



**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II), CHANDIGARH**

CP (IB) No. 31/CHD/PB/2020

***(An Application under section 7 of the Insolvency and
Bankruptcy Code, 2016)***

IN THE MATTER OF:

URMILA GOYAL

Registered Office:

K-69, First Floor, Hauz-Khas Enclave,
New Delhi - 110016

...Financial Creditor/Applicant

Versus

SHARNARTHI FINANCE LIMITED

Registered Office:

82, Lawrence Road,
Amritsar - 143001

...Corporate Debtor/Respondent

Order delivered on: 25.09.2025

**Coram: MR. KHETRABASI BISWAL, MEMBER (JUDICIAL)
MR. KAUSHALENDRA KUMAR SINGH, MEMBER (TECHNICAL)**

Present:

For the Applicant

: Mr. Rohan Mittal, Advocate

For the Respondent

: Mr. Rishi Sood, Advocate



ORDER

1. The present Application was filed by **Urmila Goyal** (hereinafter referred to as “Financial Creditor”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) for initiation of Corporate Insolvency Resolution Process (CIRP) against **Sharnarthi Finance Limited** (hereinafter referred to as “Corporate Debtor”), for the default amount of Rs.6,78,79,674/- (Principal amount due and payable: Rs. 3,75,00,000/- and Interest @18% per annum on the outstanding principal as on 13.11.2019: Rs. 3,03,79,674.00). The date of default, as mentioned in the Application, is 20.11.2019.

2. Brief facts of the case as stated in the Application and presented/argued by the learned counsel for the Applicant are summarised hereunder:

(i) The Corporate Debtor, Shamarthi Finance Limited, is a Company incorporated in Amritsar under the provisions of the Companies Act, 1956.

(ii) In 2016, the Corporate Debtor, through its Authorised Representative, had approached the Applicant/Financial creditor for lending some money for their business activities.

(iii) The Applicant, based on the representation, promises, and assurances of the Corporate Debtor through its Authorised Representative, agreed to provide loans to the Corporate Debtor in several tranches as per its request and requirements. As per the understanding between the Applicant and the Corporate Debtor, the Corporate Debtor was to provide interest to the Applicant at the rate



of 18% per annum on the total outstanding loan amount, which was repayable on demand, as agreed.

(iv) The Corporate Debtor was also taking financial assistance from the Applicant's son, i.e., Mr.Dhruva Goel who also provided an additional financial facility of Rs. 30,00,000/- to the Corporate Debtor on 29.02.2016.

(v) Thereafter, on 28.04.2016, the Corporate Debtor through its Authorised Representative, Mr. Vinod Saluja, acknowledged the receiving of the total sum of Rs. 3,55,00,000/- (Rupees Three Crore Fifty-Five Lakhs Only) jointly from the Applicant and Mr. Dhruva Goel by way of a Receipt, duly signed by Mr. Vinod Saluja. It is noted that out of the total acknowledged loan amount of Rs. 3,55,00,000/-, Rs. 3,25,00,000/- was disbursed by the Applicant, and Rs. 30,00,000/- was disbursed by the Applicant's son, Mr. Dhruva Goel.

(vi) The Applicant has requested further financial assistance and thus the Applicant further disbursed loan on 03.05.2016 and 05.05.2016 for a sum of Rs. 50,00,000/- at an interest rate of 18% per annum on the total outstanding loan amount, which was repayable on demand, as agreed.

(vii) Therefore, the total of financial facilities disbursed by the Applicant as on date at an interest rate of 18% per annum are as follows:



S. No.	Date	Cheque No./RTGS No	Bank Branch	Amount (In Rs.)
1.	20.02.2016	HDFCR52016022074531306 (RTGS)	HDFC, SDA	20,00,000/-
2.	12.04.2016	Cheque No. 61501	SBI, PBB, Hauz Khas Branch	75,00,000/-
3.	21.04.2016	HDFCR2016042177311284 (RTGS)	HDFC, SDA	26,00,000/-
4.	22.04.2016	Cheque No. 61504	SBI, PBB, Hauz Khas Branch	74,00,000/-
5.	28.04.2016	Cheque No. 61505	SBI, PBB, Hauz Khas Branch	1,30,00,000/-
6.	03.05.2016	Cheque No.61506	SBI, PBB, Hauz Khas Branch	20,00,000/-
7.	05.05.2016	Cheque No. 61507	SBI, PBB, Hauz Khas Branch	30,00,000/-
Total: Rs. 3,75,00,000/- (Rs. Three Crore Seventy Five Lakhs only) (exclusive of interest)				

(viii) The Corporate Debtor has confirmed and acknowledged in its “Confirmation of Account” dated 01.04.2016, for the financial year 2015-16, the existence of a loan as well as interest @12% per annum. Furthermore, the Corporate Debtor has deducted TDS on the interest amount. Subsequently, the Corporate Debtor has again confirmed and acknowledged in its “Confirmation of Account” dated 01.04.2017 for the financial year 2016-17, the existence of a loan as well as interest @9% per annum along with deduction of TDS.



(ix) The tax deductions made by the Corporate Debtor on the interest amount are duly reflected in the 26-AS Form of the Applicant, which establishes the existence of a loan as well as a crystal clear liability of the Corporate Debtor towards payment of interest.

(x) The Corporate Debtor requested that in the initial years out of the agreed interest rate of 18% per annum, the Corporate Debtor shall be booking the interest @12% per annum for the financial year 2015-16, and 9% per annum for the financial year 2016-17 with the assurances that at the time of actual payment of interest, the amount to be repaid will be as per the agreed interest rate of 18% per annum.

(xi) However, from 01.04.2017, the Corporate Debtor stopped to even book interest on the outstanding principal of the financial facility. The Corporate Debtor has not serviced the interest on the loan amount even once and has only reflected an interest in its books of account for the initial years. The “Confirmation of Accounts” dated 01.04.2018 for the financial year 2017-18 does not reflect any interest rate on the loan.

(xii) Since the Corporate Debtor stopped to even book interest on the financial facilities advanced by the Applicant, the Applicant on 13.11.2019 issued a Demand Notice to the Corporate Debtor demanding immediate repayment of the principal loan amount of Rs. 3,75,00,000/- along-with interest @18% per annum accrued till 13.11.2019 amounting to a total of Rs. 6,78,79,674/- (inclusive of



interest as on 13.11.2019) within seven days from the date of Demand Notice.

(xiii) The time period within which the Corporate Debtor had to make repayment of the principal amount along with interest accrued till 13.11.2019 was seven days from the date of Notice, expiring on 20.11.2019. Unfortunately, the Corporate Debtor has completely failed to dishonor the demand made by the Applicant, thereby resulting in default, within the meaning of the Code. The date of default, therefore, for the instant Application is 20.11.2019.

(xiv) The cause of action for the Applicant has arisen for the first time only on 20.11.2019, as the financial facilities were repayable on demand. Since the Applicant made the demand for repayment of the loan on 13.11.2019, seeking repayment within 7 days, therefore, as stated, the date of default is 20.11.2019. The amount lent/advanced given to the Corporate Debtor is a “financial debt” within the meaning of Section 5(8) of the Code, as the loan facility was borrowed by the Corporate Debtor against the payment of interest.

3. The Applicant further averred that the instant Application has been duly filed under the extant provisions of the Code and also suggested the name of an eligible IRP as per law, who has duly filed a suitable declaration furnishing necessary details. Therefore, the Learned Counsel has urged the Tribunal to initiate CIRP with appropriate directions, as prayed for.

4. The Application has been opposed by the Corporate Debtor by filing a Reply, vide Diary No. 00056/10 dated 09.11.2023, and as further argued



by their counsel, Mr. Rishi Sood. The defense as taken in the reply and also argued by their counsel are briefly summarised as under:-

- (i) The Applicant has failed to provide any Loan Agreement to substantiate that the loan was given against the consideration for the time value of money. The onus to prove lies on the Applicant to establish that the debt claimed in the Application comes within the purview of 'financial debt' and that the Applicant is a Financial Creditor in respect of the present claim in question in light of the fact that neither the duration of the loan has been defined in the alleged receipt nor any agreed interest is defined in the alleged receipt. There is no supporting evidence/document to establish the applicable rate of interest to be paid on the said loan. In the absence of any contractual agreement, an undefined period of loan, absence of any agreement for payment of interest at any specific rate, the alleged transaction does not fall within the definition of Financial Debt as per the terms of sub-sections (7) and (8) of Section 5 of the Code.
- (ii) The Applicant Financial Creditor has failed to establish any financial contract between the Parties. The alleged receipt and payment of TDS cannot be taken as proof of financial debt. In terms of clause 5 of Part (V) of Form I, the Financial Creditor is required to attach a latest and complete copy of the Financial Contract reflecting all amendments and waivers up to date, and in the absence of such a contract, the transaction cannot be termed as Financial Debt. The Financial Contract has been defined under clause (d) of sub-rule 1 of



Rule 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

(iii) The Applicant Financial Creditor had concealed material facts and had failed to disclose the fact that there are inter se transactions in business between the parties; therefore, such transactions cannot be termed as Financial Debt. There have been transactions between the Financial Creditors and his family members with the Companies which are directly or indirectly controlled by Mr Vinod Saluja and Mr Ankush Saluja in their capacity as the Directors and the shareholders of the said entities, wherein the Financial Creditor and his family members owe money to the Corporate debtor for a sum of over Rs. 3 crores against the transactions which were required to be set off against the amount as allegedly claimed by the Financial Creditor in the present Application.

(iv) The Applicant Financial Creditor had entered into an agreement dated 29.01.2021 to sell with Lifecare Buildwell Private Limited, which is a Company owned and promoted by Mr Vinod Saluja and Mr Ankush Saluja in the capacity as the Directors and the shareholders of the said Company, whereby the Financial Creditor had agreed to purchase the Second Floor of the property bearing No. N-81, Panchsheel Park, New Delhi, for a total consideration of Rs. 11,50,00,000/- (Rupees Eleven Crores Fifty Lakhs) against which only an amount of Rs. 9,15,00,000/- (Rupees Nine Crores Fifteen Lakhs) was paid by the financial creditor and an amount of Rs. 2,35,00,000/- (Rupees Two Crores Thirty Five Lakhs)



is due and outstanding, which is to be paid by the Financial creditor to Lifecare Buildwell Private Limited, and as per the arrangement amongst the parties, was to be adjusted/set off from the amount received from the Financial Creditor. A copy of the agreement to sell dated 29.01.2021 between Financial Creditor and Lifecare Buildwell Private Limited has been annexed as Annexure- B to the Reply.

(v) An agreement dated 01.01.2016 was executed amongst Mrs. Seeta Nayyar, Sh. SD Nayyar, being the Vendor, and Mr. Dhruv Goyal, S/o-Sh. RK Goyal (Son of Mrs. Urmila Goyal, i.e., Financial Creditor) being the Vendee and Chetanya Buildcon Private Limited as the Confirming Party (a Company managed and controlled by Mr Vinod Saluja and Mr. Ankush Saluja) qua the property bearing No. 1-8 Maharani Bagh, New Delhi, which is being developed by Chetanya Buildcon Private Limited, as the Vendors have entered into a Collaboration Agreement dated 23.05.2013 with M/s. Chetanya Buildcon Private Limited and accordingly the confirming party had demolished the entire structure and started the reconstruction of the residential building on the plot comprising of Basement, Stilt, Ground Floor, First Floor and Second Floor and Third Floor with terrace and in terms of the agreement, the confirming Party was entitled to hold the entire first floor, 2 car parking spaces in the stilt area, space for keeping 1 generator set in the stilt area.

(vi) Subsequently, vide Agreement dated 01.01.2016, the confirming party i.e., Chetanya Buildcon Private Limited had appointed Mr Dhruv Goyal as his nominee for the entire first floor, 2



car parking spaces in the stilt area against consideration of Rs. 7,50,00,000/- (Rupees Seven Crores Fifty Lakhs) wherein an amount of Rs. 6,50,00,000/- (Rupees Six Crores Fifty Lakhs) was paid by Mr Dhruv Goyal and an amount of Rs. 1,00,00,000/- (Rupees One Crore) was due and outstanding. There are inter se transactions between the parties, and in terms of the same, Mr Dhruv Goyal (Son of Mrs. Urmila Goyal, i.e., Financial Creditor) owes an amount of Rs. 1,00,00,000 (Rupees One Crore) to Chetanya Buildcon Private Limited, which entity is managed and controlled by Mr. Ankush Saluja who is also a Director of the Corporate Debtor Company. These transactions point out to the fact that there are inter se transactions between the parties that were to set off against each other, and no amount is due and subsisting towards the Financial Creditor. A copy of the agreement to sell dated 01.01.2016 amongst Mrs. Seeta Nayyar, Sh. SD Nayyar, being the Vendor, and Mr. Dhruv Goyal, S/o Sh. RK Goyal, being the Vendee and Chetanya Buildcon Private Limited as the Confirming Party, has been annexed as Annexure C to the Reply.

(vii) The Respondent had to recover an amount of Rs 3,35,00,000/-(Rupees Three Crores Thirty Five Lakh) from the Financial Creditor and her family members on account of inter se transactions between the family members of the Financial Creditor and the Financial Creditor herself with the Corporate Debtor. The Financial Creditor had failed to take into account what is due from each party to the other in respect of the mutual dealings, as the



sums due from one party shall be set off against the sums due from the other. Therefore, no debt is due and payable to the Financial Creditor; the amount borrowed from the Financial Creditor has been squared off by a large number of transactions between the parties and their family members.

(viii) The instant Application has been filed to recover the alleged debt and default by projecting the Tribunal as a recovery forum. Further, Section 65 of the Code prohibits the initiation of CIRP if the purpose of the proceeding is other than resolution for insolvency, which is apparent in the present case, as the entire thrust of the Application is to extort money from the Respondent.

(ix) The Application deserves to be dismissed on the ground of being incomplete as mandated under sub-section 5 (b) of Section 7 of the Code. Instructions to the Form 1 of the IBBI (Petition to Adjudicating Authority) Rules, 2016 categorically provides that where the Petition is made jointly, the particulars specified in the said form shall be furnished in respect of all the joint Petitioners, though the Petition is being filed only on behalf of Mrs Urmila Goyal being the Financial creditor, however the claim of her son Mr Dhruv Goyal is also narrated in the said Petition which is otherwise not permissible. The particulars of the financial debts provided in Part V of the said rules mandate the filing of copies of entries in the banker's book, record of default available with the Information Utility, and the latest and complete copy of the financial contract reflecting all amendments and waivers to date of the Application.



(x) There were regular transactions in business between the parties; therefore, such transactions cannot be termed as Financial Debt. There was no loan granted by the Financial Creditor to the Corporate Debtor, and the transaction in question is in the normal course of business for other purposes. The alleged receipt does not envisage that the amount disbursed is against the consideration for the time value of money. Moreover, the financial creditor and his son had failed to disclose the transactions amongst the parties, which, as a matter of fact, were to be set off against each other.

5. The Applicant, through its Rejoinder filed vide Diary No. 00056/3 dated 03.06.2022, has submitted that the plea of set-off is not permissible under the Scheme of IBC and the agreement to sell and transactions as referred to by the Corporate Debtor cannot be merged to make part of the same financial contract. Furthermore, during the pendency of the present Application, the Financial Creditor, along with Mr. Dhruv Goel, entered into a Settlement Agreement dated 27.01.2021 with the Corporate Debtor, as per which the Corporate Debtor has already acknowledged the financial debt. Under the Settlement Agreement, the Corporate Debtor undertook to pay an amount of Rs 5,53,50,000 (Rupees Five Crores Fifty Three Lakhs) in full and final settlement of all pending claims against the Financial Creditor, failing which the Financial Creditor would have the right to proceed in the present Application. The Corporate Debtor failed to make any payments on their due dates by way of post-dated cheques issued by them, which were returned with an endorsement "Funds Insufficient" and therefore committed default in accordance with the clause of the



Settlement Agreement. The same has been annexed as Annexure A-1 to the Rejoinder. The relevant clauses of the Settlement Agreement dated 27.01.2021 between the Applicant Financial creditor (referred to as First Party No. 1), Mr. Dhruv Goyal (referred to as First Party No. 2), and the Respondent Company (referred to as Second Party) are reproduced below:

“A. WHEREAS the FIRST PARTY on the request of the SECOND PARTY provided financial facilities to the tune of Rs. 4,05,00,000/- (Rupees Four Crores Five Lakhs Only), to the SECOND PARTY as loan with a interest of 18% per annum on the total outstanding loan amount, which was repayable on demand, as agreed. i.e. Rs. 3,75,00,000/- was paid by the FIRST PARTY No. 1 and Rs. 30,00,000/- was paid by the FIRST PARTY No. 2.

B. AND WHEREAS the SECOND PARTY has confirmed and acknowledged in its confirmation of account dated 01.04.2016 for the financial year 2015-2016, existence of loan as well as interest thereon @ 12% per annum. Subsequently, the SECOND PARTY has again confirmed and acknowledges in its confirmation of account dated 01.04.2017 for the financial year 2016-2017 existence of loan as well as interest thereon @ 9% per annum.

C. AND WHEREAS unfortunately, the SECOND PARTY has completely failed to honour the demand made by the FIRST PARTY, thereby resulting in default within the meaning of Insolvency and Bankruptcy, Code 2016. Aggrieved by the above, the FIRST PARTY No. 1 filed a Company Petition bearing CP (IB) No. 31/Chd/Pb/2020 before the NCLT. Chandigarh Bench for the for initiating the corporate insolvency resolution process and appointment of Interim Resolution Professional besides other reliefs.

D. AND WHEREAS during the pendency of the said Company Petition, the parties have been able to arrive at a compromise, which is being recorded hereunder in writing to avoid any future disputes.

1. That in pursuance of the said Settlement, it had been agreed, settled and so recorded hereunder in writing that the SECOND PARTY shall in all pay a total sum of Rs. 5,53,50,000/- (Rupees Five Crores Fifty Three Lakhs Fifty Thousand Only), (say SETTLEMENT AMOUNT) to the FIRST PARTY, in full and final satisfaction of all their claims against the SECOND PARTY and had deducting Rs. 10,00,000/ (Rupees Ten Lakhs Only), paid by RTGS in Shri Dhruva Goel account and Rs. 3,17,000/-(Rupees Three Lakhs Seventeen Thousand Only), as TDS deposited in Mrs. Urmila Goyal account by the SECOND PARTY.

2. That it had been further agreed that the SETTLEMENT AMOUNT shall be paid by the SECOND PARTY to the FIRST PARTY on or before 31.10.2021, failing which the SECOND PARTY shall be liable to pay interest @ 18% per annum w.e.f. 01.01.2021 for the period of delay on the due settlement amount along with interest, if any.

8.3. In case of any breach by



the Guarantors/Confirming Party & SECOND PARTY M/s. Sharnarhi Finance Limited, including the dishonor of the post-dated cheques for any reason, the FIRST PARTY shall be at liberty to proceed with the company petition pending before the NCLT, Chandigarh Bench, as well as to initiate proceedings u/s 138 & 141 of the Negotiable Instruments Act.”

The Financial Creditor has initiated proceedings against the Corporate Debtor under Section 138 of the Negotiable Instruments Act after the breach of the terms and conditions of the Settlement Agreement.

6. It is noted that the short written Submission was filed by the Financial Creditor vide Diary No. 00056/8 dated 22.03.2023, and Corporate Debtor filed its written submission vide Diary No. 00056/9 dated 29.03.2023.

7. We have heard the submissions made by the learned counsels of Applicant's Financial Creditor as well as the Respondent's Corporate Debtor and have gone through the material available on record carefully, along with the extant provisions of the Code and the settled position of law on the subject issue.

8. It is noted that the Respondent has taken a defence saying that the alleged transaction does not fall within the definition of Financial Debt, and the Financial Creditor has not submitted any supporting evidence/document (loan agreement) to establish the applicable rate of interest. The Respondent further took the defence that these are inter se transactions in business between the parties, which were to be set off against each other, and no amount is due for payment to the Financial creditor; and as such, there remains no such “Financial Debt”. Furthermore, the Respondent took the defence that the Instructions to the Form 1 of the IBBI (Petition to Adjudicating Authority) Rules, 2016



categorically provides that where the Petition is made jointly, the particulars specified in the said form shall be furnished in respect of all the joint Petitioners, though the Petition is being filed only on behalf of Mrs Urmila Goyal being the Financial creditor, however the claim of her son Mr Dhruv Goyal is also narrated in the said Petition which is otherwise not permissible.

9. We are not satisfied with such an explanation from the Respondent. The issue that the absence of a loan agreement is a bar for the initiation of CIRP is no longer res integra. The Hon'ble National Company Law Appellate Tribunal in **Narendra Kumar Agarwal v. Monotrone Leasin Private Limited, Co. App. (AT) (Ins.) no. 549 of 2020** (para 11), has categorically held that a loan agreement or a financial contract is not a prerequisite for establishing financial debt.

In the present case, the existence of financial debt is supported by the following documents:

(i) A receipt dated 29.04.2016 whereby the Corporate Debtor has acknowledged having taken a loan on interest amounting to Rs. 3,55,00,000/- from the Applicant Urmila Goyal and her son, Mr. Dhruv Goyal. (Note - Though the breakup is not given in that receipt, but the bank statements reflects that the amount was transferred to the Corporate Debtor in various tranches through RTGS and till 28.04.2016, the total amount of Rs. 3,25,00,000 was transferred from Urmila Goyal's Account, meaning thereby that balance Rs. 30,00,000/- was transferred by her son Dhruv Goyal in conformity with the pleadings as made in the Application.)



(ii) Bank statements of Urmila Goyal A/c No. 00321930012249 {HDFC Bank) and A/c No. 35587002953 (SBI Bank) in support of the disbursement to the Corporate Debtor, (Even otherwise, the disbursement has not been disputed by the Respondent).

(iii) The ledger accounts for the periods 01.04.2015 to 31.03.2016 and 01.04.2016 to 31.03.2017 as reflected in the Books of Accounts of the Corporate Debtor. Copies of these accounts were forwarded by the Corporate Debtor to the Applicant, Mrs. Urmila Goyal, vide letters dated 01.04.2016 and 01.04.2017 for confirmation of the balances standing in its books. The said ledger accounts record the amounts transferred through RTGS during the respective periods, the accrual of interest at the rates of 12% and 9% respectively, and the deduction of TDS thereon. The closing balance (amount payable to Applicant) is shown at Rs. 20,26,885/- and Rs. 4,03,84,591/- as on 31.03.2016 and 31.03.2017, respectively.

(iv) The ledger account for the period 01.04.2017 to 31.03.2018 sent to the Applicant vide letter dated 01.04.2018 for confirmation of the Account for that period also reflects the opening and closing balances at Rs. 4,03,84,591/- (but without crediting any interest thereon, meaning thereby that the Corporate Debtor has stopped crediting interest from 01.04.2017).

(v) The Form 26AS [Annual tax statement under section 203AA of the Income Tax Act] issued by the Income Tax Department to the Applicant Financial Creditor for the period of FY 2015-16 and FY 2016-17, which reflects the TDS as made by the Corporate Debtor under Section 194A on crediting the interest (on the loan).



These documents [Receipt, bank statements, confirmation of Ledger Accounts Form 26AS] conclusively establish the existence of Financial Debt even in the absence of any loan agreement.

10. It is also noted that during the course of present proceedings, the Corporate Debtor has entered into Settlement Agreement dated 27.01.2021 with the Applicant Financial Creditor and her son wherein the Factum of having advanced the aforesaid loan by the Applicant, the applicable interest rate, the rate at which the interest is recorded in the Books of Accounts of Corporate Debtor as stated in Confirmation of Accounts dated 01.04.2016 and 01.04.2017 have been reiterated in writing and it was agreed that the Corporate Debtor (referred as second Party) would pay a total sum of Rs. 5,53,50,000/- to the Applicant Financial Creditor and her son (referred as first party therein) on or before 31.10.2021 failing which the Corporate Debtor would be further liable to pay interest @ 18% per annum w.e.f. 01.01.2021 for the period of delay. As stated by the Applicant, the post-dated cheques issued by the Corporate Debtor could not be encashed on account of insufficient funds in the Bank Account of the Corporate Debtor, and as such, the said agreement could not be honored. Nevertheless, the facts as stated in the agreement do support the pleading made by the Applicant and the other document as referred to in Para 9 hereinabove, to arrive at the conclusion that there is an existence of debt payment of which has been defaulted by the Corporate Debtor.



11. The present claim pertains solely to the debt owed by the Applicant, amounting to Rs. 3,75,00,000, and does not encompass the sum of Rs. 30,00,000, which is owed to the Applicant's son, Mr. Dhruv Goyal. The reference to the said amount of Rs. 30,00,000 in the pleadings has been made only due to the fact that the loan was advanced jointly by both parties, and a common receipt was issued in respect thereof. Accordingly, the objection raised by the Respondent, that the present Application is filed solely on behalf of Mrs. Urmila Goyal in her capacity as Financial Creditor, whereas it also incorporates the claim of Mr. Dhruv Goyal, is misconceived and untenable in law.

12. It is noted that the Respondent, in its Reply, has placed reliance upon two Agreements, namely: (i) Agreement to sell dated 29.01.2021 executed between the Applicant Financial Creditor and M/s Lifecare Buildwell Private Limited, whereby the Financial Creditor had agreed to purchase the Second Floor of the property bearing No. N-81, Panchsheel Park, New Delhi, for a total consideration of Rs. 11,50,00,000/- (Rupees Eleven Crores Fifty Lakhs) against which only an amount of Rs. 9,15,00,000/- (Rupees Nine Crores Fifteen Lakhs) was paid by the Financial Creditor and an amount of Rs. 2,35,00,000/- (Rupees Two Crores Thirty Five Lakhs) was due and outstanding, which was to be paid by the Financial Creditor to Lifecare Buildwell Private Limited, and (ii) Agreement to sell dated 01.01.2016 executed between Mrs. Seeta Nayyar and Shri S.D. Nayyar (as Vendor) and Mr. Dhruv Goyal (son of Mrs. Urmila Goyal, the Financial Creditor) as Vendee, with Chetanya Buildcon Private Limited as the Confirming Party, whereby Chetanya Buildcon Private Limited had



appointed Mr Dhruv Goyal as his nominee for the entire first floor, 2 car parking spaces in the stilt area against consideration of Rs. 7,50,00,000/- against which an amount of Rs. 6,50,00,000/- was paid by Mr Dhruv Goyal and an amount of Rs. 1,00,00,000/- (Rupees One Crore) was due and outstanding. Therefore, a total amount of Rs. 3,35,00,000/- has been claimed by the Respondent from the Applicant Financial Creditor and her family members on account of the above inter se transactions.

12.1 It is further noted that neither of the aforementioned Agreements contains any stipulation or clause indicating that the loan amount disbursed on 28.04.2016 and 03.05.2016, aggregating to Rs. 3,75,00,000/- (Rupees Three Crore Seventy Five Lakh only), was to be adjusted or set off against any obligations arising under the said Agreements. In fact, the Agreement dated 01.01.2016 was executed prior to the disbursement of the said loan amount, and therefore, no reference to adjustment or settlement of the said loan could have been made in that agreement. However, the Agreement to Sell dated 29.01.2021 was entered after the disbursement of the loan, but this also does not contain any reference, explicit or implied, to the settlement, set-off, or adjustment of any amount payable thereunder against the liability arising out of the disbursement of the aforesaid loan amount. It is noted that the said Agreement to Sell dated 29.01.2021 was done just two days after the settlement agreement dated 27.01.2021, but no such clause as regard to set-off was given in the sale agreement. Even otherwise, the Companies are distinct entities and transactions, if any, entered by the Applicant Financial Creditor or by her son with other entities relating to the Respondent will



have no bearing onto the transactions entered into by the Applicant with the Respondent Company as referred to in the present Application. Further, it is also noted that the terms of agreement dated 27.01.2021 provide the liberty to the Applicant Financial Creditor to proceed with her Company Application filed u/s 7 of the IBC, in case the payment as stated therein is not made.

12.2 It is also worthwhile to note that the Respondent/ Corporate Debtor is deterred from taking a plea like adjustment or set off on the basis of the doctrine of estoppel and on its own act and conduct, as the Respondent has entered into a settlement agreement dated 27.01.2021 without any such condition and admitted the debt of Financial Creditor in clear and unequivocal terms. Even if, for the sake of argument, any adjustment /set off against the debt is taken, then also the remaining amount (Rs. 5,53,50,000 - 2,35,00,000 - 1,00,00,000) is more than the threshold limit of one crore.

13. Considering the above, we are of the considered view that there exists financial debt which is payable and has been defaulted by the Respondent. The debt is more than the threshold limit of Rs. 1 crore as per Section 4 of the IBC. This Application is filed within the limitation and is defect-free; as such, the Application deserves to be admitted. The debt in reference is a Financial debt which the Corporate Debtor has defaulted to pay, and it is a fit case for admission.

14. On the basis of the facts, the Application is otherwise defect-free & on record. Accordingly, we admit this Application and Order as under:



(i) Corporate Debtor **Sharnarathi Finance Limited** is admitted in the Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016.

(ii) The moratorium under section 14 of the Insolvency & Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Insolvency & Bankruptcy Code, 2016.

(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 Securitisation and Reconstruction of Financial Assets and the 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 Order of moratorium shall have effect from the date of this Order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority



approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for the liquidation of the Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

(iii) We are hereby appointed Mr. Harish Malhotra, having Registration Number IBBI/IPA-001/IP-P00728/2017-2018/11223, to act as Interim Resolution Professional; having address at- 511-A, Garden Heights, Sirhind Bye pass Road, Near DMW, Patiala-147001 (Punjab) and Email - ca.harish@gmail.com, to act as an IRP under Section 13(1)(c) of the Insolvency & Bankruptcy Code, 2016. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of the Insolvency & Bankruptcy Code, 2016, r.w. Regulations made thereunder. The IRP shall make a public announcement of the initiation of the Corporate Insolvency Resolution Process and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Insolvency & Bankruptcy Code, 2016.

(iv) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The Corporate Debtor is to provide effective assistance to the IRP as and when it takes charge of the assets and management of the Corporate Debtor.

(v) The IRP shall perform all its functions as contemplated, inter alia, by sections 17, 18, 20 & 21 of the Insolvency & Bankruptcy Code, 2016. It is further made clear that all personnel connected



with the Corporate Debtor, its Promoter, or any other person associated with the management of the Corporate Debtor are under a legal obligation under Section 19 of the Insolvency & Bankruptcy Code, 2016, to extend every assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter, or any other person is required to assist or co-operate with the IRP, do not assist or co-operate; the IRP is at liberty to make an appropriate Application to this Adjudicating Authority with a prayer for passing an appropriate Order.

(vi) The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of the obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

(vii) The Financial Creditor is directed to pay an advance of Rs. 2,00,000/- (Rupees two lakh only) to the IRP within two weeks from the date of receipt of this order, for smooth conduct of Corporate Insolvency Resolution Process, and IRP to file proof of receipt of such amount to the Adjudicating Authority along with First Progress Report. Subsequently, the IRP may raise further demands for Interim funds, which shall be provided as per the Rules.

(viii) The Registry is directed to communicate a copy of this Order to the Financial Creditor, Corporate Debtor, and the Interim Resolution Professional and the concerned Registrar of Companies, after completion of the necessary formalities, within seven working days,



and upload the same on the website immediately after pronouncement of the Order.

(ix) The IRP shall also serve a copy of this Order to the various departments, such as Income Tax, GST, State Trade Tax, and Provident Fund etc those who are likely to have their claim against Corporate Debtor as well as to the trade unions/employees associations so that they are timely informed about the initiation of CIRP against the Corporate Debtor.

(x) The commencement of the Corporate Insolvency Resolution process shall be effective from the date of this Order.

15. As a result, the Company Application **CP (IB) No. 31/CHD/PB/2020** stands allowed and disposed of.

Sd/-
Kaushalendra Kumar Singh
Member (Technical)

Gitesh

Sd/-
Khetrabasi Biswal
Member (Judicial)