**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL**
**AT NEW DELHI**
**APPELLATE JURISDICTION**
**COMPANY APPEAL (AT) (INSOLVENCY) NO. _____ OF 2022**

**IN THE MATTER OF:**

PREFERRED UNDER SECTION 61 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

**IN THE MATTER OF:**

**ALCHEMIST TOWNSHIP INDIA LIMITED**
THROUGH DEVENDRA SINGH
RESOLUTION PROFESSIONAL
ATS GREENS PARADISO,
FLAT NO.: 02054, TOWER-2
PLOT NO.: GH-03, SECTOR-CHI-04,
GREATER NOIDA, UTTAR PRADESH-201308

...APPELLANT

VERSUS

**TECHNOLOGY PARKS LIMITED**
BUILDING NO. 23, 4TH FLOOR, (EASTERN SIDE),
NEHRU PLACE, NEW DELHI-110019

...RESPONDENT

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**THROUGH:**

**VARSHA BANERJEE & UDITA SINGH**
**DHIR & DHIR ASSOCIATES**
**ADVOCATE FOR THE APPELLANT**
**D-55, DEFENCE COLONY,**
**NEW DELHI 110 024**
**MOB: 9818286508**
**E-MAIL: varsha.banerjee@dhirassociates.com**

**PLACE: NEW DELHI**
**DATE: 28.10.2022**

## SYNOPSIS

The instant appeal is being preferred by Alchemist Township India Limited (hereinafter referred to as the 'Appellant') being aggrieved by the order dated 31.09.2022 passed by the Ld. National Company Law Tribunal, New Delhi Bench-V (hereinafter referred to as the 'Ld. Adjudicating Authority'). The Ld. Adjudicating Authority vide the impugned order has wrongfully and erroneously rejected the Petition filed by the Appellant under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Technology Parks Limited.

The Appellant in the instant case had preferred an application under Section 7 of IBC against the Respondent Company who had defaulted in payment of Rs.16,10,21,76,275/-. It is noteworthy that the Appellant Company is itself undergoing insolvency resolution process and claim to the tune of Rs.40,67,38,99,966/- has been received in the ongoing insolvency resolution process.

The Ld. Adjudicating Authority has rejected the Section 7 application on account of the following:

i. The Section 7 application being premature on account of the tenure of the loan agreement being 10 years starting from 31.03.2015;

ii. Absence of agreement between the parties as regards interest payment becoming due;

iii. Failure on the part of the Appellant to furnish "Status of Authentication" from the National E-Governance Services Limited (NeSL).

The impugned order accordingly proceeds on the basis that even though there is existence of financial debt being disbursed by the Appellant to the

Respondent Company, the said debt as on the date of the Section 7 application cannot be said to be in "default. The Ld. Adjudicating Authority while passing the impugned order has failed to into consideration the following relevant facts which establish and demonstrate the default on payment of Financial Debt on the part of Technology Parks Limited (Respondent/Company):

i. Loan Agreement dated 13.12.2014 which clearly records the existence of Financial Debt and the Financial Debt being repayable by the Company to the Appellant. The loan agreement had a maximum tenure of 10 years with a clear repayment clause of the loan amount with interest on a due date as agreed to between the lender and the borrower or before the expiration of time line for exercise of call option i.e. 31.03.2018. Thus the exercise of call option latest by 31.03.2018 was the maximum available period for repayment of loan with interest whereinafter the entire loan amount with interest became due and payable. The tenure of the loan agreement was in no manner the time period whereinafter the loan amount alongwith interest would become due and payable.

ii. Without prejudice there was clear default in payment of interest. It is noteworthy that Clause 10 & 11 of the Loan Agreement provided for payment on interest to the Appellant *w.e.f.* 31.03.2018.

iii. The record of debt and default on part of the Company as duly registered with National E-Governance Services Limited (NeSL). The absence of "Status of Authentication" with NeSL has been wrongly relied upon by the Ld. Adjudicating Authority to imply "debt and default not yet reflected on NeSL". The debt and default are clearly reflected in the NeSL records.

iv. The clear admission and existence of Financial Debt being due and payable in the balance sheet of both the Appellant and the Company.

The impugned order is legally untenable and liable to be set aside by this Hon'ble Appellate Tribunal in view of the fact that the present case is a clear case of existence of an admitted financial debt which is in default. The Ld. Adjudicating Authority has erred in not taking into consideration the record of default of the Company as registered with NeSL which clearly mentions the date of default being 30.04.2018. Section 3(12) of IBC defines the term of default to mean non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the Debtor. In the present case from a bare reading of the Loan Agreement it is evident that the Loan / part of Loan not converted into equity shares shall be repaid along with interest at the appropriate G Sec Securities. Further, Clause 11 of the Loan Agreement categorically provides that no interest shall be payable till 31.03.2018 wherein after interest shall be payable by the Company to the Appellant.

That without prejudice the Ld. Adjudicating Authority while the passing the impugned order has erroneously placed reliance on the tenure of the Loan Agreement being 10 years without taking into consideration the relevant fact that default arising on account of non-payment of the interest component is itself sufficient to initiate proceedings under Section 7 of IBC. The Ld. Adjudicating Authority while the passing the impugned order has given legal recognition to the *malafide* and illegal approach of the Respondent Company, to derive unjust benefit at the cost of the Appellant.

The Company in its reply to the Section 7 Petition has not denied the existence of Financial Debt but attempted to make out a case of the debt allegedly being not "*due & payable*" on account of the Appellant having not exercised its right to choose the conversion of said debt into equity. The said submission of the Company is clearly flawed and not borne out from the books of account of the Respondent Company as well as the Appellant, since the balance sheet of the Company clearly admits the liability of the Company towards the Appellant under the head long term borrowings. The said fact has been specifically recorded at Para 2(vi) of the impugned order. Once, the balance sheet of both the Appellant as well as the Company duly reflects the Financial Debt as a liability, there cannot be any case on the part of the Respondent Company to state that the Appellant in the instant case has failed to exercise its option of conversion of debt of equity and thus the loan amount with interest is not due and payable as on date.

It is further submitted that the only other defence of the Respondent Company as regards non-payment of the admitted financial debt was premised on alleged non-payment of loan amount by one M/s Alchemist Infra Realty Limited (AIRL). It is submitted that the alleged non-payment of loan by AIRL has no bearing on the admission of the Section 7 Petition of the Appellant as the loan agreement between the Appellant and the Respondent Company was not a back to back agreement wherein the payment was based on receipt of any amount from the said AIRL.

That in view of the above it is evident that the impugned order is legally untenable and liable to be set aside by this Hon'ble Appellate Tribunal.

Hence, this Appeal.

## LIST OF DATES

| DATES | PARTICULARS |
|---|---|
| 31.03.2014 | The Respondent Company i.e. Technology Parks Limited availed loan facility from the Appellant for development of its project. The Appellant disbursed the loan amount on regular intervals to the Respondent and as on 31.03.2014, the outstanding liability of the Respondent towards the Appellant was Rs.803,98,00,000/-. |
| 31.12.2014 | The Appellant and Respondent executed a loan agreement for the outstanding amount of Rs.803,98,00,000/- as on 31.03.2014. In terms of the loan agreement i.e. Clause 11 till 31.03.2018, there was no interest payment on the loan by the Company in lieu of the call option to be exercised as mentioned in the loan agreement. The tenure of the loan was pegged at a maximum of 10 years from 31.03.2015. It is noteworthy that as per the books of accounts of both the Appellant and the Respondent Company, call option was never exercised and the loan continued to the reflected as a liability on the part of the Respondent Company. |
| 01.04.2018 | The interest component in terms of the loan agreement started accruing in favour of the Appellant Company.<br>The Respondent became liable to pay interest at the rate of 7.20% (as per the standard rate of RBI) on the principal amount in terms of the Agreement. |
| 30.04.2018 | The Respondent committed default on payment of interest. |
| 25.01.2019 | Corporate Insolvency Resolution Process (CIRP) was initiated in the case of the Appellant Company in CP (IB) No. 1082/(PB)/2018. |
| 12.02.2019 | On an appeal preferred by a shareholder of the Appellant Company i.e. Alchemist Infra Ventures Limited, this Hon'ble Appellate Tribunal directed CIRP not to proceed further in light of the settlement between the Appellant Company and the Financial Creditor. |

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| 01.03.2019 | This Hon'ble Appellate Tribunal set aside the admission order dated 25.01.2019 while granting liberty to the Financial Creditor to revive the Section 7 Application in case of non-encashment of cheques handed over to the Financial Creditor. |
| 19.09.2019 | Enforcement Directorate conducted a search on the premises of the Appellant and ceased the books of accounts, documents and data of the Appellant Company. |
| 01.10.2020 | The Section 7 Application of the Financial Creditor in CP (IB) No. 1082/(PB)/2018 was revived and CIRP proceedings commenced against the Appellant Company. |
| 19.10.2020 / 12.10.2020 | The Insolvency Resolution Process (IRP) issued public announcement as regards commencement of CIRP. |
| 23.10.2020 | In the first meeting of Committee of Creditors (CoC), Mr. Devendra Singh was appointed as the Resolution Professional (RP) of the Appellant. |
| 24.11.2020 | The Ld. Adjudicating Authority appointed Mr Devender Singh as the RP. |
| November – December, 2020 | RP took over the management and custody of the Appellant Company. While discharging the function of the RP, while reviewing the available records of the Appellant Company, the RP found that the Respondent Company has an outstanding liability towards the Appellant Company since April, 2018. |
| 30.12.2020 | The Appellant addressed a letter to Respondent Company intimating the Respondent Company regarding initiation of CIRP in the case of the Appellant Company and seeking payment of Rs.13,09,63,70,346/- along with interest. |
| 09.03.2021 | The Appellant issued a notice for payment of outstanding amount of Rs.16,10,21,76,275/- as on 28.02.2021 to the Respondent Company. |
| 10.04.2021 | The default of the Respondent Company towards the Financial Debt of the Appellant, was duly recorded with the |

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|---|---|
| | NESL. |
| 17.05.2021 | Section 7 Petition was filed by the Appellant. |
| 11.10.2021 | The Respondent filed its reply to the Application filed under Section 7 of IBC. |
| 23.03.2022 | The Appellant filed its rejoinder to the reply filed by Respondent Company. |
| 08.08.2022 | The Appellant filed its Written Submissions with the Ld. Adjudicating Authority. |
| 30.09.2022 | Impugned order passed by the Ld. Adjudicating Authority rejecting the Section 7 Application as filed by the Appellant. |
| | Hence, the instant Appeal. |

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**VERSUS**

**TECHNOLOGY PARKS LIMITED** **...RESPONDENT**

**MEMO OF PARTIES**

**ALCHEMIST TOWNSHIP INDIA LIMITED**
THROUGH DEVENDRA SINGH
RESOLUTION PROFESSIONAL
ATS GREENS PARADISO,
FLAT NO.: 02054, TOWER-2
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...APPELLANT

VERSUS

**TECHNOLOGY PARKS LIMITED**
BUILDING NO. 23, 4TH FLOOR, (EASTERN SIDE),
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...RESPONDENT

**THROUGH:**

**VARSHA BANERJEE**
**DHIR & DHIR ASSOCIATES**
**ADVOCATE FOR THE APPELLANT**
**D-55, DEFENCE COLONY,**
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**MOB: 9818286508**
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**PLACE: NEW DELHI**
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VERSUS

**TECHNOLOGY PARKS LIMITED**
BUILDING NO. 23, 4TH FLOOR, (EASTERN SIDE),
NEHRU PLACE, NEW DELHI-110019

...RESPONDENT

**APPEAL PREFERRED UNDER SECTION 61 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 AGAINST THE IMPUGNED ORDER DATED 30.09.2022 PASSED BY THE LD. NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI BENCH-V IN C.P. (IB) NO. 270/ND/2021**

1. **DETAILS OF APPEAL:**

This present Appeal is being preferred by Alchemist Township India Limited (hereinafter, "**Appellant**") herein, through the Resolution Professional i.e. Mr Devender Singh against the Impugned Order dated 30.09.2022, passed by the Ld. National Company Law Tribunal, New Delhi Bench – V (hereinafter, "**Ld. Adjudicating Authority**") in Company Petition No. (I. B.) -270(ND)/2021, whereby the Ld. Adjudicating Authority has wrongfully and erroneously rejected the

Petition as filed by the Appellant against Technology Parks Limited (hereinafter, "**Respondent**" or "**Company**") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, "**Code**").

Certified Copy of the Impugned Order dated 30.09.2022, passed by the Ld. National Company Law Tribunal, New Delhi Bench – V in Company Petition No. (I. B.) -270(ND)/2021 is annexed herewith and marked as **ANNEXURE A-1.**

The impugned order is legally untenable and liable to be set aside by this Hon'ble Appellate Tribunal in view of the fact that the present case is a clear case of existence of an admitted financial debt which is in default. The Ld. Adjudicating Authority has erred in not taking into consideration the record of default of the Company as registered with NESL which clearly mentions the date of default being 30.04.2018. Section 3(12) of IBC defines the term of default to mean non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the Debtor. In the present case from a bare reading of the Loan Agreement it is evident that the Loan / part of Loan not converted into equity shares shall be repaid along with interest at the appropriate G Sec Securities. Further, Clause 11 of the Loan Agreement categorically provides that no interest shall be payable till 31.03.2018 wherein after interest shall be payable by the Company to the Appellant.

That without prejudice the Ld. Adjudicating Authority while the passing the impugned order has erroneously placed reliance on the tenure of the Loan Agreement being 10 years without taking into consideration the relevant fact that default arising on account of non-payment of the

interest component is itself sufficient to initiate proceedings under Section 7 of IBC. The Ld. Adjudicating Authority while the passing the impugned order has given legal recognition to the *malafide* and illegal approach of the Respondent Company, to derive unjust benefit at the cost of the Appellant.

Copy of the Section 7 Application (without annexures) as filed by the Appellant before the Ld. Adjudicating Authority is annexed herewith and marked as **ANNEXURE A-2.**

2. **DATE ON WHICH THE ORDER APPEALED AGAINST IS COMMUNICATED AND PROOF THEREOF, IF ANY:**

The Impugned order is dated 30.09.2022 and the Certified Copy of the Impugned Order has been received by the Appellant on 28.10.2022.

3. **THE ADDRESS OF APPELLANT FOR SERVICE IS AS SET OUT HEREUNDER:**

i) Postal Address: ATS Greens Paradiso, Flat No. 02054, Tower-2, Plot No. GH-03, Sector-CHI-04, Greater Noida, Uttar Pradesh-201308

ii) Phone No.: 9810331877, 9810339416

iii) E-mail: cirp.atil@gmail.com

iv) Fax No.: N/A

v) Address of Legal Representative: Varsha Banerjee, Dhir & Dhir Associates, Advocates & Solicitors, D-55, Defence Colony, New Delhi 110 024

(a) Phone No.: +91 9818286508

(b) E-mail: varsha.banerjee@dhirassociates.com

(c) Fax No.: N.A

4. **THE ADDRESS OF THE RESPONDENT FOR SERVICE OF ALL NOTICES IN THE APPEAL ARE AS SET OUT HEREUNDER:**

Respondent

i) Postal Address: Building No. 23, 4th Floor (Eastern Side), Nehru Place, new Delhi-110019

ii) Phone No.: N/A

iii) E-mail: tplworks21@gmail.com

iv) Fax No.: N/A

v) Address of Legal Representative: NA

(a) Phone No.: NA

(b) E-mail: NA

5. **JURISDICTION OF THE APPELLATE TRIBUNAL:**

The Appellant herein declares that the subject matter of the present Appeal is within the jurisdiction of this Hon'ble Appellate Tribunal.

6. **LIMITATION:**

The Appellant declares that the Appeal is within the period specified in sub-section (2) of Section 61 of the Insolvency and Bankruptcy Code, 2016.

7. **FACTS OF THE CASE:**

i) That Technology Parks Limited i.e. Respondent Company was incorporated on 16.03.1985. Copy of the Master Data of the Respondent Company is annexed herewith and marked as **ANNEXURE A-3.**

ii) That the Appellant Company was incorporated on 04.07.2006. Copy of the Master Data of the Appellant Company is annexed herewith and marked as **ANNEXURE A-4.**

iii) That Technology Parks Limited (Respondent Company) availed Loan facility from the Appellant for development of its project. The Appellant and the Respondent executed a loan agreement dated 31.12.2014 for the loans/advances given by the Appellant. The foundation of the loan agreement was the balance as at 31.03.2014 of Rs.803,98,00,000/. In terms of the loan agreement the loan was pegged at a maximum of 10 years from 31.03.2015. In terms of Clause 4 of the Loan agreement the lender i.e. Appellant had option as at 31.03.2015 to convert the loan into equity in lieu of payment of interest. The loan agreement provided that within 3 years i.e. latest by the 31.03.2018 the lender i.e. the Appellant shall indicate to the borrower i.e. the Respondent its intention to exercise the call option and convert the loan into equity. The loan agreement clearly envisaged payment of interest *w.e.f.* 01.04.2018 as the interest component *w.e.f.* said date had to be paid directly by the Respondent Company to the Appellant without any conversion or exercise of any call option. Copy of the loan agreement dated 31.12.2014 is annexed herewith and marked as **ANNEXURE A-5.**

iv) That the interest component in terms of the loan agreement started accruing in favour of the Appellant *w.e.f.* 01.04.2018. The Respondent became liable to pay interest @ 7.20% on the principal amount as per the agreement. The Respondent Company accordingly committed default on payment of interest on 30.04.2018. Copy of the balance sheet of the Respondent Company for the financial year 2018-19 is annexed herewith and marked as **ANNEXURE A-6.** Copy of the balance sheet of the Appellant

Company for the financial year 2018-19 is annexed herewith and marked as **ANNEXURE A-7.**

v) That an application under Section 7 of IBC titled as Kiran Malhotra Vs. Alchemist Township India Limited, CP(IB) No. 1082/(PB)/2018 was filed on 07.08.2018 wherein the Ld. Adjudicating Authority vide order dated 25.01.2019 initiated Corporate Insolvency Resolution Process (CIRP). The said CIRP was thereafter, revived on 01.10.2020.

vi) That Mr. Devendra Singh was appointed as the Resolution Professional (RP) in the CIRP of the Appellant Company vide order dated 24.11.2020. Copy of the order dated 24.11.2020 is annexed herewith and marked as **ANNEXURE A-8.**

vii) That the RP took over the management and custody of the Appellant Company in furtherance of the order dated 24.11.2020.

viii) That the RP thereafter, addressed a letter dated 31.12.2020 to the Respondent intimating the Respondent about CIRP as initiated in the case of the Appellant Company herein while also specifically bringing it to the notice of the Respondent that an amount of Rs.13,09,63,70,346/- along with interest is payable by the Company. The Appellant vide the said letter accordingly called upon the Respondent to make payment of the above mentioned amount. Copy of the letter dated 31.12.2020 to the Company is annexed herewith and marked as **ANNEXURE A-9.**

ix) That the Appellant subsequent thereto sent a notice of payment of outstanding amount of Rs.16,10,21,76,275/- including interest upto

28.02.2021. Copy of the notice demanding payment of outstanding amount is annexed herewith and marked as **ANNEXURE A-10.**

x) That the Appellant also got the default as regards the non-payment of financial debt by the Respondent Company duly registered with the National E-Governance Services Limited (NeSL). Copy of the record of default as registered with the NeSL is annexed herewith and marked as **ANNEXURE A-11.**

xi) That the Appellant in the above background filed its Section 7 Petition before the Ld. Adjudicating Authority. The Appellant in the instant case had preferred an application under Section 7 of IBC against the Respondent Company who had defaulted in payment of Rs.16,10,21,76,275/-. It is noteworthy that the Appellant Company is itself undergoing insolvency resolution process and claim to the tune of Rs. 40,67,38,99,966/- has been received in the ongoing insolvency resolution process.

xii) The computation of the amount of default in the said Section 7 Petition is annexed herewith and marked as **ANNEXURE A-12.** The Appellant along with the Section 7 Petition duly placed on record the statement of bank account of the Appellant Company maintained with Punjab National Bank along with the ledger account of the Respondent Company in the book of accounts of the Appellant. Copy of the statement of bank account of the Appellant maintained with Punjab National Bank is annexed herewith and marked as **ANNEXURE A-13.** Copy of the ledger account of the Respondent Company in the books of the Appellant Company is annexed herewith and marked as **ANNEXURE A-14.**

xiii) That the Ld. Adjudicating Authority vide its order dated 01.06.2021 issued notice in the Section 7 Petition as preferred by the Appellant wherein after the Respondent Company filed its reply to the Section 7 Petition. Copy of the reply to the Section 7 Petition as filed by the Respondent Company is annexed herewith and marked as **ANNEXURE A-15.**

xiv) That the Appellant duly filed its rejoinder to the reply filed by the Respondent Company. Copy of the rejoinder filed by the Appellant is annexed herewith and marked as **ANNEXURE A-16.**

xv) That the Ld. Adjudicating Authority heard the Section 7 Petition on 02.08.2022 wherein after parties were granted liberty to file their Written Submission. Copy of the Written Submission as filed by the Appellant is annexed herewith and marked as **ANNEXURE A-17.**

xvi) That impugned order dated 30.09.2022 was thereafter pronounced by the Ld. Adjudicating Authority. The Ld. Adjudicating Authority while passing the impugned order has wrongfully rejected the Section 7 Petition as preferred by the Appellant on the basis that there is no default of the loan agreement dated 31.12.2014. It is submitted that the impugned order is erroneous and legally untenable in as much as the instant case is a case of default of admitted financial debt. The Ld. Adjudicating Authority in an arbitrary in cryptic manner rejected the application while observing that the application is premature as the tenure of the loan is for a period of 10 years starting from 31.03.2015 to 31.03.2025. However, the said tenure of loan is the maximum time period and

the case of the Appellant as regards of financial debt consisted of not only principal amount but also interest which clearly accrued *w.e.f.* 01.04.2018.

xvii) That the Appellant has no other remedy available with him in respect of the Impugned Order, therefore, has filed the present appeal.

8. **THE FACTS IN ISSUE OR SPECIFY THE DISPUTE BETWEEN THE PARTIES AND SUMMARY OF THE QUESTIONS OF LAW THAT ARISE FOR CONSIDERATION IN THE APPEAL:**

**(a) <u>Facts in Issue:</u>**

i) That the Ld. Adjudicating Authority erred in coming to the conclusion that the Section 7 Petition as preferred by the Appellant is premature.

ii) That the tenure of the Loan agreement being pegged at maximum period of 10 years did not in any manner interfered with the right of the Appellant to initiate proceeding under Section 7 of IBC on account of default in payment of interest *w.e.f.* 30.04.2018.

iii) That the Ld. Adjudicating Authority failed to take into consideration Clause 10 & 11 of the loan agreement in terms whereof the Appellant was entitled to payment of interest *w.e.f.* 01.04.2018.

iv) That the Ld. Adjudicating Authority exceeded its jurisdiction and proceeded to reject the application under Section 7 of IBC without taking due consideration of the record of default as registered with NeSL.

**(b) Questions of Law:**

i) **WHETHER** the impugned order is arbitrary and an unreasoned order?

ii) **WHETHER** the Impugned order is contrary to the provisions of Section 7 of IBC?

iii) **WHETHER**, the Impugned Order is contrary to the law as laid down by the Hon'ble Supreme Court in the matter of *Innoventive Industries Ltd. Vs. ICICI Bank & Anr, (2018) 1 SCC 407*?

iv) **WHETHER** the Ld. Adjudicating Authority erred in coming to the conclusion that there is no default of the loan agreement dated 31.12.2014?

v) **WHETHER** the instant case is case of default in non-payment of financial debt in terms of Section 3(12) of IBC?

vi) **WHETHER** the Ld. Adjudicating Authority has any jurisdiction to interpret the "Status of Authentication" forming part of the record of financial information as updated with NeSL?

9. **GROUNDS WITH LEGAL PROVISIONS:**

i) **FOR THAT** the impugned order is arbitrary and unreasoned in as much as the Ld. Adjudicating Authority has failed to return a finding as regards interest being not due and payable to the Appellant in terms of the loan agreement.

ii) **FOR THAT** the impugned order is legally untenable and liable to be set aside by this Hon'ble Appellate Tribunal in view of the fact that the present case is a clear case of existence of an admitted financial

debt which is in default. The Ld. Adjudicating Authority has erred in not taking into consideration the record of default of the Company as registered with NESL which clearly mentions the date of default being 30.04.2018. Section 3(12) of IBC defines the term of default to mean non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the Debtor. In the present case from a bare reading of the Loan Agreement it is evident that the Loan / part of Loan not converted into equity shares shall be repaid along with interest at the appropriate G Sec Securities. Further, Clause 11 of the Loan Agreement categorically provides that no interest shall be payable till 31.03.2018 wherein after interest shall be payable by the Company to the Appellant.

iii) **FOR THAT** the loan agreement dated 31.12.2014 provided for the maximum tenure of loan being pegged at 10 years from 31.03.2015, however, the said maximum period in no manner interfered with the right of the Appellant to seek repayment of the entire loan amount with interest prior to expiration of period of 10 years. The conjoint reading of Clauses 4 & 5 of the loan agreement merely gave an option to the Appellant i.e. the lender to convert the loan into equity share latest by 31.03.2018. The non-exercise of such a call option on the part of the Appellant, clearly entitles the Appellant to seek payment of the entire loan amount with interest from the Respondent Company.

iv) **FOR THAT** it is an admitted fact that no part of either the loan amount or interest on the loan amount was converted into equity.

The balance sheet of the Respondent as well as the Appellant clearly reflect the liability of the Respondent towards the Appellant herein. The legal position is well settled that the balance sheet of a Company reflect the true and fair position of the assets and liabilities of any Company. In view of the same, the impugned order is legally untenable and liable to be set aside by this Hon'ble Appellate Tribunal.

v) **FOR THAT** the Ld. Adjudicating Authority while the passing the impugned order has failed to take into consideration the relevant fact that in terms of Clause 10 &11 of the Loan agreement, the Appellant was entitled to received interest at the appropriate G Securities on the loan amount after 31.03.2018 in absence of the call option being exercised by the Appellant. Accordingly, in term of the loan agreement interest @ 7.20% started accruing from 01.04.2018 and became payable *w.e.f.* 30.04.2018.

vi) **FOR THAT** the loan amount was clearly due and payable w.e.f. 30.04.2018 even as per the Respondent Company since the Respondent Company itself started making payments to the Appellant during the year April 2019 onwards.

vii) **FOR THAT** the Loan Agreement dated 13.12.2014 clearly records the existence of Financial Debt and the Financial Debt being repayable by the Company to the Appellant. The loan agreement had a maximum tenure of 10 years with a clear repayment clause of the loan amount with interest on a due date as agreed to between the lender and the borrower or before the expiration of time line for exercise of call option i.e. 31.03.2018. Thus the exercise of call

option latest by 31.03.2018 was the maximum available period for repayment of loan with interest whereinafter the entire loan amount with interest became due and payable. The tenure of the loan agreement was in no manner the time period whereinafter the loan amount alongwith interest would become due and payable.

viii) **FOR THAT** without prejudice there was clear default in payment of interest. It is noteworthy that Clause 10 & 11 of the Loan Agreement provided for payment on interest to the Appellant w.e.f. 31.03.2018.

ix) **FOR THAT** the record of debt and default on part of the Company was duly registered with National E-Governance Services Limited (NESL). The absence of "Status of Authentication" with NeSL has been wrongly relied upon by the Ld. Adjudicating Authority to imply "debt and default not yet reflected on NeSL". The debt and default are clearly reflected in the NeSL records.

x) **FOR THAT** the record of debt of default on the part of the Respondent has been duly registered with the NeSL. The said record of debt and default being duly registered has been erroneously not considered by the Ld. Adjudicating Authority on the premise that the non-submission of the "Status of Authentication" implies the debt in its default are not reflected on NeSL. It is submitted that the "Status of Authentication" can in no manner be interpreted by the Ld. Adjudicating Authority to reject the Section 7 Application as preferred by the Appellant. The record of debt and default being duly registered with NeSL is itself sufficient to admit a Section 7 Application. Without prejudice it is submitted that the existence of debt and default being evident from the loan agreement, bank

account statement and balance sheet, the impugned order is legally untenable.

xi) **FOR THAT** the Ld. NCLAT while passing the impugned order has acted contrary to the law as laid down by this Hon'ble Court in the matter of ***Innoventive Industries (supra)*** which specifically states that 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.

xii) **FOR THAT** the Company in its reply to the Section 7 Petition has not denied the existence of Financial Debt but attempted to make out a case of the debt allegedly being not "*due & payable*" on account of the Appellant having not exercised its right to choose the conversion of said debt into equity. The said submission of the Company is clearly flawed and not borne out from the books of account of the Respondent Company as well as the Appellant, since the balance sheet of the Company clearly admits the liability of the Company towards the Appellant under the head long term borrowings. The said fact has been specifically recorded at Para 2(vi) of the impugned order. Once, the balance sheet of both the Appellant as well as the Company duly reflects the Financial Debt as a liability, there cannot be any case on the part of the Respondent Company to state that the Appellant in the instant case has failed to exercise its option of conversion of debt of equity and thus the loan amount with interest is not due and payable as on date.

xiii) **FOR THAT** it is further submitted that the only other defence of the Respondent Company as regards non-payment of the admitted

financial debt was premised on alleged non-payment of loan amount by one M/s Alchemist Infra Realty Limited (AIRL). It is submitted that the alleged non-payment of loan by AIRL has no bearing on the admission of the Section 7 Petition of the Appellant as the loan agreement between the Appellant and the Respondent Company was not a back to back agreement wherein the payment was based on receipt of any amount from the said AIRL.

10. **MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT:**

The Appellant further declares that the Appellant has not previously filed any writ petition or suit regarding the matter in respect of which this Appeal is preferred before any court or any other authority nor any such writ petition or suit is pending before any of them.

11. **GROUNDS FOR RELIEF(S) AND THE LEGAL PROVISIONS, IF ANY RELIED UPON:**

The grounds for relief and legal provisions relied upon have already been stated above and are not repeated hereunder to avoid duplicity.

12. **DETAILS OF INTERIM APPLICATION, IF ANY, PREFERRED ALONG WITH APPEAL:**

The Appellant declares that the Appellant has filed an Interim Application seeking exemption from filing original and/or legible/ fair/ typed copies of dim/ illegible Annexures along with the present Appeal.

13. **DETAILS OF APPEALS, IF ANY, PREFERRED BEFORE THIS APPELLATE TRIBUNAL AGAINST THE SAME IMPUNGNED ORDER/ DIRECTION, BY RESPONDENTS WITH NUMBERS, DATES AND INTERIM ORDER, IF ANY, PASSED IN THAT APPEAL (IF KNOWN):**

The Appellant declares that to the best of its knowledge, the Respondents have till date, not preferred any appeal or no such appeal is in the knowledge of the Appellant before this Hon'ble Appellate Tribunal against the same Impugned Order/direction.

14. **DETAILS OF INDEX:**

(An Index containing the details of the documents in chronological order relied upon is enclosed)

15. **PARTICULARS OF FEE PAYABLE AND DETAILS OF BANK DRAFT IN FAVOUR OF PAY AND ACCOUNTS OFFICER, MINISTRY OF CORPORATE AFFAIRS, NEW DELHI:**

In respect of the fee for Appeal and the Interim Application

Amount of Rs. 6,000/- (Rs. 5,000 + Rs. 1,000) has been paid through Bharat Kosh (Online Mode).

16. **LIST OF ENCLOSURES:**

i) Affidavit

ii) Annexure A-1 to A-17

iii) Interim Application for Exemption from filing legible/ typed copies

iv) Vakalatnama

v) Caveat Letter

vi) Proof of Service of the Appeal to the Respondent

17. **WHETHER THE ORDER APPEALED AS COMMUNICATED IN ORIGINAL IS FILED? IF NOT, EXPLAIN THE REASON FOR NOT FILING THE SAME:**

The Appellant further declares that the Certified True Copy of the Impugned Order as communicated in original has been filed with the present Appeal and the same has been marked as **ANNEXURE A-1**.

18. **WHETHER THE APPELLANT IS READY TO FILE WRITTEN SUBMISSIONS/ARGUMENTS BEFORE THE FIRST HEARING AFTER SERVING THE COPY OF THE SAME ON RESPONDENTS:**

NA

19. **WHETHER THE COPY OF MEMORANDUM OF APPEAL WITH ALL ENCLOSURES HAS BEEN FORWARDED TO ALL RESPONDENTS AND ALL INTERESTED PARTIES, IF SO, ENCLOSE POSTAL RECEIPT/COURIER RECEIPT IN ADDITION TO PAYMENT OF PRESCRIBED PROCESS FEE:**

The copy of Memorandum of Appeal along with all enclosures has been served on Respondent. The Courier receipt/acknowledgement in this regard is enclosed.

20. **ANY OTHER RELEVANT OR MATERIAL PARTICULARS/ DETAILS WHICH THE APPELLANT DEEM NECESSARY TO SET OUT:**

The Appellant states that all relevant facts and legal submissions have been elaborated in the foregoing paragraphs.

21. **RELIEFS SOUGHT:**

In view of the facts mentioned in para 7 above, points in dispute and questions of law set out in para 8 and the grounds as raised in para 9 above, the Appellant prays for the following reliefs:

a) The Hon'ble Appellate Authority be pleased to allow the present Appeal and set aside the Impugned Order dated 30.09.2022, passed by the Ld. Adjudicating Authority in Company Petition No. (I. B.) - 270(ND)/2021;

b) The Hon'ble Appellate Authority be pleased to initiate Corporate Insolvency Resolution Process against the Respondent Company;

c) The Hon'ble Appellate Authority be pleased to pass any other Order in the facts and circumstances of the present Appeal and in the interest of the Justice and Equity.

And for this the Appellant as in duty bound shall ever pray.

**Dated at New Delhi this, the 26 day of October, 2022**

**APPELLANT**

**THROUGH:**

**VARSHA BANERJEE**
**DHIR & DHIR ASSOCIATES**
**ADVOCATE FOR THE APPELLANT**
**D-55, DEFENCE COLONY,**
**NEW DELHI 110 024**
**MOB: 9818286508**
**E-MAIL: varsha.banerjee@dhirassociates.com**

**PLACE: NEW DELHI**
**DATE: 26.10.2022**

## DECLARATION BY APPELLANT

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The Appellant above named hereby solemnly declares that nothing material has been concealed or suppressed and further declares that the enclosures and typed set of material papers relied upon and filed herewith are true copies of the originals/fair reproduction of the originals/true translation thereof.

Verified at New Delhi on this the 28th day of October, 2022.

**APPELLANT**

**COUNSEL(S) FOR THE APPELLANT**

## VERIFICATION

I, Devendra Singh, aged about 58 Years, S/o Late Shri Daryao Singh, having office at Assotech Business Cresterra, Office No 216, 2nd Floor, Sector 135,Noida, UP-201305 presently at New Delhi, the Appellant herein, do hereby verify that the contents of the paras 1 to 7 are true to my personal knowledge/derived from official record and paras 8 to 21 are believed to be true on legal advice and that I have not suppressed any material facts.

Verified and signed at New Delhi on this, the 28th day of October, 2022.

**APPELLANT**

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL**
**AT NEW DELHI**
**APPELLATE JURISDICTION**
**COMPANY APPEAL (AT) (INSOLVENCY) NO. _____ OF 2022**

28

**IN THE MATTER OF:**

**ALCHEMIST TOWNSHIP INDIA LIMITED**
THROUGH DEVENDRA SINGH
RESOLUTION PROFESSIONAL
ASSOTECH BUSINESS CRESTERRA,
OFFICE NO.216, 2ND FLOOR, TOWER-1,
SECTOR-135, NOIDA, UP-201305

...APPELLANT

VERSUS

**TECHNOLOGY PARKS LIMITED**
BUILDING NO. 23, 4TH FLOOR, (EASTERN SIDE),
NEHRU PLACE, NEW DELHI-110019

...RESPONDENT

**AFFIDAVIT**

I, Devendra Singh, I, Devendra Singh, aged about 58 Years, S/o Late Shri Daryao Singh, having office at Assotech Business Cresterra, Office No 216, 2nd Floor, Sector 135,Noida, UP-201305, presently at New Delhi, do hereby solemnly affirm, state and declare as under:

1. I say that I am the Resolution Professional of Alchemist Township India Limited, appointed by this Hon'ble Tribunal vide order dated 24.11.2020 and as such I am fully conversant with the facts and circumstances of the present case and also competent and authorized to swear and affirm this Affidavit.
2. I say that the contents of the instant Appeal are based on records.
3. I say that contents of the instant Appeal true to my personal knowledge and information and believed to be true and based on provision of law.

**DEPONENT**

NOTARY
Keshav Prasad Delhi Regn. No. 4506
GOVT. OF INDIA

## VERIFICATION



I, the Deponent herein above, do hereby verify and state that the contents of the paras 1 to 5 of the Affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom.

Verified and signed at New Delhi on this 28th day of October, 2022

**DEPONENT**

NOTARY Pathay Prasad Delhi Regn. No. 4506 GOVT. OF INDIA

ATTESTED
NOTARY PUBLIC
DELHI (INDIA)

28/10/2022