IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, BENCH-VI

C.P. (IB) No. 1619/ND/2019

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

IN THE MATTER OF:

TRANSRAIL LIGHTING LIMITED
Registered Office At:
501, A, B, C, E Fortune 2000,
Block G, Bandra Kurla Complex,
Bandra East, Mumbai
Maharashtra, India- 400051 **...APPLICANT/ FINANCIAL CREDITOR**

VERSUS

ZAPDOR ENGINEERING PRIVATE LIMITED
Registered Office At:
602, 6th Floor, Rishabh Corporate Tower,
Karkardooma Community Center,
Karkardooma, East Delhi,
Delhi-110092 **...RESPONDENT/ CORPORATE DEBTOR**

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

Counsel for Petitioner:	Adv. Arjun Nanda and Adv. Bhawana Mapwal
Counsel for Respondent:	Adv. Manish Kumar Mishra

ORDER

PER: BENCH

Date: 09.05.2025

1. This petition has been filed by Transrail Lighting Limited, Financial Creditor to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s. Zapdor Engineering Private Limited and others (hereinafter referred to as "Corporate Debtor") under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as "the Code") for the alleged default on the part of the Respondent in repayment of debt of Rs. 2,36,76,30/- as on 03.07.2019 inclusive of Interest at the rate of 14% per annum from the date 15.08.2017.

2. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

    a. The Financial Creditor was in discussions with Mr. Amresh Anand, promoter of the Corporate Debtor, regarding a potential acquisition of 50% equity stake in the Corporate Debtor by the Financial Creditor. Pursuant to these discussions and with a view to

facilitating the ongoing projects of the Corporate Debtor, the Financial Creditor advanced a sum of INR 3,00,00,000/- in various tranches during March 2017 based on the two running projects of the Corporate Debtor. However, the proposed acquisition did not materialize, and both parties mutually agreed not to proceed further in that direction.

b. Subsequently, the parties executed a Memorandum of Understanding dated 28.08.2017, whereby the Corporate Debtor acknowledged its liability to repay the advance amount, and agreed to make such repayment in three equal instalments of INR 1,00,00,000/- each, vide cheques bearing Nos. 068298, 068299, and 068300, dated 30.09.2017, 15.11.2017, and 15.01.2018 respectively. The MoU also stipulated interest at the rate of 14% per annum in the event of delay in repayment.

c. Two cheques, bearing Nos. 068298 and 068300, were dishonoured upon presentation. The third cheque, No. 068299, was cleared on 09.02.2018, resulting in repayment of INR 1,00,00,000/-, and an additional amount of INR 25,00,000/- was remitted via RTGS on 21.12.2017. These payments were made following reminders and issuance of a legal-cum-demand notice by the Financial Creditor.

d. Upon continued default in payment of the remaining balance, the Corporate Debtor, vide email dated 04.05.2018, acknowledged the outstanding liability of Rs. 1,75,00,000/- and proposed a revised repayment plan. Pursuant thereto, it issued three post-dated cheques, however, all three cheques were dishonoured on presentation. Legal-cum-demand notices were issued under Section 138 of the Negotiable Instruments Act, 1881, and three complaints under the said provision were filed.

e. The Financial Creditor has claimed an amount of INR 2,36,76,301/- as outstanding, comprising a principal of INR 1,75,00,000/- and interest of INR 61,76,301/-, calculated at 14% per annum from the date of default, i.e., 15.08.2017, as per the terms of the MoU.

3. The Corporate Debtor filed its reply dated 27.08.2019 in which the following contentions were made:

a. The Corporate Debtor opposed the maintainability of the Section 7 application on the grounds that it was premature, noting that INR 1.25 crores had already been repaid and that efforts were underway to clear the remaining dues. Additionally, the Respondent alleged that the Financial Creditor breached the Clause 4 of the Memorandum of Understanding dated 28.08.2017,

which required dispute resolution through mutual dialogue and conciliation between senior executives prior to initiating insolvency proceedings.

b. The Corporate Debtor contended that proceedings initiated under Section 138 of the Negotiable Instruments Act constitute a 'dispute' within the meaning of the Insolvency and Bankruptcy Code, thereby precluding the initiation of insolvency proceedings.

c. The Corporate Debtor has duly acknowledged receipt of INR 3 crores from the Financial Creditor.

d. It attributed its inability to discharge the remaining liability to severe cash flow constraints, allegedly caused by non-payment by its principal client- the Central Organization for Railway Electrification (CORE)- which, according to the Corporate Debtor, had prematurely and arbitrarily terminated three contracts: With respect to Project Gr. 199 (Zafarabad- Akbarpur- Tanda Section), the Corporate Debtor stated that it had obtained an arbitral award dated 06.03.2019 for INR 3,07,93,767.03, which remained unpaid by CORE; In relation to Project Gr. 172, the Corporate Debtor alleged wrongful termination and submitted that arbitration proceedings were pending, wherein it had raised claims aggregating

to INR 33.14 crores; As regards Project Gr. 188A–189, the Corporate Debtor submitted that it had challenged the termination before the Calcutta High Court in W.P. No. 23549(W)/2018. The Corporate Debtor contended that a sum of INR 6.59 crores was outstanding from CORE in connection with this project.

e. The Respondent argued that initiation of corporate insolvency resolution proceedings was unwarranted, as the company was not insolvent in the legal sense but was merely experiencing transient liquidity constraints. In order to demonstrate its bona fides, the Corporate Debtor referred to an email dated 13.08.2019, wherein it had proposed a payment schedule and sought the Financial Creditor's approval for the same.

f. The Respondent also disputed the quantum of the claim raised by the Financial Creditor, contending that the actual outstanding liability stood at Rs. 2,27,50,958.90, as per its own computation and that the Financial Creditor's interest calculations were erroneous.

4. The Petitioner made the following averments in its Written Arguments dated 11.09.2019 and the Rejoinder to the supplementary reply of the Respondent:

a. The Corporate Debtor had acknowledged its liability in multiple correspondences, including the email dated 04.05.2018, wherein it committed to repaying the remaining amount through issuance of three fresh cheques. These cheques were dishonored on presentation, which further substantiates the default. Further it was submitted that the amount was in the nature of a forward purchase agreement which thereafter fell through and hence had the commercial effect of a borrowing thereby falling squarely within **Section 5(8)(f)** of the Insolvency & Bankruptcy Code, 2016.

b. The Petitioner argues that the defense raised by the Corporate Debtor, that the Financial Creditor was required to first seek mutual resolution under Clause 4 of the MoU is unfounded. The said clause does not create a bar on legal action but merely sets out a preferred method of dispute resolution.

c. The dishonor of cheques issued by the Corporate Debtor only substantiates default and did not create any bar on initiation of Insolvency proceedings.

Reliance was placed on ***Sudhi Sachdev Vs. APPL Industries Ltd. [Company Appeal (AT) (Insolvency) No. 623 of 2018)***, wherein it was held:

"The pendency of the case under Section 138/441 of the Negotiable Instruments Act, 1881, even if accepted as recovery proceeding, it cannot be held to be a dispute pending before a court of law. Thereby we hold that the pendency of the case under Section 138/441 of Negotiable Instruments Act, 1881 actually amounts to admission of debt and not an existence of dispute."

d. The plea that the Corporate Debtor is unable to pay due to non-payment by a third party (CORE) is legally irrelevant in IBC proceedings. The Code does not recognize "inability to pay due to external receivables" as a defense to insolvency triggers.

e. A detailed chronology of the settlement negotiations is provided, beginning with the first draft agreement shared on 10.10.2019, followed by revised drafts on 22.10.2019, 12.11.2019, and further iterations. A cheque dated 04.01.2020, issued by the Corporate Debtor as an upfront payment, was dishonored, leading to the collapse of the initial agreement. On 28.01.2020, the Corporate Debtor handed over two demand drafts for INR 75,00,000/- and four post-dated cheques along with a modified version of the settlement agreement. The Financial Creditor refused to accept the agreement.

f. The Corporate Debtor repeatedly delayed finalization of the revised agreement and dishonored further cheques.

g. A final draft was agreed upon on 12.03.2020, where the Corporate Debtor committed to provide two cheques of INR 2,00,000/- each by 25.03.2020 as a precondition to the Financial Creditor for withdrawing the petition. However, the Corporate Debtor failed to provide the said cheques, and the previously issued cheques were also dishonored. This breach rendered the settlement void, and the petition could not be withdrawn under any circumstances.

5. The following submissions were made in the Written Submissions of the Petitioner dated 06.01.2025:

a. The Petitioner reiterates that the amount of ₹3,00,00,000/- was disbursed to the Corporate Debtor not as equity investment or operational support, but it advanced by the Financial Creditor to the Corporate Debtor in the nature of a forward purchase agreement which thereafter fell through and hence has the commercial effect of borrowing made it fall within Section 5(8)(f) of the Insolvency and Bankruptcy Code, 2016. This characterization is evidenced by the execution of the

MoU dated 28.08.2017 which stipulated the terms of repayment and interest obligation.

b. The Petitioner Relied on ***Sree Bhadra Parks and Resorts Ltd. v. Sri Ramani Resorts and Hotels Pvt. Ltd., Co. A. (AT) (CH) (INS) No. 95/2021*** wherein the Hon'ble NCLAT held that when an entity promises to repay an amount advanced under a Share Purchase Agreement or related settlement with interest, and fails to do so, the amount becomes a financial debt under **Section 5(8).**

c. Further with respect to the issue whether the insolvency could be initiated based on the acknowledgement under the MoU the Petitioner relied on ***Uniexcel Limited v. Uniexcel Developers Pvt. Ltd., 2023 SCC OnLine NCLT 1085*** where the Adjudicating Authority held that even if the original nature of the advance was related to share purchase agreement, later a settlement converting it into a repayable obligation turns the amount into a financial debt. Non-payment of such amounts constitutes default under **Section 3(12)** of the IBC.

d. Moreover the petitioner also relied on ***Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions Pvt. Ltd., (2022) 7 SCC 164*** and ***Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd.,***

(2023) 3 SCC 753 wherein the Hon'ble Supreme Court has recognized that disbursals made to facilitate the business operations of a corporate debtor constitute 'financial debt' under **Section 5(8)** of the Insolvency and Bankruptcy Code, 2016, where such disbursals are interest-bearing and have a scheduled repayment. In the absence of a formal lending arrangement, advances may qualify as financial debt if they are extended with the commercial effect of a loan. In the present case, the amount was disbursed to the Corporate Debtor to support two ongoing projects and one substantial project scheduled for completion within 18 months, thereby demonstrating characteristics consistent with the commercial effect of a loan.

e. The Corporate Debtor has unequivocally admitted to receiving ₹3 crore from the Financial Creditor, executing the MoU dated 28.08.2017, wherein it agreed to repay the advanced sum in three equal instalments along with interest at 14% p.a. and repaying only ₹1.25 crore. It has further acknowledged that a balance of ₹2.27 crore, including interest, remains outstanding as per its own computation. These repeated acknowledgments clearly establish the essential requirements for admission of a petition under Section 7 of the IBC- namely, the

existence of a financial debt, occurrence of default, absence of any dispute regarding liability, and that the Petitioner qualifies as a Financial Creditor.

6. The following submissions were made in the Written submissions of the Respondent dated 25.01.2025:

a. The Corporate Debtor argues that the primary intention behind this advance was to enable the Petitioner to gain inside information of the Corporate Debtor's financials and operations, particularly with respect to material procurement rates in ongoing railway electrification contracts. After acquiring this sensitive data, the Petitioner allegedly reneged on the equity acquisition and subsequently emerged as a successful bidder in two railway tenders (IRCON and RVNL), despite having no prior execution history in railway contracts.

b. Since no Share Purchase Agreement was ever executed and there existed no clause for return of the advance, hence there was no contractual basis obligating the return of the ₹3 crore as a debt or loan. The amount, if any, may be subject to civil remedy under breach of negotiation, but cannot be enforced as a "financial debt" under **Section 5(8)** of the Code. Hence the debt arises under a Memorandum of Understanding (MoU) dated 28.08.2017.

c. The MoU, in the absence of a preceding S.P.A, is in the nature of a "settlement agreement," which does not satisfy the statutory test of disbursal against consideration for the time value of money.

d. The Petitioner has relied on decisions such as ***Sree Bhadra Parks and Resorts Ltd. v. Sri Ramani Resorts and Hotels Pvt. Ltd.*** and ***Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd.,*** which are distinguishable. In those cases, Share Purchase Agreements were actually executed and contained explicit refund clauses with stipulated interest. In contrast, in the present matter: No SPA was executed; there is no clause obligating refund of advance on failure of equity transaction; The MoU was not based on any pre-existing legally binding agreement.

e. The MoU dated 28.08.2017 is, at best, a post-facto understanding regarding refund of the advance. It is settled law that breach of a settlement agreement, by itself, does not give rise to a financial debt under the Code. Reliance is placed on ***Raj Singh Gehlot v. Vistra (ITCL) India Ltd. (Company Appeal (AT) (Insolvency) No. 6 of 2021; 2022 SCC OnLine NCLAT 1431*** wherein Hon'ble NCLAT held that a Section 7 petition filed on the basis of default under a settlement agreement is

impermissible. It was observed that the applicant had defaulted in payment under a settlement agreement, but since there was no underlying disbursal against time value of money, the claim was not a financial debt. "Section 7 of the Code is being invoked pursuant to Settlement Agreement which is not permissible under Section 7 of the Code." Moreover in ***Amrit Kumar Agrawal v. Tempo Appliances Pvt. Ltd. (2020 SCC OnLine NCLAT 1202):*** The Hon'ble NCLAT held that mere obligation to pay under a Settlement Agreement would not amount to disbursal of amount for consideration against the time value of money and breach thereof would not entitle the Appellant to trigger Corporate Insolvency Resolution Process.

f. Reliance was also placed on ***Delhi Control Devices (P) Ltd. v. Fedders Electric and Engineering Ltd. (2019 SCC OnLine NCLT 8030*** wherein it was held that failure or breach of settlement agreement can't be a ground to trigger CIRP against Corporate Debtor under the provision of IBC 2016, And on ***Trafigura India (P) Ltd. v. TDT Copper Ltd. (2020 SCC OnLine NCLT 10532)*** where despite an express acknowledgment of dues in a settlement agreement, the NCLT rejected the Section 7

application, observing that breach of the settlement does not attract CIRP.

g. ***Dr. Gopal Krishnan MS & Anr. v. Ravindra Beleyur & Anr. (2022 SCC OnLine NCLAT 3566)*** Wherein the facts were similar to this case that a Share Purchase Agreement was alleged by the F.C, but the agreement on record didn't have the required signatures of the representatives of the C.D, the principle laid down in Amrit Kumar Agrawal was reaffirmed.

h. Accordingly, the Corporate Debtor submits that the Petitioner's reliance on the MoU as the originating contract of financial debt is legally untenable. The Corporate Debtor has already refunded ₹2.25 crore out of the ₹3 crore received, which amounts to 75% of the alleged debt. The remaining amount is not due in light of: Consultancy services rendered by the Corporate Debtor's director (as acknowledged in the MoU itself); Unilateral withdrawal from equity discussions by the Petitioner.

i. Further, no mention of this debt exists in the Financial Creditor's audited balance sheets, thereby casting doubt on the nature and legitimacy of the alleged claim.

j. The Petition is a disguised attempt at debt recovery. The Petitioner is using the Code's mechanism as a tool of coercion rather than a bona fide attempt to resolve insolvency; this is clearly prohibited under IBC, as affirmed in ***Shapoorji Pallonji and Co. (P) Ltd. v. Shore Dwellings (P) Ltd. (2020 SCC OnLine NCLT 1458)*** where it was reiterated that the IBC is not a debt recovery tool. If the real objective is to resolve insolvency, CIRP cannot be triggered in such cases.

Analysis and Findings

7. We have perused the documents filed by the Financial Creditor as well as Corporate Debtor and have heard the arguments made by the Ld. Counsels appearing for both the parties.

8. The Financial Creditor has pleaded that the amount of Rs. 2.36 Cr. qualifies as a financial debt under **Section 5(8)(f)** of the Code since the original nature of advance was in relation to a share purchase agreement, and the MoU signed subsequent to the transaction converted it into a repayment obligation, hence making it a default under **Section 3(12)** of the Code. It is material to note that the Corporate Debtor has not disputed the existence of the debt as acknowledged under the MoU. On the contrary, the Corporate Debtor has, on multiple occasions, undertaken efforts towards settlement. Nevertheless, persistent failure was evident on the part of the Corporate Debtor to honour its commitments under

various agreements, as well as non-compliance with the directions of this Tribunal's order dated 22.02.2021- wherein the Corporate Debtor was directed to deposit a sum of ₹ 25 lakh as part of the settlement arrangement.

9. Prior to adjudication of the present application, it is pertinent to refer to **Section 3(12), Section 5(8)(a) and 5(8)(f)** of the IBC, 2016, which have been reproduced below–

> ***Section 3(12): "debt** means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not 1[paid] by the debtor or the corporate debtor, as the case may be;*
>
> ***Section 5(8):** financial debt means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes-*
> *(a) money borrowed against the payment of interest;*
> *(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*

10. The Petitioner has relied on ***Sree Bhadra Parks and Resorts Ltd. v. Sri Ramani Resorts and Hotels Pvt. Ltd., Co. A. (AT) (CH) (INS) No. 95/2021*** the relevant portion of which has been reproduced below:

> *"40.At the outset this 'Tribunal' points out that the Respondent/Applicant had entered into a 'Share Purchase Agreement' with the 'Corporate Debtor' on 21.11.2012 to purchase 100% shares of the 'Corporate Debtor' for a consideration of Rs.33,08,00,000/-. It is not in dispute that*

the Respondent/Applicant had paid an advance of Rs.1,00,00,000/- to the 'Corporate Debtor', which was duly acknowledged by the 'Corporate Debtor' as per various letters dated 05.09.2014, 17.03.2015, 28.11.2018."

"42. It is to be pointed out that an 'addendum' to the 'Share Purchase Agreement' dated 21.11.2012 came to be executed whereby the Respondent/Applicant had agreed to make payment to the 'Creditors' of the 'Corporate Debtor'. In reality, the 'Corporate Debtor' on 27.11.2012 had issued a letter requesting the 'Respondent/Applicant' to handover an advance sum of Rs.1,00,00,000/- to Dr.J.J.R. Justin and that on 05.09.2014 and 17.03.2015 the Respondent/Applicant issued a letter agreeing to refund the advance sum."

"66. When a 'Settlement' was arrived at between the parties, it is the pre-module duty of the 'Corporate Debtor' to effect payments proposed by virtue of the 'Settlement' after committing 'default', the 'Appellant' cannot take altogether different stand, especially when the tenor and spirit of 'Share Purchase Agreement' was not adhered to. To put it precisely, when the 'Appellant' had promised to repay the advanced sum paid by the 'Respondent'/"Applicant' to it, then there is not only a violation of the 'Share Purchase Agreement' dated 21.11.2012 but also the non-payment of amounts comes squarely under definition of Section 5(8) of the I&B Code pertaining to 'Financial Debt".

11. It is evident from the above mentioned that the facts of the case at hand are similar to the facts of the case relied on by the Petitioner, hence this Adjudicating Authority has no hesitation in holding that the alleged amount is a Financial Debt under the code.

12. In order to ascertain whether, in the absence of the initial Share Purchase Agreement (SPA) on record, the Memorandum of Understanding (MoU) effectively novated, acknowledged, or otherwise crystallized the liability such that the default in payment qualifies as a "default" within the meaning of **Section 3(12)** of the Code a reference needs to be made to ***Uniexcel Limited v. Uniexcel Developers Pvt. Ltd., 2023 SCC OnLine NCLT 1085,*** wherein the tribunal held:

> *"Thus, the consent given by the CD to pay back the amount due to the Applicant on being demanded by it still subsist and stands. The tenor of such consent is that in a way the CD was prepared to pay the amount of over Rs. 1 Crore to Petitioner/FC on being demanded. As could be viewed by Hon'ble NCLAT in Sree Bhadra Parks and Resorts Ltd. v. Sri Ramani Resorts and hotels Pvt. Ltd. [Company Appeal (AT) (CH) (Ins) No. 95 of 2021] decided on 06.09.2021, the Hon'ble NCLAT ruled that once there was an agreement between the parties for purchase of shares (Share Purchase Agreement), in terms of which the advance to purchase the share was paid and once there was settlement between the parties regarding refund of the money, in terms of the settlement, the amount become payable and non-payment of the same constitute default in repayment of financial debt".*

13. At the outset, it is essential to determine whether the Memorandum of Understanding ("MoU") relied upon by the Financial Creditor ("F.C.") evidences the existence of a financial debt as contemplated under Section 5(8) of the Insolvency and Bankruptcy Code, 2016 ("the Code"). While the Corporate Debtor

("C.D.") contends that the MoU constitutes merely a settlement or an informal understanding between the parties, it becomes necessary to examine the true legal nature and substantive character of the said document, beyond its nomenclature. In this regard, the Hon'ble High Court of Kerala, in ***A.V. Ravi v. M.M. Abdulkhadar, 1994 SCC OnLine Ker 117*****,** observed: *"For finding out the true character of the instrument, one has to read the instrument as a whole and then find out the dominant purpose. The test is not what the document calls itself or what form it adopts, but what is the true meaning and effect of the terms contained therein."* Thus, mere labels or titles assigned to the document cannot be determinative. It is the substantive rights and obligations created by the terms of the MoU which must guide the analysis.

14. Hence, a reference to the MoU is much warranted, relevant clauses of which have been reproduced below:

- *AA and TLL had entered into discussion for acquiring 50% equity in ZEPL subject to due diligence and completion of certain conditions precedent.*
- *ZEPL had two running projects out of which one of the projects was required to be completed in a period of 4-6 months and the other being a larger project having completion time of 18 months.*

- *Basis the above discussions, TLL had advanced Rs. 3 crores to AA for deployment in the said projects thru various transactions in March 2017.*
- *However, since the disbursement upto date, discussions between the parties remain inconclusive to satisfaction of both parties. Therefore, the parties have now decided to not progress on the acquisition of 50% equity in ZEPL by TLL.*

Refund and advanced payment

Zapdor shall refund the advance payment of Rs. 3 crores made by TLL in 3 instalments of Rs. 1 crore each through Post-dated cheques.

Payment of interest

Zapdor shall be liable to pay interest @ 14 percent p.a. on Rs. 3 crores, from August 15, 2017, upto the date of payment of the last instalment on proportion basis.

Entire Agreement

This MOU shall constitute the entire agreement and understanding between the Parties hereto with respect to the subject matter and supersedes all prior agreement and understanding between the Parties whether expressed or implied. No amendment to this MOU shall be valid and binding on the Parties unless the same is in writing and duly signed by authorized signatory of the respective Parties.

15. Under the MoU, the C.D had admitted that the F.C had advanced an amount of ₹ 3 crore towards the acquisition of 50% of the share capital of the C.D, with a specific stipulation that the said advance would be utilized in two ongoing projects and another project which was to be completed in coming 18 months. This clear admission by the C.D regarding the purpose and deployment of the advance satisfies the essential criteria for the existence of a 'financial debt' as enunciated by the Hon'ble Supreme Court in

***Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions Pvt. Ltd.*, (2022 SCC OnLine SC 634)** i.e. the disbursals made to facilitate business operations constitute a financial debt. In view of such admission, it is evident that the twin requirements under **Section 5(8)** are fulfilled and there is no requirement of a separate Share Purchase Agreement for the advance to qualify as a Financial Debt under the Code.

16. Further, the stipulation regarding the refund of the principal amount along with an obligation to pay interest at 14% per annum manifests the essential feature of 'time value of money' a fundamental criterion for classifying a transaction as a financial debt under **Section 5(8)** of the Code. This position finds direct support from the ruling of the Hon'ble Supreme Court in ***Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd.*, (2021) 6 SCC 557,** wherein the Court held that even in absence of formal lending arrangement advances with a commercial effect of borrowing qualify as a financial debt.

17. Moreover, by virtue of the 'Entire Agreement' clause, the MoU must be construed as the complete and final manifestation of the parties' understanding, thereby obviating the necessity of a separate Share Purchase Agreement to validate the transaction. Even assuming the existence of any prior agreement, the MoU, by its own terms, supersedes all earlier arrangements, and hence, must be treated as embodying the terms of the original share acquisition deal.

Therefore, the MoU itself is to be considered the Share Purchase Agreement.

18. We are not persuaded by the contention of the Respondent that the disbursal in question does not constitute a "financial debt" and is merely a settlement arrangement or a post-facto understanding incapable of attracting proceedings under the Insolvency and Bankruptcy Code, 2016 ("the Code"). A perusal of the Memorandum of Understanding ("MoU") reveals that the amount was disbursed as an advance pursuant to a Share Purchase transaction and was structured to carry the attributes of "time value of money," thereby fulfilling the essential criteria of a "financial debt" as envisaged under Section 5(8)(f) of the Code. Consequently, the requirements for initiation of proceedings under Section 7 of the Code stand duly satisfied.

19. This Adjudicating Authority, being limited to the determination of debt and default within the framework of a summary trial, finds that the other submissions advanced by the parties fall beyond its jurisdiction. Consequently, this Authority refrains from delving into them. However, liberty is granted to the concerned parties to approach the appropriate forum for redressal.

20. We are satisfied that the present application is complete in all respects and the applicant Financial Creditor is entitled to claim its outstanding financial debt from the Corporate Debtor and that there has been default in payment of the Financial Debt.

21. In light of the above and in terms of the fact that existence of debt and its default by the Corporate Debtor has been established by the virtue of the material placed on record, this Adjudicating Authority ***admits*** this petition and initiates CIRP on the Corporate Debtor with immediate effect.

22. Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Kranthi Kumar Kedari for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P00173/2017-18/10342 (Email – kranthikumar1980@gmail.com) the proposed IP has a valid AFA. Therefore, this Adjudicating Authority, appoints him to act as Interim Resolution professional in the matter. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code.

23. We direct the Applicant to deposit a sum of Rs. 2 Lakh with the Interim Resolution Professional, namely Mr. Kranthi Kumar Kedari to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of 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.

24. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

25. 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, tribunal, 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."

26. 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.

27. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation

committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

28. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

29. Let copy of the order be served to the parties.

-SD/- -SD/-

(ATUL CHATURVEDI) **(MAHENDRA KHANDELWAL)**

MEMBER (TECHNICAL) **MEMBER (JUDICIAL)**