
>
> ***18.3*** *The Corporate Debtor has duly acknowledged that the terms of settlement stands revoked.*
>
> **.....**
>
> ***20.2*** *The issues voiced by the Corporate Debtor with regard to group settlement and not individual company settlement has been adequately dealt with by the Hon'ble NCLAT. Hon'ble NCLAT in no uncertain terms has held that it is an individual company wise settlement, and the view stands affirmed by the Hon'ble Supreme Court too.*
>
> ***20.3*** *The Corporate Debtor has duly acknowledged the contents of the letter of revocation being letter dated November 22, 2018, by its letter dated December 14, 2018. It has even acted in terms of the said letter of revocation*

of the terms of settlement, requested the Financial Creditor to issue NOC with regard to the two companies only who have paid their dues. Hence the default in regard to Uniworth Textiles is clearly admitted."

11. When we look at the material on record, it is pertinent to note that it was the Corporate Debtor which had made the offer for the GSA to the ARC on 19.09.2016 in view of their financial constraints and had proposed settlement amount of Rs 75 cr towards settlement of dues of each of the companies separately. For reasons of clarity, we wish to reproduce the relevant extracts of the letter dated 19.09.2016 hereunder:

19th September 2016

To,
Mr. Vinayak Bahuguna
The CEO & Managing Director, Arcil
Dear Sir.
Sub: Settlement of Dues of Uniworth and its Group/Associate Companies promoted by A. P. Lohia and others.

This is with reference to the above subject. Please refer to our letter dated February 17, 2016 wherein we had submitted our settlement proposal of Rs.60.00 crore which was further enhanced to Rs. 70.00 crore vide our letter dated August 8, 2016. After our discussions, and meetings with you and your officials we improved the offer to Rs.71.50 crore vide our letter dated August 18, 2016 for your consideration towards the settlement of dues of below mentioned companies pertaining to Uniworth Limited and its group and associate companies. However, the same was rejected at your end. We request you to please give due consideration to our final offer of Rs. 75.00 crore. We request you to please consider this offer at your end for approval and for us to settle the dues of the company. The proposed settlement amount is payable against the debt assigned to Arcil by the various banks. The settlement amount of Rs. 75.00 crore shall be payable as follows:-

Sr. No.	***Company Name***	***Amount (Rs. in crore)***
1	*Uniworth Limited*	*50.50*
2	*Uniworth Textile Limited*	*21.00*
3	*Uniworth International Limited*	*0.10*

4	*Indoworth India Limited*	*1.00*
5	*For settlement of Corporate Guarantee extended by Uniworth Limited for securing financial assistance provided by bank to Uniworth Apparel Limited*	*0.40*
6	*Texprint Overseas Limited*	*2.00#*
	Total	***75.00***

 # The amount of Rs.2.00 crore is over and above the amount realized by Arcil from Sale of assets of the Company.

- *The settlement amount of Rs. 75.00 crore shall be payable as under:*
  - *Rs. 11.25 Crore upon handing over in Principle Sanction Letter and*
  - *Rs. 63.75 Crore on or before February 25, 2016*

- *We shall keep in abeyance all charges, litigation and cases of whatsoever nature filed by us at various forums for the assets of Indoworth India Limited, Uniworth Limited, Uniworth Textile Limited, Texprint Overseas Limited, Uniworth Apparels Limited and Uniworth International Limited and/or any other related/ associated company during the course of the settlement period and the same shall be adhered by Arcil as well. We shall withdraw and so shall Arcil after satisfactory completion of the settlement process.*
- *Further after full and final payment of Rs. 75.00 crore Arcil shall issue No Dues Certificate for all the companies mentioned above except Uniworth Apparels Limited and will release all personal and corporate guarantee/s extended in respect of above companies.*

  As it was earlier conveyed to your goodselves that the condition of the business is deteriorated. Further the units are only working on demand based condition and due to the same the assets have started getting deteriorated. We urge you to consider this sympathetically. With a lot of difficulty we have stretched the offer to Rs. 75.00 crore. Hope to hear positively from your end and resolve the matters amicably.

For Uniworth Group

(Emphasis supplied)

12. A bare reading of this letter makes it amply clear that in terms of this offer of settlement, only after a full and final payment of Rs. 75 cr was made by the Corporate Debtor that the ARC was required to issue NDCs for all the companies

mentioned above except Uniworth Apparels. The other obligation which was incumbent on both parties was to withdraw all litigation but only after satisfactory completion of the settlement process.

13. Now that we have noticed the genesis of the settlement offer and the terms thereof, to remove all doubts in our minds, we now need to notice whether it was ripe for the ARC to issue NDC in respect of the Corporate Debtor and withdraw all legal proceedings. To find an answer as to whether a breach of GSA had taken place and whether the Corporate Debtor had duly acknowledged that the GSA stood revoked, we may peruse the letter of revocation issued by the ARC on 22.11.2018 and the response of the Corporate Debtor thereto on 14.12.2018. Both these letters are as reproduced below:

"BGVII/NS/FY19/2738 *November 22, 2018*

Dear Sir,

Revocation of Settlement

We hereby refer to your offer letter dated September 19, 2016 and our in principle sanction letter dated November 08, 2016 (copy enclosed) regarding the OTS of the debt of Uniworth Ltd, Uniworth Textile Ltd, Uniworth International Ltd, Texprint Overseas Ltd and Indoworth India Ltd.

Further to the said letters, Uniworth Ltd, Indoworth India Ltd and Uniworth International Ltd have paid Rs.51.10 crore as under:

Company Name	*Amount (Rs. crore)*
*Uniworth Limited**	*50.00*
Indoworth India Limited #	*1.00*
Uniworth International Limited #	*0.10*
Total	*51.10*

** The amount payable by Uniworth limited as part of OTS is Rs.50.50 crore of which Rs.50 crore has been paid so far.*

 # The amounts have been paid in full in terms of OTS and NDC's have been issued.

The amounts payable by Uniworth Textiles Ltd viz Rs. 21.40 crore and Texprint Overseas Ltd viz Rs.2.50 crore aggregating to Rs.23.90 crore as per terms of OTS have still not been paid although the due date to pay the same was February 25, 2017.

Kindly note that inspite of our repeated reminders and various discussions from time to time you (Uniworth Textiles Ltd and Texprint Overseas Ltd) have failed and neglected to make payment of these amounts within agreed timeframe.

In view of the above we are constrained to hereby recall the said terms of settlement and the same stands revoked w.e.f. the date of this letter in respect of OTS granted to Uniworth Textiles Ltd and Texprint Overseas Ltd.

We, therefore, call upon you (Uniworth Textiles Ltd and Texprint Overseas Ltd) to pay the outstanding amount as on September 26, 2018 of Rs. 795,61,06,937/- i.e. total dues of Uniworth Textiles Ltd being Rs. 402,05,64,202/- and total dues of Texprint Overseas Ltd being 393,55,42,735/- on or before November 23, 2018 failing which Arcil shall pursue legal action for recovery of the outstanding dues under applicable laws.

Yours faithfully,
Jigar Dalal
Vice President"

(Emphasis supplied)

14. From a reading of the above letter, it is clear that the ARC has in clear and unambiguous terms stated that NDCs have been issued for those companies whose settlement amount has been paid while the amounts payable by Uniworth Textiles Ltd of Rs. 21.40 crore as per terms of GSA had still not been paid. The letter also clearly stated that if payments were not made by 23.11.2018, ARC would proceed with legal action for recovery of the outstanding dues against the Corporate Debtor.

15. The receipt of the letter of 22.11.2018 was acknowledged by the Corporate Debtor on 14.12.2018 which letter is as reproduced below:

"December 14 2018
Dear Mr. Dalal,

This has reference to your letter No. BGVII/NS/FY 19/2738 dated November 22 2018. We wish to inform you that while we have received the NO DUE CERTFICATE for Indoworth India Ltd. and Uniworth International Ltd. as mentioned in your said letter, we have not yet received the NO DUE CERTIFICATE in favour of Uniworth Ltd.

Therefore, we would request you to issue NO DUE CERTIFICATE in favour of Uniworth Ltd. and send to us at the earliest and oblige.

For UNIWORTH LTD."

(Emphasis supplied)

16. From a plain reading of the above letter, it is clear that the Corporate Debtor had only adverted attention to the fact that the ARC had already given NDC in respect of Indoworth India Ltd. and Uniworth International Ltd. besides requesting for issue of NDC for Uniworth Ltd. for which substantial payment had been made. However, there is no objection made whatsoever to the outstanding settlement amount claimed by the ARC as payable in respect of the Corporate Debtor-Uniworth Textiles and the resultant default. In such a situation where the Corporate Debtor did not make the payments as contemplated in the GSA allowing them to take a stance that the ARC cannot claim revocation of GSA is an illogical and absurd argument. If the Corporate Debtor was seriously contesting the revocation of settlement, as has been contended by the Respondent, they would have at least adverted reference to payments made on their behalf towards entire settlement amount or asked the ARC to issue their NDC. This letter does not even make a whisper of protest that that there was non-compliance of GSA by the ARC or that they did not accept the unilateral

revocation of GSA by ARC. The tone and tenor of the response does not indicate even a muted objection to the revocation of the GSA thus betraying undertone of implicit acceptance. In these circumstances, we are inclined to agree with the Adjudicating Authority the Corporate Debtor had acknowledged that the settlement was revoked by the ARC.

17. This brings us to the next strand of argument canvassed by the Appellant that once both parties had entered into the GSA, the original debt had ceased to exist as it was subsumed under the GSA. Since the original debt had ceased to exist between the parties on their having entered into the GSA, the balance amount payable under the settlement had acquired a character which was different from a financial debt. The amount payable under the GSA was not a 'financial debt' in terms of Section 5(8) of the IBC. No Section 7 application could have therefore been maintained on grounds of violation of the GSA. The Adjudicating Authority had committed a grave error in permitting the ARC to enforce the GSA by allowing them to file a Section 7 petition. In support of their contention, reliance has been placed on the judgment of this Tribunal in the matter of ***Amrit Kumar Agarwal Vs Tempo Appliances Pvt. Ltd. in CA(AT)(Ins)No. 1005 of 2020*** and ***Trafigura India (P) Ltd. Vs TDT Copper Ltd. in CA(AT)(Ins)No.742 of 2020.***

18. Rival submission was made by the Respondent that even if a Settlement Agreement between the parties failed, the Financial Creditor is not barred from filing a Section 7 application on the basis of original financing documents. The GSA having failed in the instant case, the ARC was well within its rights to file the Section 7 application. In support of their contention, reliance has been

placed on the judgement of this Tribunal in ***Priyal Kantilal Vs IREP Credit Capital Pvt. Ltd.*** in ***(CA)(AT)(Ins) No. 1423 of 2022.***

19. Before we proceed to answer whether the Section 7 application in its present form as filed by ARC was maintainable or not, we may first begin by looking at the Section 7 application filed by the ARC which is as reproduced hereunder.

PART IV
PARTICULARS OF FINANCIAL DEBT

<table>
<tr>
<td>1.</td>
<td>Total amount of debt granted date(s) of disbursement</td>
<td>(i) Rs. 41,50,00000/- together with further contractual interest till date of payment and / or realization in the facts and circumstances stated hereinafter;
(ii) IFCI Ltd and ICICI Ltd had from time to time sanctioned diverse credit facilities, the first of such sanction was made in 1992.
<table>
<tr><th>SI. No.</th><th>Nature of facility</th><th>Sanction limit (in crores)</th><th>Disbursement Date</th></tr>
<tr><td>1</td><td>Term Loan</td><td>20.00</td><td>Debt admitted</td></tr>
<tr><td>2</td><td>Corporate Loan (Term Loan</td><td>10.00</td><td>Debt admitted</td></tr>
<tr><td>3</td><td>Corporate Loan (Term Loan)</td><td>5.00</td><td>Debt admitted</td></tr>
<tr><td>4</td><td>Corporate Loan (Term Loan)</td><td>6.5</td><td>Debt admitted</td></tr>
<tr><td></td><td>Total:</td><td>41.50</td><td></td></tr>
</table>
The terms and conditions governing the said sanction/ renewal would appear from the Loan Agreement A copy of the same is annexed with this application. Thereafter by a deed of assignment dated 12.01.2007 the said IFCI Ltd assigned its account to the petitioner and by deed of assignment dated 31.03.2004 ICICI</td>
</tr>
</table>

		Bank Ltd assigned its account to the petitioner. The Corporate Debtor Company has acknowledged the dues of the financial creditor vide its letter dated 11th November, 2016. A copy of the same is annexed hereto.
2.	*Amount claimed to be in default and the date on which the default occurred (attach the workings for Computation of amount and days of default in tabular form)*	*There is now a total sum of Rs.205,83,38,833/- (Rupees Two hundred five crores eighty three lakhs thirty eight thousand eight hundred eighty three Only) due and payable by the corporate debtor to the financial creditor to whom the debt was assigned by Industrial Finance Corporation of India Ltd and Industrial Credit and Investment Corporation of India Ltd as on 05.09.2014 together with further contractual interest as agreed upon per annum (compounded monthly) till date of payment and/or realization.*

Perusal of the Section 7 application makes it clear that it is not based on the default of the GSA but founded on the original financial debt which was extended by the ICICI and IFCI to the Corporate Debtor which had been subsequently assigned to the ARC.

20. This issue has been squarely covered on similar set of facts by the judgement of this Tribunal in ***Priyal Kantilal supra*** wherein the inapplicability of the judgement of this Tribunal in ***Amrit Kumar Agarwal supra*** which has been relied upon by the Appellant has also been discussed. The relevant portions of the said judgement is as extracted hereunder:

> *"12. The judgement which has been relied by Learned Counsel for the Appellant "Amrit Kumar Agrawal" (supra) was a case where section 7 application was filed on the ground of default in payment of settlement agreement where the court held that default in payment of settlement agreement does not constitute a financial debt. The facts of the present case are clearly distinguishable. Present is not a case where Section 7 Application has been filed only on the ground of default in the settlement agreement rather section 7 application has been filed on the basis of original financial debt which was extended by the Financial Creditor to the*

Corporate Debtor. The mere fact that in earlier company petition, consent terms was arrived, which consent terms was breached by the corporate debtor, the financial debt which was claimed by the financial creditor would not be wiped out nor the nature and character of financial debt shall be changed on account of breach of the consent terms. Permitting such interpretation shall be giving premium to the corporate debtor who breach the consent terms. Another judgement which has been relied on by Learned Counsel for the Appellant is "Dr. Gopal Krishnan MS", (supra) which is also judgement relying on "Amrit Kumar Agrawal". The court in the facts of the said case came to the conclusion that debt is not a financial debt. The above judgement is also clearly distinguishable."

21. The facts of the case in ***Trafigura India judgement supra*** which has been relied upon by the Corporate Debtor is also distinctive and has no relevance in the instant case since in that case the settlement agreement was not predicated on the operational debt arising out of the Master Sale Agreement. Having seen the Section 7 application and the binding precedent of ***Priyal Kantilal judgement*** supra, we are of the considered view that the Respondent cannot be held to be precluded in any manner from being entitled to initiate a Section 7 application against the Corporate Debtor in the facts of the present case. The nature of debt which has been claimed under Section 7 application is a financial debt. Simply because an GSA was entered into between the parties which GSA suffered breach, the nature of debt shall not get changed. That does not in any way destroy the character of ARC as a creditor or the character of the money due to it from the Corporate Debtor as a debt. Hence the contention of the Appellant that the Section 7 petition is not maintainable lacks force. The right of the financial creditor would not be wiped out nor the nature and character of the financial debt would change by the mere fact of entering into

the GSA and any contrary interpretation would provide undue advantage to the Corporate Debtor and frustrate the objective of IBC.

22. This brings us to the last issue as to whether there was debt which was due and payable and default in the payment thereof.

23. It is the case of the Appellant that the Adjudicating Authority has committed a grave error in treating an acknowledgement of debt for the purposes of Section 18 of the Limitation Act as admission of debt. In support of their contention, reliance was placed on the judgment of the Hon'ble Supreme Court in ***J.C. Budhraja vs. Chairman Orissa Mining Corporation Limited (2008) 2 SCC 444***. Submission has been pressed by the Appellant that acknowledgment of debt in the Balance sheet of Corporate Debtor at best suffices to establish the jural relationship between the Corporate Debtor and Financial Creditor for the purposes of limitation. But mere acknowledgment of debt in Balance sheet is not sufficient for the purposes of considering a Section 7 application as admission of debt under Section 7 is required to be clear, unambiguous, unqualified and unequivocal. It was submitted that the Annual Reports in the Balance sheet of the Corporate Debtor clearly show that the Corporate Debtor had contested the liability. It was pointed out that in some of the Annual Reports of the Corporate Debtor, there is a specific denial of any liability qua the ARC. The Annual Reports contain the following remarks: "*The Company has disputed the repayment of due. The loss and damages caused to the borrower by the lender is much more than the amount lent. Hence, the figures of the borrowed amount shown in the balance sheet after due adjustments with the said loss and damages may result in entitlement to recover substantial amount*

from the lender. Under these facts and circumstances, the figures of borrowed amount in this balance sheet cannot be considered as admission, if any, of the claim of the lender(s).” In view of this caveat, it is clear that the debt was disputed and contested as not payable. Hence the Adjudicating Authority committed an error in taking the view that the dues claimed by the ARC which form the basis of the Section 7 application have been admitted by the Corporate Debtor.

24. Per contra, it is the contention of the Respondent that the Corporate Debtor had not only acknowledged its debt owed to the ARC in their Balance sheets from FY 2008-09 onwards but the very fact that the Appellant had offered a settlement to the ARC and also made part payments in discharge of the GSA obligations clearly tantamount to admission of liability on the part of the Corporate Debtor. Moreover, the DRT in its order had issued a decree dated 04.12.2018 in favour of ARC directing the Corporate Debtor to pay a sum of Rs 211.86 cr. along with interest till realization. The existence of debt and default stands decided and the quantum is clearly more than the threshold limit of Rs 1 cr and hence there is no infirmity in the order of the Adjudicating Authority admitting the Section 7 application.

25. At this juncture, we may have a look at the manner in which the Adjudicating Authority has treated the issue of debt and default while admitting the Section 7 application.

> ***18.1*** *The CD in its own balance sheet of 2018-2019 have acknowledged default in payment of dues to the financial creditor have also acknowledged that loans have become due for repayment as in Page No. 835 of the Supplementary Affidavit Vol-IV.*

18.2 *Against the Settlement offered for an amount of Rs.75 crores for 5 group companies, the amount payable under the terms of settlement is more than 1 crore which crosses the minimum threshold.*

20.1 *The grounds taken by the Corporate Debtor have no relevance in the instant matter as the Corporate Debtor has acknowledged its debt and stated default in no uncertain terms.*

20.3 *The Corporate Debtor has duly acknowledged the contents of the letter of revocation being letter dated November 22, 2018, by its letter dated December 14, 2018. It has even acted in terms of the said letter of revocation of the terms of settlement, requested the Financial Creditor to issue NOC with regard to the two companies only who have paid their dues. Hence the default in regard to Uniworth Textiles is clearly admitted.*

26. It may also be useful to take note of the letter of the Corporate Debtor dated 11.11.2016 where it was admitted that the terms and conditions of the Original Loan Agreement executed with the financial institutions whose debt had been acquired by ARCIL would cease and come to an end only on payment of full settlement consideration of Rs.75 Cr. The said letter is as reproduced hereunder:

To, *11th November 2016*
Mr. Vinayak Bahuguna
The CEO & Managing Director, ARCIL,

Subject:- Payment towards settlement of entire dues of Uniworth Limited, Uniworth Textiles Limited, Uniworth International Limited, Indoworth India Limited and Texprint Overseas Limited and their respective Guarantors (collectively referred to as "Uniworth Group")

Reference:- (i) Our Letter, inter alia, dated 19.09.2016 and subsequent discussions held in various meetings between the parties.

(ii) Your Letter No. BGVI/AD/FY17/2189 Dated 08/11/2016 recording in principal approval and settlement of dues of Uniworth Limited, Uniworth Textiles Limited, Uniworth International Limited, Indoworth India Limited and Texprint Overseas Limited and their respective Guarantors

Dear Sir,

This refers to the captioned subject. Please find enclosed herewith Cheque bearing No. 000076 dated 11.11.2016 for a sum of Rs.11,25,00,000/- (Rupees Eleven Crores and Twenty Five Lakhs Only) drawn on Andhra Bank, Karaya Road Branch, Kolkata in favour of Asset Reconstruction Company (India) Limited (ARCIL) issued by Uniworth Securities Limited towards part consideration of settlement of dues of Uniworth Group namely,

1) Uniworth Limited
2) Uniworth International Limited
3) Indoworth India Limited
4) Uniworth Textile Limited
5) Texprint Overseas Limited
6) and their respective Guarantors

against total settlement consideration of Rs.75,00,00,000/- (Rupees Seventy Five Crores Only). The sum of Rs.11,25,00,000/- (Rupees Eleven Crores and Twenty Five Lakhs Only) is being deposited representing 15% of the total settlement consideration of Rs.75,00,00,000/- (Rupees Seventy Five Crores Only). This settlement amount of Rs.75,00,00,000/- (Rupees Seventy Five Crores Only) is the entire consideration towards all the assets, rights and claims acquired by ARCIL from all the banks and financial institutions who have assigned their debt in favour of ARCIL in one or the other manner.
…….
Please also note that the terms and conditions of the Original Loan Agreement/Deed of Guarantees executed with the respective banks/ financial institutions whose debt has been acquired by ARCIL will cease and comes to an end after conclusion of the final Agreement and on payment of full settlement consideration of Rs.75,00,00,000/- (Rupees Seventy Five Crores Only). It is agreed and understood that no further action, claim or legal proceedings shall be raised or initiated by ARCIL, any of the bank/ financial institutions whose debts have been assigned to ARCIL or whose assets or the secured assets are acquired by ARCIL The sum of Rs.75,00,00,000/- (Rupees Seventy Five Crores Only) as agreed is towards full and final settlement consideration of all claims, rights as existing or may exist in future against the Uniworth Group and five companies mentioned in your letter dated 08.11.2016 or any of its guarantors.

For Uniworth Group

(Emphasis supplied)

27. When we look at the material on record, we find that it is an admitted fact that the GSA entered into both parties provided for a settlement amount of Rs

75 Cr. of which the amount paid by the Corporate Debtor was only Rs 51.10 Cr. Only part payment had been made towards satisfaction of the full and final claim of the financial creditor in terms of the settlement agreement. The ARC in their letter of 22.11.2018 as at para 13 supra had clearly pointed out that the amounts payable by the Corporate Debtor was Rs. 21.40 cr. There has been no specific denial that this amount was not due nor has any proof been submitted of payments to the tune of Rs. 21.40 cr. having been made. Even though the Corporate Debtor has challenged maintainability of the Section 7 petition on the ground that the breach of GSA cannot revive the original debt but nowhere has it denied debt and default. The event of default is therefore a glaring fact. Moreover, the DRT decree clearly establishes debt and default. Even though the order of DRT has been appealed against, the order of the DRT has not been stayed by the DRAT. This does not in any way obliterate the fact that debt qua the ARC subsists. More significantly, when the DRT decree passed on 04.12.2018 has been noticed also by the highest court of the land in Civil Appeal No.6175/2023, it does not lie in the mouth of the Appellant to state that this decree has not been referred to by the Adjudicating Authority in coming to the decision of debt and default. The order of the Hon'ble Supreme Court is reproduced below:

> *"In view of the peculiar facts and circumstances of the case, including the factum that the One Time Settlement proposal was moved by a group of companies, of which the appellant-Uniworth Textiles Limited is also a member, and the Debts Recovery Tribunal has passed the decree on 04.12.2018, we do not find any good ground and reason to interfere with the impugned judgment and hence, the present appeal is dismissed."*

28. The scheme of the IBC as to when a financial creditor can trigger the provisions of Section 7 against the Corporate Debtor has been elaborately explained in the judgement of the Hon'ble Supreme Court in ***Innoventive Industries Ltd. Vs ICICI Bank (2018) 1 SCC 407*** wherein it has been observed:

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to

ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5, where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

....

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise".

29. Under the ambit of Section 7 of the IBC, the Adjudicating Authority is to only determine whether a default has occurred and whether the debt, which even if disputed, remains due and unpaid. The moment the Adjudicating Authority is satisfied that a default has occurred, the Section 7 application is to be admitted unless it is incomplete. In the present matter, the Adjudicating Authority has rightly concluded that it was satisfied that a debt had arisen qua ARC; that a default on the part of the Financial Creditor-Appellant has occurred and the default is above the threshold limit of Rs. 1 crore. Since debt and default is clearly established, we are of the considered opinion that there is no infirmity in the impugned order admitting the Section 7 application.

30. In view of the above discussions, facts and circumstances, we therefore affirm the findings of the Adjudicating Authority and are of the considered opinion that there are no good reasons to interfere with the impugned order. In the result, the appeal being devoid of merit is dismissed. No costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Place: New Delhi
Date: 03.04.2025

Abdul/Harleen