

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT - IV**

**CP No.: IB 555(ND)/2023 & IA 1500(ND)/2024**

*(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

**IN THE MATTER OF:**

**M/s IDBI Trusteeship Services Private Limited  
...Financial Creditor / Applicant**

**VERSUS**

**M/s ATS Infrabuild Private Limited  
...Corporate Debtor / Respondent**

**Pronounced on: 04.03.2025**

**CORAM:**

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE  
MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

**Present:**

For Applicant : Ms. Anushree Poddar, Adv

For Respondent : Mr. Ajit Kumar, Adv.

**ORDER**

**PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)**

1. This Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by IDBI Trusteeship Services Limited (“**Applicant**”), in its capacity as Debenture Trustee on behalf of the debenture holder, ASK

Wealth Advisors Private Limited ("**Debenture Holder**"), seeking to initiate Corporate Insolvency Resolution Process ("**CIRP**") against ATS Infrabuild Private Limited [CIN: U45400DL2007PTC168922] ("**Corporate Debtor**").

2. The Corporate Debtor was incorporated on 04.10.2007, under the Companies Act, 1956. Its registered office is at 711/92, Deepali Nehru Place, South Delhi, Delhi, India, 110019. Therefore, this Bench has jurisdiction to deal with this petition.
3. It is the case of the Applicant that the Debenture Holder had subscribed to 50 non-convertible debentures ("**Debentures**") amounting to Rs. 5 crores under the Debenture Trust Deed dated 12.09.2022 ("**DTD**") (*refer to page 40 of the petition*) issued by the Corporate Debtor. The Debentures were issued for the purpose of construction and development of a real estate project named 'Casa Espana' situated in Mohali ("**Project**").
4. The Learned Counsel for the Petitioner has putforth the following submissions:
  - a. The "Events of Default" ("EOD") as well as the default in payment of the contractually guaranteed default return, i.e., the Financial Debt by the Corporate Debtor, are clearly established from the record. The documents on record substantiate that multiple EODs have been committed by the Corporate Debtor.

First EOD: Failure to Infuse Capital

- b. As per Clause 3(xviii) of Schedule III of the DTD ('Promoters Undertaking') (refer to page 131 of Volume 1 of the Petition), the Promoter was obligated to infuse a capital of Rs. 18 crores within 90 days, with a grace period of 30 days from the date of allotment of debentures, i.e., by 27.01.2023 at

the latest. Failure to infuse the requisite capital amounts to an EOD under Clause 9.3(a) of the DTD (refer to page 74 of Volume 1 of the Petition).

- c. The Corporate Debtor, in para 37 of its reply (refer to page 15), has admitted that only a sum of Rs. 8 crore was purportedly infused as the promoter's contribution, with no further capital infusion. This constitutes a blatant breach of the covenant in Schedule III of the DTD, thereby triggering an EOD under Clause 9.3(a) of the DTD.
- d. Further, in an email dated 03.07.2023 (refer to Annexure 16, page 56 of Additional Documents of the Respondent filed with IA 2065/2024), the Corporate Debtor has expressly admitted to its failure in infusing funds as per the stipulated timelines.
- e. The Respondent has failed to produce any documentary evidence to establish that even the purported Rs. 8 crores was infused into the Respondent's company by ATS Group company, Prateek Resorts Private Limited, into the project's account maintained under the DTD.
- f. Thus, there is a clear and admitted breach of the contractual obligation under Clause 3(xviii) of Schedule III of the DTD.

Second EOD: Expiry of RERA and PAPRA License

- g. Both RERA and PAPRA licenses for the Project expired on 31.12.2022 and were not renewed within 30 days, thereby violating Clause 2.2 and Clause 3(xiii)(vi) of Schedule III of the DTD (refer to page 128 of Volume 1 of the petition). This amounts to an EOD under Clauses 9.2(a), 9.3(a), 9.3(b), and 9.20 of the DTD.
- h. Various documents and correspondence filed by the Corporate Debtor (appended to IA No. 2065 of 2024) reflect delays and defaults by the Corporate Debtor in renewing the RERA registration. (Refer to Annexure

A-1 to Annexure A-3, pages 11 to 19 of Additional Documents filed with IA No. 2065/2024.)

- i. As per Rule 6 of the Punjab State Real Estate (Regulation and Development) Rules, 2017, the Corporate Debtor was required to approach Punjab RERA at least three months prior to the expiry of its registration for renewal. However, the Corporate Debtor filed its renewal application on 02.01.2023—after the expiry of the license on 31.12.2022. (Refer to page 11 of Additional Documents of the Respondent filed with IA No. 2065/2024 and para 52 of the Corporate Debtor's reply at page 22.)
- j. The renewal of the RERA license was dependent on the renewal of the construction license by the Greater Mohali Area Development Authority ("GMADA"), which was also pending. GMADA denied renewal, as there was a cap on renewal of licenses for colonies only until 2022. Despite obtaining a GMADA license in 2013, the Corporate Debtor failed to complete construction by 2022, thereby causing the non-renewal of the license. (Refer to page 31 of Additional Documents of the Respondent filed with IA No. 2065/2024.)
- k. Subsequently, GMADA amended its policy to accommodate the Corporate Debtor and, vide memo dated 28.03.2023, called upon the Corporate Debtor to pay a license renewal fee of Rs. 1,21,233/- and settle outstanding dues of Rs. 5.68 crores. The memo also indicated that eight post-dated cheques deposited by the Corporate Debtor had been dishonored. (Refer to letter dated 28.03.2023 at page 37 of Additional Documents of the Respondent filed with IA No. 2065/2024.)
1. As per a GMADA letter dated 14.06.2023, the Corporate Debtor was required to clear dues of Rs. 7.15 crores as of 31.05.2023 to have its license renewed. (Refer to Annexure A-10, page 40, and Annexure A-12,

page 44 of Additional Documents of the Respondent filed with IA No. 2065/2024.)

- m. The Corporate Debtor has failed to provide any documentary proof establishing payment of outstanding dues towards GMADA, nor has such an assertion been made in its reply.
- n. Therefore, the delay in renewing the GMADA license and, consequently, the RERA registration is solely attributable to the Corporate Debtor.

### Third EOD: Default in Interest Payments

- o. The Corporate Debtor failed to pay the entire interest due against the debentures under the DTD, which was payable on 12.06.2023. This constitutes an EOD under Clause 9.1 of the DTD (refer to page 72 of the Petition).
- p. In para 46 of its reply (refer to page 20), the Corporate Debtor has admitted that an interest amount of Rs. 6,17,614/- remained outstanding past the due date of 12.06.2023, thereby acknowledging the default.
- q. As per Clause 5A of the DTD (refer to page 66 of Volume 1 of the petition), coupon interest payments were to be prioritized in a specific order. However, on 12.06.2023, the Corporate Debtor's bank account had a balance of only Rs. 5,54,85,262.84/-, whereas the total interest due was Rs. 13,85,20,548/-. The shortfall resulted in proportionate payments to all parties, leaving the debentures under the present DTD partially unpaid.
- r. The Corporate Debtor made an offer to pay the remaining interest on 10.08.2023—two months after the due date—which was still insufficient. Thus, there is a clear default in interest payment, qualifying as an EOD under Clause 9.1 of the DTD.

#### Fourth EOD: Non-Payment of Principal Amount

- s. The Corporate Debtor has failed to repay the principal amount of Rs. 5 crores due under the DTD, which was contractually payable on 12.09.2023. This constitutes an EOD under Clause 9.1 and Clause 9.3(a) of the DTD (refer to page 72 and 74 of Volume 1 of the Petition).
  - t. In para 49 of its reply (refer to page 23), the Corporate Debtor has admitted its failure to repay the principal amount within the stipulated timeline. The Corporate Debtor's bank statements, as placed on record (refer to Annexure 20, page 80 of Additional Documents filed with IA 2065/2024), show an insufficient balance to meet the principal repayment obligations.
  - u. Further, as per Clause 5A of the DTD (refer to page 66 of Volume 1 of the petition), priority was given to coupon interest payments, leading to the default in principal repayment. Despite repeated follow-ups from the Debenture Holder, no alternative repayment arrangement was made.
  - v. Thus, the Corporate Debtor's failure to repay the principal amount constitutes a material breach under the DTD and further supports the admission of the petition under Section 7 of the IBC.
5. The Ld. Counsel for the Respondent has put forth certain points on technical grounds in order to defend the respondent's case. The same is as follows:
- a. The four (4) EODs as alleged by the Petitioner are as under:
    - a. The promoter of the Respondent failed to infuse Rs. 18 Crores in the company. [Ref. Point 3 (xviii) of Schedule 3 of DTD].
    - b. Expiration and non-renewal of the RERA and PAPRA License for a continued default of 30 days. [Ref. Clauses 9.2(i), 9.3(i), 9.3(ii), and 9.20 of the DTD].
    - c. Non-

payment of interest coupon at 10% on every anniversary of the initial debenture allotment date. The Respondent was liable to pay the Petitioner the annually payable debenture interest by 12.06.2023 (11.06.2023 being a holiday) [Ref. Clauses 9.1(a) and 9.1(c) of the DTD].

d. Cross default under the DTD dated 08.06.2018 [Ref: Clause 9.12].

The present application under Section 7 of the Code is not maintainable:

- b. Without prejudice to the fact that the Respondent was and continues to be in compliance with the terms of the DTD and has not committed the defaults as alleged by the Petitioner, it is submitted that no default has been committed by the Respondent on 22.07.2023 or otherwise. On the contrary, it is the Petitioner who has failed to comply with the terms and conditions of the DTD.
- c. As per Clause 1.1 of the DTD, an 'Event of Default' shall carry the same meaning as set out in Clause 9.1 to Clause 9.24 of the DTD dated 12.09.2022. [Ref: Clause 9 of the DTD @ Pg. 72-81].

Non-compliance of Terms Related to Event of Default Notice

- d. As per Clause 9.3 @ Pg. 74 of the DTD, in case of: a. Non-compliance with the DTD (including non-payment of any alleged outstanding dues), b. Breach of any representation and warranties, c. Non-compliance with project documents, and d. Non-compliance with the letter of undertaking,
- e. The Petitioner was required to call upon the Respondent to cure the alleged breach/defect/default/non-compliance within a period of 30 days.
- f. Further, the Petitioner, being only the Debenture Trustee, was required under the terms of the DTD to obtain the permission of the Debenture

Holder before issuing an Event of Default notice. The Petitioner has failed to demonstrate compliance with this contractual obligation, as no document has been placed on record showing that the consent of the Debenture Holder was obtained. This omission alone renders the Event of Default notice dated 12.09.2022 non-est and unreliable.

Consent of Debenture Holder is Mandatory

- g. Under Clause 9.25 @ Pg. 80 read with Clause 12.18 @ Pg. 88 of the DTD, the Debenture Trustee was mandatorily obligated to obtain the consent of the Debenture Holder before initiating any action available under the DTD against the Respondent. No document evidencing such consent has been filed with the present Section 7 petition. Consequently, the petition is non-maintainable. [Relevant Clauses: Debenture Consent @ Pg. 48, Debenture Holder @ Pg. 49, Schedule 8 (Consent of Debenture Holder) @ Pg. 160-162].
- h. Annexure P/5 @ Pg. 198 evidences that the Debentures under the DTD were issued to ASK Wealth Advisors Pvt. Ltd. (Debenture Holder). Therefore, obtaining ASK's consent was imperative before filing the present Section 7 Application.

Debenture Holder is a Speculative Investor

- i. The present Application by the alleged Financial Creditor is devoid of merit and not maintainable. The Applicant/ Financial Creditor lacks the right to approach this Hon'ble Tribunal, as the debenture holders themselves do not qualify as 'Financial Creditors' under the IBC and are merely 'speculative investors.' This is evident from several terms and conditions of the purported term sheet of the debenture deed. [Relevant Clause: Clause 12.5 of the DTD @ Pg. 83].



- j. The Debenture Holders were involved in the day-to-day affairs of the company and had nominee directors on the board of the Respondent Company. [Clause 12.5 of the DTD @ Pg. 83 read with emails exchanged between the Debenture Holder and the Respondent @ Pg. 107-119 of the application for additional documents].

The date of default is incorrect:

- k. The date of default mentioned on Pg. 16 of Part IV of the Section 7 Application is 22.07.2023, derived from the Event of Default notice dated 07.07.2023 @ Pg. 285-287.
  - l. However, as per the annexure @ Pg. 287, the actual due date is 29.08.2023. [Ref: Entry No. 5 on Pg. 287].
  - m. Therefore, given the Petitioner's own admission, the date of default could not have been 22.07.2023. Hence, the application is misplaced and deserves to be dismissed on this ground alone.
6. Further at the outset, it is pertinent to note that the Respondent, in its reply (*Para 42-47*), had made certain significant assertions; however, the Ld. Counsel for the Respondent neither emphasized these contentions during oral arguments nor elaborated upon them in its written submissions.
  - a. It is averred in the reply that on 12.06.2023, ASK Wealth Advisors Pvt. Ltd. instructed the Financial Creditor to direct Kotak Mahindra Bank to make a payment of ₹5,41,40,400/- towards interest servicing for ₹135 Cr Debenture Holders. This clearly demonstrates that the debenture trustee and debenture holders were primarily focused on servicing their own interest payments, rather than ensuring the

completion of the project. The financial needs and operational requirements of the Corporate Debtor were completely disregarded.

- b. It is further averred that ASK Wealth Advisors Pvt. Ltd. systematically appropriated receivables in advance to service interest payments before their due date. The amount that was due for payment on 12.06.2023 had already been taken by the debenture holders on 30.03.2023 and 09.06.2023, respectively. This pattern of premature withdrawals suggests a pre-planned strategy to benefit the debenture holders at the cost of the project's progress.
- c. The Corporate Debtor contends that these actions were undertaken with a malafide intent to financially weaken the Corporate Debtor and push it towards insolvency. The calculated moves of the alleged Financial Creditor were aimed at ensuring that the project did not progress, thereby damaging the Corporate Debtor's financial position and reputation.
- d. The Corporate Debtor relies on payments made by customers for flat purchases to fund various construction-related obligations, including payments to vendors and service providers. The ability to complete the project is directly linked to the proper allocation of customer funds at different stages of construction. However, the Financial Creditor's actions in diverting funds towards interest payments severely impacted the completion of the project.
- e. It is further reiterated in the reply that sufficient funds were available in the designated account at the time of the alleged default, yet the Financial Creditor deliberately refused to appropriate the necessary

amounts. A balance of ₹2,20,40,100/- towards the ₹135 Cr Debenture and ₹6,17,614/- towards the ₹5 Cr Debenture remained outstanding, despite clear communication from the Corporate Debtor requesting appropriation of the funds. Instead, the Financial Creditor deliberately issued false and fabricated default notices to create an illusion of default.

- f. In support of this, the Corporate Debtor highlights an email dated 10.08.2023, wherein it explicitly informed the alleged Financial Creditor that there was sufficient balance available in the account to service the outstanding interest payments. However, the Financial Creditor willfully ignored this communication and, through an email dated 14.08.2023, proceeded to trigger an Event of Default (EOD). This deliberate non-appropriation of funds, despite availability, further confirms the malafide intent of the Financial Creditor to falsely portray the Corporate Debtor as a defaulter.
- g. In light of the above, it is alleged that the default was engineered by the Financial Creditor through deliberate non-appropriation of funds and misrepresentation of financial facts to unjustly initiate insolvency proceedings.
- h. The Judgments relied upon by the Corporate Debtor are as follows:
  - i. Fercometal S.A.R.L. and Mediterranean Shipping Co. Sa 1988 [House Of Lords] – Pg.799 of the Case.
  - ii. Tele2 International Card Company And Anr. v. Post Office Limited, (2009) ECWA Civ 9 – Para 53
  - iii. Kohinoor Speciality Foods India Pvt. Ltd. v. Kohinoor Foods Limited, 228 DLT 357 (2016)– Para 57

- iv. Ganga Retreat and Towers v. State of Rajasthan and ors.,(2003) 12 SCC 91- Para 30
- v. State of Kerala v. Cochin Chemical Refineries Ltd., [1968] 3 SCR 556.- Para 10.
- vi. Creative Industries Unit 11 v. SS Collection LLP, CP(IB) 853/MB/2023. Para 20
- vii. Yatra online Limited v. Ezeego One Travel & Tours Limited through RP, CA (AT) (INS.) No. 387 of 2023.- Para 17
- viii. Ramdass Dutta v. IDBI Bank, CA (AT) (INS.) No. 387 of 2023.- Para 18-19
- ix. Ramesh Kymal v. Siemens Gamesa Renewable Power Private Limited (2021) 2 SCC 224- Para 11
- x. Swiss Ribbons (P) Ltd v. UOI , (2019) SCC 17- Para 65

### **Finding & Analysis**

7. We have heard the Learned Counsels appearing for Applicant and Respondent and perused the documents on records. In adjudicating upon the matter at hand, it is observed that the Applicant extended credit facilities totaling Rs. 5,95,65,806 (*Including interest of Rs. 95,65,806*) to the Corporate Debtor. The Applicant has furnished documentary evidence, including the sanction letter, loan agreements, and financial statements, which substantiate the existence of a financial debt within the meaning of Section 5(8) of the Insolvency and Bankruptcy Code, 2016 (“IBC”). The Corporate Debtor, having availed the said credit facility, was obligated to make timely repayments as per the agreed terms. However,

as per the records and the Applicant's submission, the Corporate Debtor failed to adhere to its repayment obligations, leading to a default.

8. A petition under Section 7 of the IBC is maintainable upon satisfaction of the following essentials:

(a) **Existence of a financial debt** – The Applicant must demonstrate the existence of a financial debt as defined under Section 5(8) of the IBC. In the present case, the credit facility extended to the Corporate Debtor, coupled with the obligation to repay along with interest, qualifies as a financial debt.

(b) **Default in repayment** – The occurrence of default is a sine qua non for the admission of an application under Section 7. The Applicant has furnished evidence of default, including financial records and Information Utility reports, which substantiate that the Corporate Debtor has failed to discharge its debt obligations.

(c) **Threshold requirement** – The quantum of debt should exceed the threshold prescribed under Section 4 of the IBC. The present claim meets this criterion.

(d) **Time limitation** – The petition must be filed within the limitation period of three years from the date of default, extendable in cases where acknowledgment under Section 18 of the Limitation Act, 1963, has been made. In the instant case, the application is well within the prescribed period.

9. Further, the Hon'ble Supreme Court in **Innoventive Industries Ltd. v. ICICI Bank Ltd.**, (2018) 1 SCC 407, has held that the Adjudicating Authority is required to examine whether there is a financial debt and

whether default has occurred. Once these conditions are met, the petition must be admitted.

10. It is a settled position that even a single event of default is sufficient to trigger proceedings under Section 7 of the IBC. The Supreme Court in **E.S. Krishnamurthy v. Bharath Hi-Tech Builders Pvt. Ltd.**, (2022) 3 SCC 161, has reiterated that default by the Corporate Debtor entitles the Financial Creditor to seek initiation of CIRP. The Corporate Debtor's contention regarding multiple defaults or partial payments does not absolve it from liability under the IBC.
11. We also find that the Corporate Debtor has raised several objections, which are analyzed and addressed as follows:
  - (a) **Dispute Regarding the Quantum of Debt** – The Corporate Debtor has contended that the amount claimed by the Applicant is exaggerated or disputed. However, it is pertinent to note that a Section 7 application is not akin to a recovery suit; the existence of financial debt and default is the only criterion for admission, as held in **Mohanraj v. Shah Bros. Ispat (P) Ltd.**, (2021) 6 SCC 258. Therefore, disputes on quantum are immaterial at the admission stage.
  - (b) **No 'Due and Payable' Amount** – The Corporate Debtor has argued that the amount is not due and payable. However, as evidenced by the Applicant's submissions and Information Utility records, the default has occurred, and even a single default is sufficient for triggering insolvency proceedings under IBC.

(c) **Misuse of IBC as a Recovery Mechanism** – The Corporate Debtor has argued that the Applicant is misusing IBC for recovery purposes. This argument is untenable as a financial creditor is entitled to invoke Section 7 upon default, and the IBC mechanism is not dependent on the availability of other recovery options.

12. We also take note of the fact that the Respondent in para 4.15 of its Written Submission has stated that the Respondent's email dated 10.08.2023 at Pg. 233 of the Rejoinder, read with the email dated 14.08.2023 at Pg. 236 of the Rejoinder, clearly evidences the fact that the Respondent was ready and willing to pay the interest and that the present Section 7 has been filed deliberately. The Respondent further points out that Annexure P13 at Pg. 287 clearly shows that the date on which the amount of Rs. 6.99L was due was 29.08.2023.
13. However, upon perusal of the Rejoinder, we note that the Applicant has stated that it has been alleged that sufficient funds are available in the Respondent Company's escrow account (bearing account no. 8211936002) for due interest payments to the Financial Creditor as of the present date. The Applicant also argues that, as of 12.06.2023, the balance interest amounts due under the Debenture Trust Deed dated 08.06.2018 and the DTD dated 12.09.2022, owed by the Respondent to the Debenture Trustee, were aggregating to approximately Rs. 7.7 crores. However, on 12.06.2023, the Respondent did not have sufficient balance in its project accounts.
14. The Applicant further claims that the allegation regarding sufficient balance in the Respondent's project bank accounts is baseless and unsupported by evidence on record, as the email dated 10.08.2023, which was relied upon by the Respondent in its Reply to prove the same,

was not annexed to the Reply. The Financial Creditor also refers to an email dated 20.06.2023, in which it enquired about the payment of the outstanding interest, which was due as of 12.06.2023, and notified the Corporate Debtor that, as of 20.06.2023, the account did not have sufficient bank balance to cover the outstanding interest. The Corporate Debtor, however, provided a belated response on 10.08.2023, much beyond the cure period provided under the DTD, indicating its readiness to pay the interest due on the debentures. Nonetheless, the Corporate Debtor, even as of the date of the said email, had failed to remit the interest payable to the Financial Creditor. As highlighted in the reply email dated 14.08.2023, the non-payment of interest that was due on 12.06.2023 amounted to an Event of Default (EOD) under the DTD. The emails dated 20.06.2023, 10.08.2023, and 14.08.2023 are annexed herewith as Annexure P-8, Annexure P/9, and Annexure P/10, respectively.

15. Upon perusal of the documents and the emails exchanged between the parties, we find that while funds were available in the account of the Corporate Debtor, the balance in the said account was insufficient to satisfy the entirety of the outstanding payment due. Consequently, it is abundantly clear that the Respondent lacked adequate financial resources to discharge the full amount of interest payable on the debentures held by the Financial Creditor under the Debenture Trust Deed (DTD) dated 12.09.2022, as of 12.06.2023. This insufficiency of funds, in turn, resulted in an Event of Default (EOD) under the provisions of the DTD.
16. In light of this, it follows that the Respondent's failure to remit the requisite interest payment constitutes a default in the performance of its



financial obligations. This failure to make payment, despite the existence of an outstanding liability, is sufficient grounds to invoke the provisions relating to an Event of Default, as stipulated under the DTD, and constitutes a clear default in the payment of the debt owed by the Respondent.

17. Based on the foregoing analysis, it is evident that the Applicant has established the existence of a financial debt within the meaning of Section 5(8) of the IBC and the Judgments relied upon by the Corporate Debtor does not help the case of the Corporate Debtor. The default committed by the Corporate Debtor has been sufficiently demonstrated through Debenture Trust Deed, loan agreements, and Information Utility records. The contentions raised by the Corporate Debtor do not hold merit and do not negate the factum of default. Even a single event of default is sufficient to trigger insolvency proceedings under Section 7 of the IBC. The application meets all the statutory requirements for admission.

18. In light of the above facts and circumstances, it is ordered as follows: -

18.1 The Application bearing **IB-555(ND)/2023** filed by the Applicant/(FC), under section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules for initiating CIRP against the Corporate Debtor is **admitted**.

18.2 We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, Adjudicating Authority, arbitration panel or other authority;*
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.*
- (e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*

18.3 It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3)(b) of the Code

#### **18.4 IA 1500/2024**

a) This Application has been filed by the Applicant herein under Section 16(2) read with Section 60(5) of the Code, r/w Rule 11 of the NCLT Rules, 2016 for change of originally proposed Interim Resolution Professional in the captioned petition, along with supporting affidavit proposing the name of Mr. Devendra Umrao, having registration number **IBBI/IPA-003/IPN00223/2019-2020/12640**.

b) However, on perusal of the records of Mr. Devendra Umrao from the IBBI Website, this Bench finds that Mr. Umrao has been appointed as a Resolution Professional in more than Ten Companies. This is in violation of the clarification of Regulation 22 of the IBBI (Insolvency Professionals) Regulations, 2016. The relevant portion is extracted below for reference:

*22. [Clarification: An insolvency professional may, at any point of time, not have more than ten assignments as resolution professional in corporate insolvency resolution process, of which not more than three shall have admitted claims exceeding one thousand crore rupees each.]*

c) In the light of foregoing, this Bench is not in a position to appoint the proposed IRP in the present case. Hence this Bench proceeds to appoint an IRP from the list provided by the IBBI.

d) **Mr. Nirmal Kumar Bhesoni** is hereby appointed as as the Interim Resolution Professional (“IRP”) having address: **A-211, Ground Floor, Gali no.1, Hardev Nagar, Jharoda Majra, Burari, Delhi-110084**. His Email id is [ipnirmalkumar@gmail.com](mailto:ipnirmalkumar@gmail.com) and the

registration number is **IBBI/IPA-001/IP-P00010/2016-2017/10016**. This appointment is subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 within 3 days from the date of this order.

- 18.5 In pursuance of Section 13(2) of the Code, we direct the IRP to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 18.6 During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- 18.7 The IRP shall perform all his functions as contemplated, inter alia, by Sections 17, 18, 20 & 21 of the Code. He is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

- 18.8 The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- 18.9 The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakh Only) with the IRP to meet the expense to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by IRP and shall be paid back to the Financial Creditor.
- 18.10 In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today.
- 18.11 The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- 18.12 The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.
- 18.13 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Accordingly, the present petition bearing CP No. **IB 555 (ND)/2023** is **admitted.**

**IA 1500/2024** in CP No. **IB 555 (ND)/2023** stands dismissed.

**-sd-**

**(DR. SANJEEV RANJAN)**

MEMBER (TECHNICAL)

**-sd-**

**(MANNI SANKARIAH SHANMUGA SUNDARAM)**

MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT - IV**

**IP 26(ND)/2024 in CP No.: IB 555(ND)/2023**

*(Under Section 60(5) of Insolvency and Bankruptcy Code, 2016 read  
With Rule 11 of National Company Law Tribunal Rules, 2016)*

**IN THE MATTER OF:**

**M/s IDBI Trusteeship Services Private Limited  
...Financial Creditor / Applicant**

**VERSUS**

**M/s ATS Infrabuild Private Limited  
...Corporate Debtor / Respondent**

**AND IN THE MATTER OF:**

Mr. Rajinder Singh  
... Applicant/ Intervenor

**Pronounced on: 04.03.2025**

**CORAM:**

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE  
MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

**Present:**

For Applicant : Ms. Anushree Poddar, Adv

For Respondent : Mr. Ajit Kumar, Adv.

For the Intervenor : Mr. Amandeep Saini, Adv.

## **ORDER**

**PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)**

1. This is an Intervention Petition filed by Mr. Rajinder Singh (“**Intervenor / Applicant**”) seeking intervention in Company Petition bearing CP (IB) No. 555 of 2023 titled "IDBI Trusteeship Services Private Limited vs. ATS Infrabuild Private Limited" [hereinafter referred to as "Company Petition"]. The Prayer sought for in the application is as extracted below:

*“a. Allow the instant Application and implead the Applicant to the Company Petition bearing no. C.P. (IB)/555/2023; and*

*b. Direct the Financial Creditor to provide a copy of the Petition to the Applicant and allow the Applicant to file its reply; and*

*c. Dismiss the Company Petition bearing no. C.P. (IB)/555/2023 filed by the Financial Creditor; and*

*d. Pass any such further order which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”*

### **Submissions of the Intervenor / Applicant:**

2. The Applicant/Intervenor is the lawful owner of the land situated in the Revenue Estate of Village Barhmaja, District Mohali, Punjab ("alleged mortgaged land"), which was illegally mortgaged by the Corporate Debtor for availing financial facilities from the Financial Creditor.

3. The Applicant/Intervenor had entered into a Joint Development Agreement (JDA) dated 21.11.2017 with the Corporate Debtor for the development of the project "CASSA ESPANA-II" on the



Applicant/Intervenor's land. Additionally, the Applicant/Intervenor executed a Power of Attorney ("POA") in favor of the Corporate Debtor, authorizing the Corporate Debtor to raise funds only for the development of the Applicant/Intervenor's land, as specified under Clauses 17 and 18 of the POA [pg. 135] and Clause 3.4.12 of the JDA [pg. 41]. Under no circumstances was the Corporate Debtor permitted to mortgage the Applicant/Intervenor's land for any other project.

4. However, in complete violation of the terms of the JDA and POA, the Corporate Debtor, without the consent or knowledge of the Applicant/Intervenor, surreptitiously mortgaged the Applicant/Intervenor's land with the Financial Creditor for the development of another project, "CASSA ESPANA-I."
5. The Financial Creditor could not have lawfully accepted the Applicant/Intervenor's land as mortgage security for a project other than "CASA ESPANA-II," as the Corporate Debtor had no authority to mortgage the said land for any other development. This establishes that the mortgage of the Applicant/Intervenor's land was done in connivance with the Financial Creditor, rendering it illegal and unlawful.
6. Despite the passage of approximately six years, no construction activity was initiated on the Applicant/Intervenor's land. Consequently, the Applicant/Intervenor cancelled the POA through a registered Cancellation Deed dated 04.05.2023, which was duly confirmed by the Corporate Debtor through a Letter of Confirmation dated 26.05.2023 [pg. 84]. Subsequently, the Applicant/Intervenor entered into a new agreement with another developer, and any adverse order in this matter would not only affect the Applicant/Intervenor but also significantly

impact the new developer. A copy of the Cancellation Deed is annexed as Annexure - A.

7. It is relevant to note that the POA stood cancelled (vide Registered Cancellation Deed dated 04.05.2023) approximately two months before the issuance of the Default Notice dated 07.07.2023 and around four months before the filing of the present petition under Section 7 of the Insolvency and Bankruptcy Code by the Financial Creditor.
8. The Applicant/Intervenor has also lodged a criminal complaint dated 29.11.2023 [pg. 196] against the collusive arrangement and fraudulent acts committed by the Financial Creditor and the Corporate Debtor.
9. Upon cancellation of the JDA and POA, the Corporate Debtor lost all rights in relation to the Applicant/Intervenor's land. Therefore, the said land cannot be treated as an asset of the Corporate Debtor and should not be included in the pool of assets under the present insolvency petition.
10. The Financial Creditor was fully aware that the Corporate Debtor lacked the legal authority to mortgage the Applicant/Intervenor's land. Nevertheless, the Financial Creditor filed a civil suit [pg. 23] before the Learned Trial Court seeking a declaration that it is the rightful mortgagee of the alleged mortgaged land. Since the matter is sub-judice, the interest of the Financial Creditor in the property remains under judicial scrutiny.
11. With an ulterior motive to mislead this Tribunal and potential Resolution Applicants, the Financial Creditor has deliberately included the Applicant/Intervenor's land in the pool of Corporate Debtor's assets to inflate asset value. In furtherance of this motive, the Financial

Creditor has deliberately withheld material facts regarding the cancellation of the POA/JDA and the pending civil suit. The Hon'ble Supreme Court has held that any person approaching a Court or Tribunal with unclean hands or by suppressing material facts is not entitled to any relief. Reliance is placed on **Dalip Singh Vs. State of U.P. & Ors. [(2010) 2 SCC 114] (Para 1 & 2)**. A copy of the judgment is enclosed as Annexure - B.

### **Finding & Analysis**

12. The present application has been filed by the Applicant/Intervenor seeking intervention in the ongoing insolvency proceedings initiated under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC"). The primary contention of the Applicant/Intervenor is that the Corporate Debtor had unlawfully mortgaged the Applicant/Intervenor's land to the Financial Creditor in contravention of a Joint Development Agreement ("JDA") and a Power of Attorney ("POA"). It is further contended that the said POA was cancelled prior to the initiation of insolvency proceedings, thereby rendering the mortgage invalid and unenforceable.
13. At the outset, it is pertinent to note that the Applicant/Intervenor, through the present application, seeks intervention in a **Section 7 application** filed by the Financial Creditor. However, in proceedings under **Section 7 of the IBC**, the adjudicating authority is required to ascertain only whether: **(i) a financial debt exists, (ii) there is a default in repayment of such debt, (iii) the debt has the attribute of time value of money, and (iv) the petition is filed within the prescribed period of limitation**. These are the **sole parameters** for admission of a Section 7 petition, as consistently reiterated by the Hon'ble Supreme

Court and the Hon'ble National Company Law Appellate Tribunal (NCLAT). The scope of inquiry at the admission stage is strictly confined to these factors, and any extraneous considerations—such as disputes pertaining to title, ownership, or validity of transactions—**are not to be adjudicated by this Adjudicating Authority at the Admission Stage.**

14. The Applicant/Intervenor has contended that the Corporate Debtor had no authority to mortgage its land and that the Financial Creditor was complicit in the alleged unlawful mortgage. However, it is well settled that the jurisdiction of this Adjudicating Authority under Section 7 of the IBC does not extend to determining ownership rights over specific assets at the stage of admission. The limited function of this Bench, at this stage, is to ascertain whether the Corporate Debtor has committed a financial default. The Applicant/Intervenor's claims regarding the ownership of the alleged mortgaged land and the legality of the mortgage transaction pertain to contractual and property rights, which must be adjudicated before a competent civil court, not in these proceedings.
15. The question of whether a particular asset forms part of the Corporate Debtor's estate is an issue that can be examined at the appropriate stage, if necessary, during the corporate insolvency resolution process (CIRP) by the Interim Resolution Professional (IRP)/Resolution Professional (RP) and the Committee of Creditors (CoC). However, at the stage of admission of a Section 7 petition, this Adjudicating Authority has no role in determining whether a particular asset belongs to the Corporate Debtor or not. The parameters for admission of a Section 7 application are limited, and adjudicating ownership claims at this stage would be contrary to the objectives of the IBC, which emphasizes expeditious resolution of financial distress.

16. The Hon'ble Supreme Court has consistently held that the IBC is not a debt recovery mechanism but a framework for resolution of corporate insolvency. The admission of a Section 7 petition does not amount to a final determination of the Corporate Debtor's liabilities or the ownership of assets; it merely initiates the CIRP, during which such issues, if relevant, may be examined. Allowing third-party interventions based on property disputes at this stage would derail the expeditious resolution process and open the floodgates for unwarranted challenges, thereby frustrating the very object of the Code.
17. Moreover, the claims of fraud, collusion, and unauthorized mortgage raised by the Applicant/Intervenor are presently sub judice before the competent **civil court**, where the Financial Creditor has already initiated proceedings seeking declaration of its mortgage rights. Since the matter is **pending adjudication before a court of competent jurisdiction**, it would be inappropriate for this Adjudicating Authority to render any findings on these disputed questions. The principle of comity between judicial forums dictates that issues involving property disputes and title claims must be decided by the appropriate forum, and this Adjudicating Authority, in its limited jurisdiction under Section 7, cannot usurp that function. Any grievance in this regard can be pursued in appropriate legal proceedings, but such grievances cannot be allowed to obstruct the insolvency process.
18. In view of the foregoing discussion, this Adjudicating Authority finds no merit in the present application. The Applicant/Intervenor retains the liberty to pursue its remedies before the appropriate forum in accordance with law.

Accordingly, **IP 26(ND)/2024** in CP No. **IB 555 (ND)/2023** stands dismissed.

**-sd-**

**(DR. SANJEEV RANJAN)**

MEMBER (TECHNICAL)

**-sd-**

**(MANNI SANKARIAH SHANMUGA SUNDARAM)**

MEMBER (JUDICIAL)