

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH: NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1395 of 2025**

[Arising out of the Order dated 02.09.2025, passed by the  
'Adjudicating Authority' (National Company Law Tribunal,  
Mumbai Bench-II in CP (IB) No. 141/MB/2024]

**IN THE MATTER OF:**

**Vinodkumar Nihalchand Parmar**

R/o. Flat No. 1101,  
11<sup>th</sup> Floor Shatrunjay Tower,  
Vithal Chawan Marg, Parel, Mumbai  
Maharashtra – 400012

**...Appellant**

**Versus**

1. **Mr. Anuj Bajpai**

I.R.P. of Dee Plone Polyester Pvt Ltd.  
Reg. Number: IBBI/IPA-001/IP-  
P00311/2017 - 2018/10575  
708, Raheja Centre, Nariman Point  
Mumbai, Maharashtra – 400021

**...Respondent No.1**

2. **Pegasus Assets Reconstruction Private Limited**

[CIN: U65999MH2004PTC144113]  
having its registered office at 507,  
Dalamal House, Jamnalal Bajaj Marg  
Nariman Point, Mumbai  
Maharashtra 400021

**...Respondent No.2**

**Present:**

**For Appellant** : Mr. Puneet Singh Bindra, Ms. Charu Modi, Mr. Rishabh Gupta, Ms. Kirti Dang, Ms. Shaanya Shukla, Ms. Sukriti Seth and Mr. Chandra Raj Singh Chouhan, Advocates

**For Respondent** : Mr. Dinkar Singh and Mr. Rohit Singh, Advocates for R-2.

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

**[Per: Arun Baroka, Member (Technical)]**

The present Appeal has been preferred by the suspended Director and shareholder of Dee Plone Polyester Pvt. Ltd. ("Corporate Debtor") under Section

61 of the Insolvency and Bankruptcy Code, 2016 ("IBC/Code") against the order dated 02.09.2025 ("Impugned Order") passed by the Ld. National Company Law Tribunal, Mumbai Bench ("Ld. NCLT") in CP (IB) No. 141/MB/2024 whereby the Ld. NCLT has admitted the Company Petition filed on behalf of the Respondent No.2 and initiated the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor.

2. Appellant is the Suspended Director and claims that impugned order was passed in violations of principles of natural justice as the NCLT relied upon the affidavit filed on behalf of the Financial Creditor (after reserving of orders) without granting the Corporate Debtor any opportunity to respond to the same and also that the Ld. NCLT further ignored the fact that the said Affidavit was never served on the Corporate Debtor and the objections raised on behalf of the Corporate Debtor were rejected by the Ld. NCLT basis the Affidavit of the Respondent No.2 and the Impugned Order suffers from further procedural irregularities.

**Reliefs sought:**

3. The Appellant has sought the following reliefs:
- a) Set aside the Impugned Order dated 02.09.2025 passed by the Ld. National Company Law Tribunal, Mumbai Bench in CP (IB) No. 141 of 2024; and/or
  - b) Quash the Insolvency Resolution Process proceedings before the Ld. National Company Law Tribunal, Mumbai Bench in CP (IB) No. 141 of 2024;
  - c) Pass any other appropriate orders/directions that this Hon'ble Tribunal deems necessary in the facts of the present case.

### **Submissions of the Appellant**

4. Appellant claims that the newly engaged Advocate of the Corporate Debtor appeared through VC and informed about the change of Advocate. Respondent No.2 never supplied the copy of the Additional Affidavit to the newly engaged Advocate or the Corporate Debtor and thus the Corporate Debtor was not given any opportunity to make submissions with respect to the Additional Affidavit. Perusal of paragraph 28 and 29 of the Impugned Order that the Ld. NCLT relied on the contents of the Additional Affidavit to dismiss the objections of (i) non-compliance of Section 65B of the Indian Evidence Act, 1872 and (ii) non-compliance of Rule 4(3) of the I&B (Application to Adjudication Authority) Rules (service of petition to IBBI) raised by the Corporate Debtor. The reliance on the contents of the Additional Affidavit, without granting the Corporate Debtor to respond to the Additional Affidavit and without re-hearing the argument on the matter is gross violation of the principles of natural justice and hence the Impugned Order is liable to be set aside. Thus, NCLT passed the Impugned Admission Order in violation of the principles of natural justice. Appellant places reliance on the following judgement dated 16.07.2021 passed by the Hon'ble Madras High Court titled **Selvaraj vs. Koodankulam Nuclear Power Plant India, [CRP(MD) Nos. 915, 943, 967, 991 & 330 of 2020]**

"8. ....xxx...

An adjudicatory mechanism for the redressal of the grievances of a citizen is an integral facet of the principle of access to justice which, the Supreme Court in **Anita Kushwaha v Pushap Sudan [(2016) 8 SCC 509]**, has declared as a facet of right to life guaranteed under Article 21 of the Constitution. The Court observed:

"One of the most fundamental requirements for providing to the citizens access to justice is to set up an adjudicatory mechanism whether described

as a court, tribunal, commission or authority or called by any other name whatsoever, where a citizen can agitate his grievance and seek adjudication of what he may perceive as a breach of his right by another citizen or by the State or any one of its instrumentalities. In order that the right of a citizen to access justice is protected, the mechanism so provided must not only be effective but must also be just, fair and objective in its approach. So also the procedure which the court, tribunal or authority may adopt for adjudication, must, in itself be just and fair and in keeping with the well-recognised principles of natural justice."

5. Appellant contends that defect cannot be cured in a manner not recognized by the Code. Section 7(5)(b) of the Code provides that where an application is incomplete petition, the Ld. NCLT may, by order, reject such application after giving notice to the applicant to rectify the defect in the application within seven (7) days of receipt of such notice from the Ld. NCLT. Ld. NCLT either could have rejected the petition or given a notice to Respondent No.2 to cure the defects within a period of 7 days. The Code does not recognise any post facto curing of defects by way of additional affidavits after the orders have been reserved. Admittedly, the undermentioned defects were cured by way of the additional affidavit filed on behalf of the Respondent No.2. Thus there is non-compliance of the following Rules:

- Rule 4(3) of the IBC (Application to Adjudicating Authority) Rules, 2016- Service of Petition to the IBBI.
- Section 65B of the Indian Evidence Act, 1872.

6. Appellant also contends that the defects, if not cured in one instance cannot be admitted as a proof of default. As held in Selvaraj (supra):

"33. For curing any of the permissible defects, no court shall return the plaint more than once. This has been deprecated by this Court even in S. Parameswari

v. Denis Lourdusamy, [(2011) 5 CTC 742] referred to above. In other words, returning the plaint multiple times on multiple grounds is a sin in procedure and the Court/Registry needs to become adequately aware about it. In spite of the fact that the decision in S. Parameswari's case was pronounced a decade ago, even in this batch of cases this Court has witnessed that some of our Courts and their registry continue to flout it."

7. Appellant contends that the following defects have still not been cured by the Respondent No.2:

i. Non-compliance of Regulation 20(1A) of the IBBI (Information Utilities) Regulations, 2017 which provides that before filing an application to initiate CIRP under Section 7 the creditor shall file the information of default with the information utility and the information utility shall process the information for the purpose of issuing record of default in accordance with Regulation 21.

ii. Non-Compliance of the provisions of the Bankers Book Evidence Act, 1891 whereby Respondent No.2 was required to file the certified copies as prescribed under the provisions of the Bankers Book Evidence Act, 1891, in absence of such certified copies, the Petition remained defective and ought not to be admitted.

8. Appellant in this regard, placed reliance on the following judgements:

i) Judgement dated 23.10.2024 passed by the Hon'ble Supreme Court titled **GLAS Trust Co. LLC v. BYJU Raveendran [(2025) 3 SCC 625]**:

"70. When a procedure has been prescribed for a particular purpose exhaustively, no power shall be exercised otherwise than in the manner prescribed by the said provisions. In such cases, the court must be circumspect in invoking its 'inherent powers' to deviate from the prescribed procedure. If such deviation is made, the court must justify why this was necessary to "prevent the abuse of the process of the Court""

ii) Judgement dated 03.02.2021 passed by the Hon'ble Supreme Court titled **OPTO Circuits (India) Ltd. v. Axis Bank [(2021) 6 SCC 707]**:

"14. This Court has time and again emphasised that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. Among others, in a matter relating to the presentation of an election petition, as per the procedure prescribed under the Patna High Court Rules, this Court had an occasion to consider the Rules to find out as to what would be a valid presentation of an election petition in Chandra Kishore Jha v. Mahavir Prasad [Chandra Kishore Jha v. Mahavir Prasad, (1999) 8 SCC 266] and in the course of consideration observed as hereunder: (SCC p. 273, para 17)

"17.... It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner."...xxx.

9. Appellant also contends that the unstamped loan agreement could not have been relied upon by the Ld. NCLT while admitting the petition under Section 7 of the Code. Appellant also contends that the loan agreements dated 06.05.2014 and 10.08.2016 were un-stamped. It is further admitted that non-stamping of an Agreement is a curable defect, otherwise such unstamped Agreement is not admissible in evidence. Thus, the Loan Agreement can only be relied upon once such document has been compounded viz. when the defect of non-stamping of an Agreement has been cured by adequately stamping such Agreement. The loan agreements being inadmissible, any 'debt' claimed to be arising therefrom, or any other right claimed by Respondent No.2 flowing therefrom cannot be sustained and the Impugned Order is therefore liable to be set aside.

**Submissions of Respondent No.2 – Pegasus Assets Reconstruction Private Limited**

10. Respondent contends that the Adjudicating Authority justifiably arrived to a conclusion that the Financial Creditor adduced cogent evidence to

establish that there is a "Financial Debt" as defined under Section 5 (8) of the Code and "Default" as defined under Section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of 'debt' and 'default' for admission of a petition under Section 7 of the I&B Code, have been, therefore, met in this case.

11. The prime ground taken by the Appellant in its memo of appeal is that the Ld. Adjudicating Authority, after completion of pleadings and hearing both parties, reserved its orders on 04.06.2025, however, later vide order dated 23.07.2025, de-reserved its orders and directed Respondent No.2 herein to file an additional affidavit to provide explanation to the grounds raised in the affidavit in reply on behalf of the Appellant. According to the Appellant, the Financial Creditor filed the affidavit but the said additional affidavit was neither served upon the Corporate Debtor nor its duly appointed Counsel and was only tendered during the course of proceedings by the Respondent on 12.08.2025 when the matter was called out. Further, according to the Appellant herein, the Ld. Adjudicating Authority, granted no opportunity was given to the Corporate Debtor to deal with the contents of the said additional affidavit. Thus, according to the Appellant herein, the Corporate Debtor counsel did not get any opportunity to review and/or rebut any of the contents of this additional affidavit and nor did the Corporate Debtor Counsel get adequate opportunity to make any oral arguments on the additional affidavit or on the main matter.

12. It is a fact, that after the petition was reserved for judgment, the petition, on 23.07.2025 was again listed for clarification. The Ld. Adjudicating

Authority, vide order dated 23.07.2025, sought clarification from the answering respondent, on compliance of Rule 4(3) of the IBC (Application to Adjudicating Authority), which mandates service of the application to both the Corporate Debtor and the Insolvency and Bankruptcy Board of India (IBBI) before filing. The Tribunal observed that the omission of service upon the IBBI constitutes a procedural irregularity, albeit one that is rectifiable. Accordingly, when this Application was listed for clarification on 23.07.2025, learned Counsel for the Financial Creditor was directed to clear the defect by effecting service of the petition upon the IBBI. On that occasion, the Counsel for the Financial Creditor, undertook to file proof of such service in additional Affidavit. The Financial Creditor, scrupulously complied with the subsequent order dated 23.07.2025, having served a copy of the petition upon the IBBI. The proof of service stands substantiated through the Additional Affidavit of the Financial Creditor, tendered in compliance with the directions of order dated 23.07.2025.

13. Respondents contends that the Appellant, has committed perjury, by making false statement of fact on oath, that the Financial Creditor did not serve the additional affidavit upon the counsel of the Corporate Debtor, which caused prejudice to the Corporate Debtor. The true fact is that the Counsel for the answering respondent, before filing the additional affidavit to clarify the compliance of Rule 4(3) of the IBC (Application to Adjudicating Authority), served the advance copy upon the counsel on record of the Corporate Debtor. Further, the Appellant itself admitted in the memo of appeal that after the final hearing when the case was reserved for judgment, another counsel on

behalf of the corporate debtor, without furnishing 'NoC' from the counsel on record, appeared on VC and informed about the new engagement and change of counsel and sought opportunity to make fresh submissions. However, the same was not granted, as the Adjudicating Authority, on 23.07.2025, sought clarification from the Financial Creditor, on compliance of Rule 4(3) of the IBC (Application to Adjudicating Authority), but did not give any opportunity to both the parties to make any fresh submissions. The Counsel on record, for the Corporate Debtor, as on 23.07.2025, did not appear on 23.07.2025 to make any objection regarding non service of additional affidavit. Further, the said Counsel on record, as on 23.07.2025, for the Corporate Debtor, has not filed any affidavit along-with the memo of appeal to justify that the additional affidavit was not served upon by the Financial Creditor, hence the objection raised by the Corporate Debtor is devoid of merit and ought to be rejected.

14. Further, upon perusal of document management system (DMS), duly maintained by the Adjudicating Authority, it may be verified that the Order of Admission of Company Petition dated September 2, 2025 was uploaded on the same day, while another Vakalatnama was uploaded only on September 10, 2025, i.e. after the passing of Order of Admission of Company Petition.

15. Dombivli Nagari Sahakari Bank Ltd. (herein referred to as "DNS Bank"), during the period from 2014 to 2017, advanced, to the Corporate Debtor, following loan facilities as under:

- DNS Bank had initially sanctioned the following facilities to the Corporate Debtor:

- For sum of Rs. 10 crores term loan and cash credit facility for 5 crores
- Fresh Term Loan of ₹6.18 Crores sanctioned on 17.07.2016.
- The debt was later part of a consortium loan with Apna Sahakari Bank Ltd., with DNS Bank acting as the lead bank, extending 6.18 Crores of the 10.8 Crores total facility.

16. The Debt was secured by way of multiple hypothecation and mortgage deeds, which were executed between 2014 and 2017, securing Movable and immovable assets including plant and machinery, stocks, receivables, land and building, etc.

17. Pegasus Assets Reconstruction Private Limited (R2) is the Assignee of the debts of the Corporate Debtor which was assigned along with all the underlying security interest, pledges and guarantees, by Dombivli Nagari Sahakari Bank Ltd. ("DNS Bank") vide an Assignment of Debt Agreement dated December 31, 2020.

18. The Corporate Debtor defaulted in repayment and the loan account was classified as NPA on 31.03.2018 by DNS Bank. As of 16.10.2023, the outstanding default amount is 37,35,74,442.07/- inclusive of principal, interest, and penal charges. The total amount claimed to be in default, as per Part-IV of the Application, is Rs. 37,35,74,442.07/- (Rupees Thirty-Seven Crores Thirty-Five Lakhs Seventy-Four Thousand Four Hundred Forty-Two and Seven Paise Only), in respect of Term Loan, Cash Credit Facility, advanced during the period from 2014 to 2017, to the Corporate Debtor by

the assignor of the Financial Creditor, Dombivli Nagari Sahakari Bank Ltd. (herein referred to as "DNS Bank").

19. The Corporate Debtor acknowledged the outstanding debt in its audited balance sheets for FY 2018-19, 2019-20, and 2020-21, referencing DNS Bank under Notes to Accounts. Additionally, the Corporate Debtor admitted its liability in an email dated 16.02.2024, addressed to the Financial Creditor. Despite duly acknowledging and admitting its liability towards the outstanding debt, the Corporate Debtor failed to discharge the same. Consequently, the Financial Creditor, approached Hon'ble NCLT Mumbai, seeking initiation of CIRP against the Corporate Debtor.

20. The Corporate Debtor filed reply affidavit to oppose the admission of the petition. The primary defence of the Corporate Debtor were as under:

- i) The Petition was not maintainable due to lack of valid Authorization.
- ii) Non-Compliance on behalf of the Financial Creditor, in respect of Regulation 20(1A) of IBBI (IU) Regulations, 2017:

As per Regulation 20(1A) inserted by Notification dated 14.06.2022, submission of the Record of Default from an Information Utility is mandatory before filing a Section 7 application. The present Petition dated 01.11.2023 lacks a Form D certificate from NeSL, despite the NCLT Joint Registrar's direction dated 03.04.2023. The absence of a valid Information Utility record renders the Petition incomplete and liable to dismissal.

- iii) Insufficiently stamping of the Loan Agreements under the Maharashtra Stamp Act, 1958, making it as inadmissible as per settled law and cannot form the basis of establishing a financial debt.
- iv) Non filing of the mandatory 65B Certificate with electronic records such as ledgers and account statements.
- v) Violation of Rule 4(3) of the IBC (Application to Adjudicating Authority) Rules, 2016 Rule 4(3) which mandates service of the application to both the Corporate Debtor and the Insolvency and Bankruptcy Board of India (IBBI) before filing.

21. The Financial Creditor contends that the Corporate Debtor only raised technical and curable objections, without denying the existence of debt or occurrence of default. The Corporate Debtor availed loan facilities from DNS Bank (assignor) which are duly reflected in the Corporate Debtor's audited accounts and the erstwhile director of the Corporate Debtor, Mr. Vinod Parmar, by email dated 16.02.2024, admitted that the loan account was declared NPA and acknowledged liabilities. The Applicant/Financial Creditor assigned the debt to Pegasus ARC under SARFAESI Act, which was intimated to the Corporate Debtor vide letter dated 06.01.2021. The Corporate Debtor, approached the financial creditor i.e. Pegasus ARC for settlement, thus estopped from disputing the loan agreement and deed of assignment. The Application was filed through its authorized representative who is duly empowered under Board Resolutions dated 27.07.2023 and 12.12.2023.

Inability to file record of default with IU is not fatal. Absence of IU record, specifically when there is categorical acknowledgment of debt in the book of accounts of the Corporate Debtor, cannot be a ground to reject the petition filed by the Financial Creditor under Section 7. The alleged inadequate stamping of loan documents constitutes a curable defect. Such deficiencies do not preclude rectification and should not defeat the enforceability of documents at the admission stage. The production of certificate to comply with the requirement of Section 65B certificate is not mandatory during the admission stage of proceedings specifically when there is categorical acknowledgment of debt in the book of accounts of the Corporate Debtor, cannot be a ground to reject the petition filed by the Financial Creditor under Section 7.

22. The Ld. Adjudicating Authority, justifiably observed that the application was verified and signed by a person duly authorized by the applicant and therefore, this challenge was held not maintainable. The amount involved in the application was far more than the threshold limit as prescribed under Section 4 of the I&B Code. The application was not time-barred. Thus, in terms of the provisions of IBC, 2016, the petition was justifiably allowed. The Answering Respondent, in view of the aforesaid facts, to be read with the documents on record filed by the Appellant itself, further read with the finding in the justified order impugned herein by the Appellant, craves leave of this Hon'ble Appellate Authority, to pray that in the interest of justice, the present appeal shall be dismissed being devoid of any merits.

## **Appraisal**

23. Heard both sides. From the materials placed on record and also bases submissions of both sides, we find that the Adjudicating Authority has clearly established the existence of a “Financial Debt” and also the existence of default and the application was complete and within limitation and for that reason it had admitted the CIR Proceeding against the Corporate Debtor. The issue for us to decide is whether the appeal is maintainable basis several technical grounds raised by the Appellant.

24. We observe that the original financial debt was sanctioned by Dombivli Nagri Sahkari Bank Limited but subsequently it was assigned to the Respondent ARC and it constitutes a financial debt within a meaning of Section 5(8) of the Code. We find that the sanctioned term loan and cash credit facilities, were supported by security documents which included hypothecation and mortgages, assignment deed dated 31.12.2020 and it is also reflected as a liability in the Corporate Debtors audited balance sheets. Thus we observe that under the SARFAESI Act assignment of debt vests a right in the assignee and the Corporate Debtor cannot dispute once acknowledgement is evident from its own records.

25. We further note that the account was classified as NPA on 31.03.2018 and the outstanding default amount was around Rs. 37.35 crs. The Corporate Debtor never disputed the quantum or existence of default. It had acknowledged the debt in its audited financial statements up to financial year 2021-21. The liability is also admitted in its email dated 16.02.2024 which expresses its financial distress. Under these conditions there are sufficient

acknowledgements which conclusively establish the default under Section 3(12) of the Code.

26. We also note that this application was filed on 01.11.2023 and the acknowledgements as per the audited financial statements and also the admission of liability in its email dated 16.02.2024 shows that the application is within the limitation period as provided under Section 18 of the Limitation Act. The objections raised regarding the limitations thus cannot be sustained.

27. On some technical objections relating to authorization defect, it is brought to our notice that initial defect in authorization defect which is curable was cured once the board resolutions were placed on record during the proceeding. Such a procedural defect cannot defeat substantive justice especially when debt and default are undisputed.

28. With respect to the objection relating to not filing in the information utility record, we observe that information utility filing is directory and not mandatory and the absence thereof cannot defeat the Section 7 Application particularly when default is otherwise proved and also when the efforts to notify the Corporate Debtor to information utility failed due to bouncing of the emails.

29. On the objections relating to stamp duty and the registration objections, Adjudicating Authority has relied on the judgment of Hon'ble Supreme Court in Civil Appeal No. 1599 of 2020 in **N.N. Global Mercantile (P) Ltd. vs. Indo Unique Flame Ltd.** holding that inadequate stamping is curable defect and unstamped documents are not void or non-existence. Moreover, at the Section

7 admission stage the Tribunal is not adjudicating the enforceability of contracts but merely verifying the debt and default.

30. With respect to Section 65B objection that in the absence of Section 65B certificate the proceedings at admission stage are not invalidated and certified bank statements are admissible under the Bankers Books Evidence Act. Moreover, the proceedings of admission are independently corroborated, rendering this objection unsustainable.

31. With respect to the objection relating to the Rule 4(3) regarding the service on IBBI, the Adjudicating Authority had held that this defect can be treated as it is a rectifiable procedural lapse and which was subsequently cured pursuant to the directions of NCLT. Once the compliance was affected and was proved on affidavit the objections ceased to survive.

32. With respect to the allegations under Section 65 of the Code that the petition is malicious or recovery oriented, we observe that the CD has repeatedly acknowledged financial stress and contends that it has insufficient funds and requesting for settlement-all clearly demonstrate insolvency. We note that invocation of the IBC in such circumstances is the right course of action and the Tribunal was correct in rejecting the defence of Section 65 of the Code.

33. We note that at the admission stage under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), the Adjudicating Authority is only required to examine:

- (a) existence of a financial debt,
- (b) occurrence of default, and
- (c) whether the application is complete and within limitation.

34. From the above analysis, we conclude that the impugned order meticulously applies these parameters and does not suffer from any jurisdictional error, perversity, or misapplication of law warranting appellate interference.

**Orders**

35. We find that the impugned order is a reasoned order which is based on material record and is in conformity with statutory provisions and binding precedents. There is no ground which is made out for interfering under Section 61 of the Code. Accordingly, the Appeal is dismissed. All related IA's are also disposed of. The IRP shall continue with the insolvency proceedings.

**[Justice N Seshasayee]  
Member (Judicial)**

**[Arun Baroka]  
Member (Technical)**

**[Indevar Pandey]  
Member (Technical)**

**New Delhi.  
February 06, 2026.**

*pawan*