



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-VI, NEW DELHI BENCH
COMPANY PETITION IB (IBC) NO. 176/ND/2024**

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

SMRITI BHATIA
Having its Registered Address
at, R/ o No. 5, Grand Westend,
Rajokri, New Delhi-110038.

...Applicant No.1/Financial Creditor

SAINA BHATIA THROUGH
SMRITI BHATIA Having its
Registered Address at, R/ o No.
5, Grand Westend, Rajokri, New
Delhi-110038.

...Applicant No.2/Financial Creditor

ARNAV BHATIA THROUGH
SMRITI BHATIA (POA), Having its
Registered Address at, R/ o No.
5, Grand Westend, Rajokri,
New Delhi-110038.

...Applicant No.3/Financial Creditor

Versus

M/S BIRD CONSULTANCY SERVICES PVT LTD
Through its Director, Mrs. Radha Bhatia
Having its Registered Address at
E91 Connaught House 1 Connaught Place,
New Delhi - 110001.

...Respondent/Corporate Debtor



Order Delivered on: 13.06.2025.

CORAM:

JUSTICE JYOTSNA SHARMA
HON'BLE MEMBER (JUDICIAL)

MS. ANU JAGMOHAN SINGH
HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Petitioner: Adv. Swapnil Gupta, Adv. Vaibhav Mendiratta, Adv. Tarun Mishra, Adv. Sajal Jain, Adv. Harshit Gupta.

For the Respondent: Sr. Adv. P. Nagesh, Adv. Aseem Chaturvedi, Adv. Wanika Trehan, Adv. Milind Jain, Adv. Siddhart, Adv. Arsh Alok.

ORDER

1. This is a Company Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity "the Code") read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by **SMRITI BHATIA AND ORS.** (hereinafter referred to as 'Financial Creditor'), seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against **M/S BIRD CONSULTANCY SERVICES PVT LTD** ("Corporate Debtor").
2. The present application was filed on 14.03.2024 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of **Rs. 5,35,67,557/-** (Rupees Five Crore Thirty-Five Lakh Sixty-Seven Thousand Five Hundred Fifty-Seven Only) which includes interest outstanding @18% per annum (From 23.12.2023 till 08.03.2024) of **Rs. 19,30,057/-** (Rupees Nineteen Lakh Thirty Thousand Fifty-Seven Only) and the principal amount of default is **Rs. 5,16,37,500** (Rupees Five Crore Sixteen Lakh Thirty-Seven Thousand Five Hundred Only) whereas on 23.12.2023 (alleged date of default). The Financial Creditor has filed the "record of default" dated 23.12.2023 as generated by the NeSL, showing the status of default of the Corporate Debtor under the Loan Agreement as "deemed to be authenticated.



3. **Submission made by Financial Creditor:**

- I. Late Shri Ankur Bhatia was the Director and shareholder of the Corporate Debtor, who during his lifetime, extended a loan of INR 6,67,50,000/- (Rupees Six Crore Sixty-Seven Lakh and Fifty Thousand Only) to the Corporate Debtor.
- II. The acknowledgment of the said loan is reflected in the balance sheet for the financial year ending 31.03.2022 of the Corporate Debtor. Copy of the balance sheets for the financial year 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22 as available and filed on the website of the Ministry of Corporate Affairs have been placed on record reflecting the said loan by debtor which are to be payable on demand.
- III. The Petitioners are Class I legal heir of Late Sh. Ankur Bhatia and are collectively entitled to 3 / 4th share of the loan given to the Corporate Debtor. Copy of the surviving member certificate is attached herewith as ANNEXURE-A4 of the Petition.
- IV. The Petitioners accordingly addressed notices for recall dated 08.12.2023. In the notice, the Petitioners clearly highlighted that being class one legal heirs, they are each entitled to an amount of INR 1,72,12,500/- from the Respondent /Corporate Debtor, and that the said amount is a loan repayable on demand for which they are seeking repayment on an immediate basis. Copy of the loan recall letter dated 08.12.2023 by Petitioner No. 1, 2 & 3 to the Corporate Debtor for their shares are attached herewith as **ANNEXURE-A5** of the Petition.
- V. The Corporate Debtor vide email dated 22.12.2023 raised various defenses, trying to avoid the repayment to the petitioners, being itself in default of the debt. The Corporate Debtor further asserted that a surviving member's certificate, succession certificate, and no objection from other class I legal heirs are also required for the repayment of the debt.
- VI. The Petitioner Nos. 1, 2 & 3 vide email dated 06.01.2024 & 07.01.2024 stated that there is no requirement in law for NOC from class I legal heirs and that the Corporate Debtor is well aware of all the legal heirs and the surviving member certificate were also attached.



VII. It is submitted that the Petitioners are legal heirs of Late Shri Ankur Bhatia who was prior to his demise was one of the Directors of the Corporate Debtor. As on the date board consist of the following people:

1. Radha Bhatia - Director (Mother of Late Sh. Ankur Bhatia)
2. Gaurav Bhatia - Director (Brother of Late Sh. Ankur Bhatia)

It is pertinent to note the company further recognizes the rights of the Petitioners as the legal heirs of late Shri Ankur Bhatia by issuing 1250 shares each to Petitioner No. 1, 2 & 3 in lieu of 5000 shares that were held by late Shri Ankur Bhatia. The same is evident from the fact that the share certificates for the same have been issued to the Petitioners.

4. **Submissions made by the Corporate Debtor:**

- i. The Application is devoid of merit and not maintainable. No right has accrued to the Applicants herein to approach this Hon'ble Adjudicating Authority as the Applicants are not 'Financial Creditors' in terms of the provisions of the Code. It is further submitted that the alleged debt sought to be claimed by the Applicants is not a 'financial debt' under Section 5(8) of the Code. Without prejudice to the above, it is submitted that the purported financial debt, as claimed by the Applicants, has neither become due nor payable and as such, there can be no 'default' in repayment of the alleged debt within the meaning of the Code.
- ii. The funds infused given by Late Dr. Ankur Bhatia, in his capacity as a Director of the Corporate Debtor (prior to his unfortunate demise), is not a 'financial debt', as defined under the Code.
- iii. The Respondent herein, being part of a group of companies known as the Bird Group - which is founded, owned and operated by Mr. Vijay Kumar Bhatia and Mrs. Radha Bhatia, is a separate and distinct legal entity. The Chairperson of the group is Mrs. Radha Bhatia. That out of the wedlock of Mrs. Radha Bhatia and Mr. Vijay Kumar Bhatia, two sons, namely, Dr. Ankur Bhatia and Mr. Gaurav Bhatia were born. The Bird Group was started by Mrs. Radha Bhatia and Mr. Vijay Kumar Bhatia. Mrs. Radha Bhatia groomed his two sons Late Dr Ankur Bhatia and Mr. Gaurav Bhatia, after they completed their college education, over the years and inducted them in the business who only helped Mrs. Radha Bhatia and Mr. Vijay Kumar Bhatia in



operations of some of the companies of the Group.

- iv. It is in this background that Mrs. Radha Bhatia, Mr. Gaurav Bhatia and Late Dr Ankur Bhatia (in their capacity as a directors of the Respondent) had, over a period of time, infused a sum of INR 5,50,00,000/- (Indian Rupees Five Crore Fifty Lakh), INR 50,00,000 (Indian Rupees Fifty Lakh) and INR 6,88,50,000/- (Indian Rupees Six Crore Eighty-Eight Lakh Fifty Thousand) respectively. It is re-iterated that the said amounts were infused into the Respondent with the understanding that the same would remain invested in the Respondent and the Respondent remains financially viable.
- v. It is evident that in the express terms of the Rules, transfer of debt from a lender to his / her legal heirs, after the demise, can only be established by filing a copy of a succession certificate, a probate of a will, a letter of administration or a court decree to that effect, whichever applies. In this case, since Late Dr Ankur Bhatia died intestate, the provision mandatorily requiring submission of a Succession Certificate in support of the Application under Form 1, squarely applies. However, despite clear stipulation in the Rules, the present Application has been filed by the Applicants by merely attaching a survivor member's certificate which does not fulfill the mandatory requirements laid down in Rule 4 read with Point 4 of Part V of Form 1 of the Rules. Therefore, it is submitted that the Applicants have failed to establish their alleged right and/or title on the alleged debt in terms of Section 5(7) and 5(8) of the Code read with Rule 4 and Form 1 of the Rules, and the present Application is liable to be dismissed on this ground alone.
- vi. It is submitted that having failed to establish their title over the alleged financial debt in terms of the Code, the Applicants herein have no locus to file the Application under Section 7 of the Code.
- vii. It is submitted that the Application has been filed without the Applicants having established sufficient title on 3/4th of the amounts infused by the Late Dr Ankur Bhatia into the Respondent, the default in repayment of which forms the subject matter of the Application. It is reiterated that the said claim over the monies infused is contested by Mrs. Radha Bhatia. Despite being wholly aware of the dispute regarding the claim over the monies infused, the Applicants have only adduced a surviving members certificate in order to



substantiate their title over the alleged financial debt forming subject matter of the present proceedings, which is grossly inadequate to establish title in terms of the provisions of the Code, as well as the provisions of the Indian Succession Act.

- viii. It is submitted that Applicants have no interest in resolution of the Respondent or value maximization of the assets of the Respondent, which is the object of the Code. Rather, the present Application is a disguised recovery proceeding instated by the Applicants with the sole intention of recovering amounts infused by the Late Dr. Ankur Bhatia into the Respondent, to which the title of the Applicants is disputed. In fact, the intention of the Applicants becomes even clearer when seen in light of the fact that the Applicants have, in the preceding year, initiated more than 10 proceedings against the rest of Late Dr. Ankur Bhatia's family, either seeking the title / ownership of assets belonging to the Late Dr. Ankur Bhatia or to create pressure on the rest of Late Dr. Ankur Bhatia's Family in order to force them to give in to the Applicant's illegal demands. Furthermore, in addition to the frivolous litigations instituted by the Applicants, the Applicants have, in an attempt to recover monies illegally, have been constantly harassing other members of Late Dr. Ankur Bhatia's Family leading to further proceedings being initiated between the members. A table of the litigations initiated by the Applicants against the rest of Late Dr. Ankur Bhatia's Family as well as proceedings initiated against the applicants is reproduced hereinbelow for the ease of reference:

LITIGATION INITIATED BY THE APPLICANTS	
S.NO.	NAME OF LITIGATION
1.	Civil Suit No. 1205 of 2023 pending before Patiala House Court
2.	Writ Petition (Civil) No. 3759 of 2024 pending before Delhi High Court
3.	Complaint Case No. 6927 of 2023 pending before Patiala House Court (DV Act Complaint)
4.	Company Petition No. 205/ND/2023 pending before National Company Law Tribunal (Oppression & Mismanagement)
5.	IB-151/ND/2024 being Section 7 IBC filed against Bird Hospitality Services Private Limited for infusion of funds by Dr Ankur Bhatia
6.	IB-195/ND/2024 being Section 7 IBC filed against Bird Airport Hotel Private Limited for infusion of funds by Dr Ankur Bhatia
7.	IB-197/ND/2024 being Section 7 IBC filed against Goa Inn Private Limited for infusion of funds by Dr Ankur Bhatia



8.	Complaint dated 22 January 2024 before Crime against Women Cell against Vijay Kumar Bhatia & Gaurav Bhatia
9.	CS (OS) 411 of 2024 Rebird Technologies Private Limited vs Bird Travels Private Limited pending before Delhi High Court
10.	CA No. 218/2024 for recall of order dated 22.03.2024 in CP(CAA)-46/ND/2024 Smriti Bhatia Vs. Bird Consultancy Services Pvt. Ltd
LITIGATION INITIATED AGAINST THE APPLICANTS	
11.	CS(OS) 684 of 2023 pending before Hon'ble Delhi High Court (Civil Suit for defamation)
12.	Complaint Case No. 703 of 2024 pending before Patiala House Court (DV Act Complaint)
13.	Complaint Case No. _____ of 2023 pending before District Magistrate, New Delhi (Senior Citizen Complaint)

- ix. In the present case, the monies infused by Late Dr Ankur Bhatia into the Respondent did not accrue any interest. Notably, even apart from the interest, no benefit accrued to Late Dr Ankur Bhatia in order to classify the disbursement as being in consideration of the time value of money. As such, it is submitted that the infusions made by the Late Dr. Ankur Bhatia cannot be termed as financial debt in terms of the definition provided in Section 5(8) of the Code.
- x. It is also relevant to mention here that the alleged loan given by Late Dr Ankur Bhatia cannot be termed as “financial debt”, as defined in the Code. It is submitted that Late Dr Ankur Bhatia was the Director of the Respondent during his lifetime and was thus a “related party” as defined in the Code. Thus, any money infused by him in his capacity as a Director is termed as a related party transaction and in terms of the judgement of Pheonix ARC Private Limited vs. Spade Financial Services Limited and Ors., decided by the Hon’ble Supreme Court on 01 February 2021, the said alleged loan cannot be termed as a financial debt.
- xi. Section 2(12) of the code defines default as “non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [Paid] by the debtor or the corporate debtor, as the case may be”. It is submitted that the present Application is based on the misconceived notion of the Applicants that the monies infused by Late Dr Ankur Bhatia into the Respondent were in the nature of a interest free infusion of funds,



repayable on demand. As has been stated hereinabove, the amounts infused into the Respondent by Late Dr Ankur Bhatia were never intended to be re-imbursed and had been infused with the intention of ensuring financial stability of the Respondent. Notably, during his lifetime, Late Dr Ankur Bhatia had never sought the re-imbursement of the monies so infused in furtherance of the understanding established between the directors.

- xii. It is submitted that Clause 7(3)(a) of the Code requires that the financial creditors shall file along with the application under Section 7 a record of the default recorded with the information utility or such other record or evidence of the default as may be specified. It is submitted that contrary to the requirement under the Code, the Applicants have failed to file, along with their application a copy of the record maintained by the Information Utility. Rather, the Applicants have merely filed a copy of the form C filed by them with NESL. Notably, no liberty has been sought by the Applicants to file the record available with NESL at a later stage.
- xiii. It is submitted that even in terms of the provisions of the Indian Succession Act, 1925 the Applicants herein have failed to adduce sufficient proof of title to file the present petition, which is nothing but a petition for recovery of monies. It is submitted that while the immediate relief being sought under a Petition under Section 7 of the Code is for initiation of insolvency, the ultimate objective of the creditor is recovery of a debt through a resolution process or through liquidation. As such, Section 214 would apply even to an Application under Section 7 of the Code, such as the one filed by the Applicants herein. It is submitted that the intent of the legislature is further made clear on a collective reading of Section 214 of the Indian Succession Act, 1925, with Section 7 of the Code, and Rule 4 and Part V of Form 1 of the Rules.

5. Rejoinder:-

- I. It is submitted that the loan extended by the Director of the Company is a financial debt and comes under the definition of 5 (8) of the Code, 2016. It is further submitted that the Petitioners have only asked for their 3/ 4th share of loan advanced and for the debt which is due and payable by the Corporate Debtor and the Corporate Debtor has completely failed to repay the amount



of loan as extended by Late Sh. Ankur Bhatia and therefore, the Corporate Debtor and its board of directors are deliberate and willful default, necessitating filing of the captioned Petition against the Corporate Debtor under Section 7 of the Code, 2016.

- II. It is submitted that the same is nothing but bald averments made by the Corporate Debtor without any support of documents and the Corporate Debtor and its board of directors may be put to strict proof. The said loan is repayable on demand which is an admitted fact and the same is reflected in the balance sheet for the financial year 2021-22 of the Corporate Debtor.
- III. It is reiterated that the present Petition is filed with the sole motive to prohibit the Corporate Debtor from defrauding their creditors as such in the present case. As the Petitioners herein are the legal heirs of Late Sh. Ankur Bhatia and therefore legally entitled for the 3/ 4th share of the loan advanced to the Corporate Debtor. The present Petition is filed as the Corporate Debtor has failed to repay the debt which is due and payable as admitted by the Corporate Debtor in the Balance Sheet for the financial year 2021-22 as available on the website of the Corporate Debtor.
- IV. It is submitted that the Petitioners are legally entitled for their 3/ 4th share of the loan advanced by Late Sh. Ankur Bhatia to the Corporate Debtor. Further, the Corporate Debtor is well aware about the fact of the legal heirs of Late Sh. Ankur Bhatia, by issuing 1250 shares each to the Petitioners in lieu of the 5,000 shares that were held by Late Sh. Ankur Bhatia and the same is more evident from the share certificate issued by the Corporate Debtor in favour of the Petitioners which is annexed with the captioned Petition and marked as Annexure A-8. The Corporate Debtor herein is taking advantage of unfortunate position of the legal heirs i.e. the Petitioners, which they have been put to, due to untimely demise of original creditor i.e. Late Sh. Ankur Bhatia. It is submitted that on one hand the Petitioner has admitted fact that the said loan is repayable on demand in its own reply at Para 10 and on the other hand the Corporate Debtor has denied that the said loan amount is not repayable on demand, even otherwise, the balance sheet of the Corporate Debtor for the financial year 2021-22 provides that the same is repayable on demand.



- V. The Board of Directors of the Corporate Debtor is very well aware of the fact about the legal heirs of Late Sh. Ankur Bhatia as the same being managed by the family members of Late Sh. Ankur Bhatia and thus, using frivolous objections to avoid repayment of the debt. The Petitioners are legally entitled for their 3/ 4th share of the loan advanced by Late Sh. Ankur Bhatia to the Corporate Debtor and deprived of their legal rights. The Corporate Debtor herein is taking advantage of unfortunate position of the legal heirs i.e. the Petitioners, which they have been put to, due to untimely demise of original creditor i.e. Late Sh. Ankur Bhatia.
- VI. It is submitted that the Corporate Debtor has committed default in repayment payment of debt and the same is due and payable. Further, the interest was calculated from the date of default i.e. 23.12.2023 as mentioned in loan recall letter dated 08.12.2023 at 18% per annum due to non-payment of debt and therefore, interest has to be calculated and continues to accrue till date.
- VII. There is no dispute as to the legal heirs of Late Sh. Ankur Bhatia and the Corporate Debtor is well aware of legal heirs, who was prior to his demise was the director of the Corporate Debtor. Further, the Hon'ble High Court of Calcutta in the matter of Chhayabani P. Ltd., and Ors. [Company Petition No. 32 of 1979] has correctly held that there is no requirement of succession certificate even in the case of winding up of the Company filed by the legal heirs of the original creditor.

Analysis and Findings

6. Heard the Learned Counsel and perused the material on record.
7. The first and foremost objection which has been emphatically raised by the Respondent pertains to the locus standi of the Petitioners to file this petition under Section 7 of the Insolvency and Bankruptcy Code (IBC), 2016. In order to better understand the points in controversy, it is appropriate to concisely re-state in clear terms the background and the submissions of the Petitioners and the Respondent in this regard:
- i. The petition has been filed by Petitioners No. 1, 2, and 3 as the legal heirs of Late Shri Ankur Bhatia, who was the Director and a shareholder of the



Corporate Debtor. He extended a loan of a certain amount to the Corporate Debtor and this petition has been filed for initiating the insolvency proceeding for alleged default in payment.

- ii.** Admittedly Shri Ankur Bhatia passed away on 4th June, 2021 and the petitioners are his wife, daughter and the son.
- iii.** Admittedly the Petitioners recalled the amount to the extent of their 3/4th share by a notice dated 08.12.2023.
- iv.** The Respondent Company does not deny the fact of infusion of money by late Ankur Bhatia. However, it denies liability on the premise that the amounts infused into the Respondent by Late Dr Ankur Bhatia were never intended to be re-imbursed and had been infused with the intention of ensuring financial stability of the Respondent. The money was given with the understanding that the same would remain invested.
- v.** Another contention of the Respondent is that, without obtaining a Succession Certificate from the court of competent jurisdiction, they cannot claim to stand as Financial Creditor as defined under Section 5 (7) of the IBC, 2016. The Respondent says that merely attaching a survivor members certificate is not enough.
- vi.** Further, it has been contended on behalf of the Respondent that Rule 4 of the IBC (Application to Adjudicating Authority) Rule, 2016, expressly provided that an application under Section 7 of IBC, 2016 shall lie in Form 1 and shall be accompanied with the documents as specified but those documents (as specified in Part V of the Form 1) have not been produced. As the mandatory requirement laid down in rule 4 read with point 4 of Part V of form 1 of the rules has not been fulfilled, hence the petition is liable to be dismissed on this ground alone. According to the Respondent the application is a non-starter as having been filed in violation of relevant rules. Further, that because no Succession Certificate has been enclosed and therefore, the petition is incomplete and is liable to be rejected.
- vii.** It has been argued by the Respondent that the Petitioners, under the garb of provisions of Section 7 of the IBC, 2016 are ultimately claiming right to payment of alleged financial debt, without obtaining Succession Certificates from the competent court. The present Application is a disguised recovery proceeding initiated by the Applicants with the sole intention of recovering amounts infused by the Late Dr. Ankur Bhatia into the Respondent, to which the title of the Applicants is disputed.



- viii.** The Respondent relies on Section 214 of the Indian Succession Act in order to buttress his point contending that wherever a proceeding for recovery of debt from the debtors of the deceased person is sought, no court shall proceed without production of Succession Certificate specifically showing the claimant's entitlement for the debt. The Respondent is also taking support of Section 381 of the Indian Succession Act, to contend that the Respondent cannot take the risk of payment to the Petitioners without them having Succession Certificate as it may expose the company to the risk of inviting unnecessary litigation from any person having an interest in the payment of debt. Whereas if Succession Certificate has been obtained, it would give the Respondent company indemnity from the claims of any third person interested therein.
- ix.** To counter the objections raised by the Respondent as regard locus standi, of the Petitioners, it is submitted on their behalf that they are entitled in law to 3/4th of the assets of late Shri Ankur Bhatia on account of their being Class I heirs as provided in Hindu Succession Act, 1956. Petitioner's argument is that the Petitioners have already been recognized by the Corporate Debtor as legal heirs of the deceased, as Corporate Debtor earlier issued 1,250 equity shares each to Petitioner Nos. 1, 2 & 3 in lieu of 5000 equity shares that were held by Late Sh. Ankur Bhatia. The same is evident from share certificates issued to the Petitioners. Therefore, the Respondent is now estopped from objecting to their claim.
8. This factual position is admitted by the Respondent in its reply that the Petitioners are Class I legal heirs of Late Ankur Bhatia and that Late Ankur Bhatia had infused certain amount in the Corporate Debtor Company and that his heirs recalled their part i.e., 3/4th share in the total amount infused by their predecessor in interest. Not even a feeble objection has been raised by the Respondent as regard their being class I heir. Moreover, their status as legal heirs is unassailable as the Respondent company issued certain equity shares to them in lieu of the shares held by the deceased.
9. The Code gives right to different classes of creditors to apply for initiation of Insolvency Proceedings against the debtor who has defaulted in payment of debt. This is a well-settled legal position that the principal object of the IBC, 2016 is to maintain the business activities of the defaulter and to keep the company alive in wider public interest. Definitely the re-payment part of the proceeding is never the aim and objective of the code. This legal position is well settled and will be discussed in coming paras of this judgment.



10. Section 6 of the Code embodies a substantive provision regarding Corporate Insolvency Resolution Process (CIRP) and provides that where any Corporate Debtor commits a default, a financial creditor, an Operational Creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under Chapter II. The following provision i.e. Section 7 is a specific provision embodying the right to Financial Creditor to apply for Corporate Insolvency Resolution Process (CIRP).
11. The contention of the Corporate Debtor is twofold: first, that the Petitioners do not fall under the definition of Financial Creditors, and even if they are treated as such, they cannot initiate the Corporate Insolvency Resolution Process (CIRP) proceeding under Section 7 unless they have obtained a Succession Certificate showing their entitlement to the money infused by the deceased and a mere surviving certificate is wholly inadequate.
12. The Financial Creditor has been defined in Section 5(7) of the Code as below:
"Financial Creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred."
13. There are no two opinions on the legal position that on the death of a person dying intestate, his property devolves on his heirs instantly, without intervention of any external agency or aid. In other words, the succession, which is distinct from transfer inter-vivos, takes effect on the death of the deceased, neither before nor after. This brings us to the question of applicability of Section 214 of Indian Succession Act. Section 214 of the Indian Succession Act, 1925 is mentioned herein below:
"214. Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons. –
No Court shall -
"(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person or to any part thereof, or
(b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming of -



***a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or
(ii) a certificate granted under section 31 or section 32 of the Administrator General's Act, 1913 (3 of 1913), and having the debt mentioned therein, or
(iii) a succession certificate granted under Part X and having the debt specified therein."***

14. A bare reading of Section 214 of the Indian Succession Act makes it very clear that wherever any proceeding, suit or application is filed for recovery of debt or execution of any decree on the basis of succession, the production of Succession Certificate or probate or letters of administration, etc., as provided in the provisions of Section 214, is a prerequisite. As discussed earlier, the Corporate Insolvency Resolution Process cannot be equated and kept on the same pedestal as any proceeding instituted for recovery or payment of debt. The two proceedings are qualitatively different in nature and operate in different legal spheres. Any comparison to equalize the two would be irrational. In our considered view, provision of Section 214 of the Indian Succession Act do not apply to any Corporate Insolvency Resolution proceeding for the above reasons.
15. On this issue, the Petitioner has relied upon a judgment of Hon'ble Supreme Court given in **HPCL Bio Fuels Ltd. V. Shahji Bhanudas Bhad, (2024SCC Online SC 3190)**:

"What can be discerned from aforesaid decisions is that insolvency proceedings are fundamentally different from proceedings for recovery of debt such as a suit for recovery of money, execution of decree or claims for amount due under arbitration, etc. The first distinguishing feature that sets apart ordinary recovery proceedings from insolvency proceedings is that under the former the primary relief is the recovery of dues whereas under the latter the primary concern is the revival and rehabilitation of the corporate debtor. No doubt both proceedings contemplate an aspect of recovery of debt, however in insolvency proceedings, the recovery is only a consequence of the rehabilitation/resolution of the corporate debtor and not the main relief.

Thus, by no stretch of imagination can insolvency proceedings be construed as being for the same relief as any ordinary recovery proceedings, and therefore no case is made out for exclusion of time under Section 14(2) of the Limitation Act, 1963."



The matter before the Hon'ble Supreme Court in HPCL Biofuels (Supra) was with regard to application of Limitation Act. An attempt was made to compare the arbitration proceeding with the proceeding for initiating corporate insolvency resolution process on the grounds that essentially both the proceedings pertained to recovery of debts. The Hon'ble Supreme Court was of the opinion that the Corporate Insolvency Resolution Process (CIRP) is a proceeding *in-rem* while the arbitration was concerned with private disputes. The Hon'ble Supreme Court, while giving a clear opinion that the insolvency proceedings are fundamentally different from proceedings for recovery of debt also relied on the observations of itself in the landmark judgment in Swiss Ribbons Private Limited Vs. Union of India (2019) 4 SCC 17. In the same judgment the Hon'ble Supreme Court in Para 100 of the judgment, while expressing agreement with the observations of itself in Pioneer Urban Land & Infrastructure Ltd. V. Union of India (2019) 8 SCC 416, reiterated that IBC is not a debt recovery mechanism. Further it observed that when Corporate Insolvency Resolution Process (CIRP) is initiated the aspect of recovery of debt is completely outside the control of the creditor and there is no guarantee of recovery or refund of the entire amount of default. The Hon'ble Supreme Court in HPCL Biofuels (Supra) drawing the distinction with other debt recovery proceedings observed that by no stretch of imagination can insolvency proceedings be construed as being for the same relief as any ordinary recovery proceedings.

In our view, the analogy drawn by the Petitioner on the basis of the observations of the Hon'ble Supreme Court in the aforementioned judgment is enlightening.

16. The Hon'ble High Court of Calcutta in the matter of ***Chhayabani P. Ltd., In Re***, [1979 SCC OnLine Cal 202], has held that a petition for winding-up, without obtaining a succession certificate, against the company is maintainable even if it is filed by the legal heirs of the deceased. Relevant extracts of the same are mentioned herein below:

"A question has also been raised as to whether the petitioners can maintain a winding-up petition without obtaining a succession



certificate against the company as they are the heirs of the deceased creditor...

In the facts and circumstances of this case the company is liable to be wound up under the Companies Act, being a dishonest company and which is a public danger. In short, for enforcing a statutory right there is no question of any succession certificate at this stage. Therefore, the present winding-up petition is maintainable and the same is not an abuse of the process of the court, on the other hand disputes sought to be raised by the company are not bona fide and there is no substance or merit in the defence raised by the company either in fact or in law at this stage."

As observed earlier, there is no scope for the application of Section 214 of the Indian Succession Act in the present Corporate Insolvency matter. The observations expressed by the Hon'ble Calcutta High Court further strengthens our view.

17. For clarity, it may be added that Section 381 of the Indian Succession Act provides for indemnity to the person paying the amount to a person entitled for the same on the basis of a Succession Certificate. In our view, where Section 214 of the Indian Succession Act has not been found to be applicable there is no point in elaborating on the benefit likely to accrue to the Corporate Debtor of the basis of Section 381 of Indian Succession Act.
18. Reinforcing the argument as regards the requirement of Succession Certificate for initiation of Corporate Insolvency Resolution Process (CIRP), the Respondent has further relied on Rule 4 of the IBC, (Application to Adjudicating Authority Rules, 2016). The IBC (Application to Adjudicating Authority) Rules, 2016, Rule 4 provides that an application for Corporate Insolvency Resolution Process (CIRP) process under Section 7 shall be filed in Form 1 and shall be accompanied with the documents and the record as specified. For convenience the Rule 4 of IBC (Application to Adjudicating Authority), 2016 is being reproduced below:

“(1) A financial creditor, either by itself or jointly, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under Section 7 of the Code in Form 1, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India



(Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(2) Where the applicant under sub-rule (1) is an assignee or transferee of a financial contract, the application shall be accompanied with a copy of the assignment or transfer agreement and other relevant documentation to demonstrate the assignment or transfer.

(3) The applicant shall serve a copy of the application to the registered office of the corporate debtor and to the Board, by registered post or speed post or by hand or by electronic means, before filing with the Adjudicating Authority.

(4) In case the application is made jointly by financial creditors, they may nominate one amongst them to act on their behalf.”

This rule speaks of assignment or transfer agreement and other relevant documentation. The Part V of the Form 1, Row 4, mentions details of the Succession Certificate, probate or letters of administration, court decree (as may be applicable) under Indian Succession Act. On the basis of above, the argument of the Respondent is that the mention of the succession certificate in form 1 Part V clearly implies that where a legal heir chose to apply for insolvency proceeding under the code the succession certificate is mandatorily required.

19. Before proceeding further this legal position must be kept in mind that authority of the Rules and Regulations flows from the substantive provision of law which they are going to supplement. The rules can add and supply for the gaps but cannot go beyond the scope of the mother provision. Section 5(7) of IBC, which defines a Financial Creditor, says that the term includes a person to whom debt is legally assigned or transferred. In our view, a general term transfer has been used in this place to signify all kinds of transfers. The authority of Rule 4 of IBC (Application of Adjudicating Authority), 2016 definitely applies where rights are passed on the Financial Creditor by assignment or by transfer and therefore speaks of only assignment or transfer deed. According to Rule 4(2), the application shall be accompanied with copy of the assignment and transfer agreement or other relevant documents to demonstrate the assignment or transfer. It may be noted at this juncture that no document is required to show the succession as in this case the succession is undisputed in itself in as much the petitioners are legal heirs. Where a person dies intestate the estate devolves on the heirs and no deed is



required to demonstrate that in fact it has devolved on the heirs. It is reiterated again that this is a case of intestate succession and Petitioners are undisputedly class I heirs of the deceased. We note that in Rule 4 IBC (Application of Adjudicating Authority), 2016 specific mention of Succession Certificate is omitted though assignment and transfer agreement have been mentioned specifically.

20. The Corporate Insolvency Resolution Process (CIRP) proceeding is initiated by filing a petition and not merely an application. As compared to an application, a petition is a formal request and prepared in a particular format as prescribed. Some of the details required to be filled in may be of general importance. Ordinarily the format is so structured that no particular is left out. This does not mean that each and every particular mentioned in the format is mandatory requirement. Merely because words Succession Certificate find place in Part V of form 1, it cannot be construed that filing of the certificate is a pre-requisite for initiation of Section 7 proceeding. In this particular case, in view of the indisputable facts that the Petitioners are legal heirs falling under Class I of the Schedule, under the Hindu Succession Act and that their predecessor in interest infused money in the Corporate Debtor company, and that the Petitioners have recalled their share, and also in view of the fact that the succession operates on the death of the deceased, no further document as far as the entitlement of the Petitioners to initiate insolvency process is concerned, is required. There is no merit in the argument of the respondent, hence it fails.

21. Now, we come to the next contention which is essentially intertwined with the Respondents attack on the locus. The contention is that the money infused being not a loan is therefore non-payable, and the petitioners cannot be treated as the Financial Creditors of the Respondent company. They do not have any right to initiate the insolvency proceedings under Section 7.

On this issue the documents filed by the petitioners assume importance. The petitioners have produced the balance sheets of the Corporate Debtor for the year 2021-22, the relevant extract is as below:



Classification of borrowings [Table]

..(7)

Unless otherwise specified, all monetary values are in Hundreds of INR

Classification based on current non-current [Axis]	Current [Member]			
Classification of borrowings [Axis]	Rupee term loans from banks [Member]			
Subclassification of borrowings [Axis]	Secured borrowings [Member]		Unsecured borrowings [Member]	
	31/03/2022	31/03/2021	01/04/2021 to 31/03/2022	01/04/2020 to 31/03/2021
Borrowings notes [Abstract]				
Details of borrowings [Abstract]				
Details of borrowings [Line items]				
Borrowings	0	0	(A) 14,88,500	(B) 14,88,500
Terms of repayment of term loans and other loans			The terms of Loan taken from Directors and Shareholders have been revised and are repayable on demand as per the Board Resolution passed. Hence, shown as Current Borrowings.	The terms of Loan taken from Directors and Shareholders have been revised and are repayable on demand as per the Board Resolution passed. Hence, shown as Current Borrowings.

Footnotes

(A) Unsecured Loan from Key Management Personnel -Mr. Ankur Bhatia- Rs. 6,88,50,000 Mr. Gaurav Bhatia- Rs. 50,00,000 Mrs. Radha Bhatia- Rs. 7,50,00,000

(B) Unsecured Loan from Key Management Personnel -Mr. Ankur Bhatia- Rs. 6,88,50,000 Mr. Gaurav Bhatia- Rs. 50,00,000 Mrs. Radha Bhatia- Rs. 7,50,00,000

It is evident from the paper, relevant extract whereof is shown above that the money infused from the directors has been treated by the Corporate Debtor as loan repayable on demand. It has been held in various judgments that Interest free loan is a financial debt. The view taken is that the definition of “financial debt” in Section 5 (8) IBC does not expressly exclude an interest free loan and the word “financial debt” include interest free loans and advances. In **Orator Marketing Private limited vs Samtex Desinz Private Limited, [(2023) 3 SCC 753]**, it has been held that the definition of “financial debt” in Section 5 (8) IBC does not expressly exclude an interest free loan and the word “financial debt” would have construed to include interest free loans advances to finance the business operations of a corporate body. The relevant para of the judgement are as follows-

“22. NCLT and NCLAT have overlooked the words "if any" which could not have been intended to be otiose. "Financial debt" means outstanding principal due in respect of a loan and would also include interest thereon, if any interest were payable thereon. If there is no interest payable on the loan, only the outstanding principal would qualify as a financial debt. Both NCLAT and NCLT have failed to notice clause (f) of Section 5(8), in terms whereof "financial debt" includes any amount raised under any other



transaction, having the commercial effect of borrowing.

23. Furthermore, sub-clauses (a) to (i) of sub-section (8) of Section 5 IBC are apparently illustrative and not exhaustive. Legislature has the power to define a word in a statute. Such definition may either be restrictive or be extensive. Where the word is defined to include something, the definition is prima facie extensive.

From the above discussion there remains no doubt that infusion of money from the predecessor in interest of the petitioner in the Corporate Debtor company has been treated as a loan payable on demand by the company itself. The Petitioners being heir of the deceased now stand in his shoes.

22. One of the feeble objections raised by the Respondent is that the title of the applicant is disputed because more than 10 proceedings have been initiated by the applicants before different forums against rest of the family of Late Ankur Bhatia and these proceedings relate to either title or ownership of assets or to create pressure on rest of the members of his family for vested interest. The Respondent has given the title and number of those proceedings in tabular form. We went through the table given by the Respondent. Our firm view is that this plea has been taken just to mislead the Tribunal and to give this case a different color. In our view where family tree is admitted by the Respondents and where undisputedly the three fourth share of the deceased has already devolved on them, pendency of any litigation whatsoever has no bearing on the instant matter. In the same vain another plea of being 'related party' has been taken which in our view is another attempt to divert the attention from the main issue. Section 5(7) clearly defines Financial Creditor as the person to whom the financial debt is owed and no conditions have been imposed.

23. For the application of Section 7 of IBC existence of debt and commission of default are the two essential ingredients. From the above discussions in our view, the existence of debt requires no further proof. Now coming to the next ingredient that is commission of default, we note that the amount reflects in the balance sheet of the Corporate Debtor is payable on demand and the Respondent company has admitted in its reply that the notice of recall dated 30.11.2023. was received from the petitioners. There is in fact no denial of the receipt of notice of



recall and of the non-payment of any amount claimed in the notice. In present case Form D from Information Utility is on record at (Pg. 65/ A4 of Rejoinder) which in itself is sufficient to prove the existence of debt and the default of payment.

24. The Hon'ble Supreme Court in the judgement **of “Innoventive Industries Limited v. ICICI Bank and Another”** held that once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the Application under Section 7 of I & B Code, 2016. The relevant extract of the said judgment is reproduced hereunder as:

“30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

25. It is clear that the applicants are Financial Creditors and the debt owed to them by the Corporate Debtor is a Financial Debt, and there has been a default, as stipulated in Sections 3(12), 5(7) and Section 5(8) of the IBC.
26. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petitioner established that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under Section 4(1) of the Code, stipulated at the relevant point of time. We are of the view that since this Petition was filed on 14.03.2024, and the updated debt owed to the Financial Creditor is an amount of Rs. 5,35,67,557/- (Rupees Five Crore Thirty-Five Lakh Sixty-Seven Thousand Five Hundred Fifty-Seven Only) which meets the threshold of Rs. One Crore as laid down under Section 4 of the Code.
27. In the light of the above facts and circumstances, and in terms of Section 7(5) (a)



of the Code, the instant petition COMPANY PETITION IB (IBC)/176 (ND) 2024 filed by **SMRITI BHATIA AND ORS.**, the Financial Creditor, under Section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **BIRD CONSULTANCY SERVICES PVT. LTD.**, the Corporate Debtor, is admitted and Corporate Insolvency Resolution Process (CIRP) of **BIRD CONSULTANCY SERVICES PVT. LTD.** commences.

28. The petitioner in part-III of the petition has proposed the name of **Mrs. Nisha Malpani**, as Interim Resolution Professional, having Registration Number IBBI/IPA-001/IP-P00058/2017-2018/10136 and E-mail Id ip.nmalpani@gmail.com, is hereby appointed as an Interim Resolution Professional (IRP) for Corporate Debtor. The consent of the proposed interim resolution professional in Form-2 is on record. It is pertinent to mention that IRP has a valid AFA.
29. 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.
 - (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.

30. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and 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.
31. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 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.
32. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely **Mrs. Nisha Malpani** to meet out the expenses to perform the initial 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 three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
33. The Interim Resolution Professional shall perform all his functions as 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.
34. 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 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 tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing appropriate orders.

35. 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 his 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.
36. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
37. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing C.P. I.B./176 (ND)/2024 stands admitted.
38. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD/-
(ANU JAGMOHAN SINGH)
MEMBER (TECHNICAL)

-SD/-
(JYOTSNA SHARMA)
MEMBER (JUDICIAL)

Date- 13.06.2025