



**IN THE NATIONAL COMPANY LAW  
TRIBUNAL COURT-VI, NEW  
DELHI BENCH  
COMPANY PETITION IB (IBC) NO. 151/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 HOSPITALITY SERVICE 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 Applicant:** Adv. Swapnil Gupta, Adv. Vaibhav  
Mendiratta, Adv. Tarun Mishra, Adv.  
Sajal Jain, Adv. Harshit Gupta

**For the Respondent:** Sr. Adv. Abhinav Vasisht, Adv. Aman  
Bholla, Adv. Akshita Sachdeva

**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 **BIRD HOSPITALITY SERVICES PVT. LTD.** ("Corporate Debtor").
2. The present application was filed on 13.03.2024 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of **Rs. 21,50,58,118/-** (Rupees Twenty-One Crore Fifty



Lakh Fifty-Eight Thousand One Hundred Eighteen) including interest outstanding @18% per annum (From 31.12.2023 till 08.03.2024) of **Rs. 69,59,368/-** (Sixty-Nine Lakh Fifty-Nine Thousand Three Hundred Sixty-Eight Only). The principal amount of default is Rs. 20,80,98,750 (Twenty Crore Eight Lakh Ninety-Eight Thousand Seven Hundred Fifty). The alleged date of default is 31.12.2023. The Financial Creditor has filed the “record of default” dated 31.12.2023 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, and during his lifetime, he extended a loan of Rs. 27,74,65,000/- (Rupees Twenty-Seven Crore Seventy-Four Lakh and Sixty-Five Thousand) to the Corporate Debtor.
- II. The acknowledgment of the said loan is reflected in the balance sheet for the financial year ending 31.03.2023 of the Corporate Debtor. Copy of the balance sheets of the Corporate Debtor for the financial year 2017-18, 2018-19, 2019-20, 2020-21, 2021-22 and 2022-23 as available 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 Petitioner No. 1, i.e., Ms. Smriti Bhatia, is the widow of Late Sh. Ankur Bhatia. The Petitioner No. 2 i.e., Ms. Saina Bhatia, is the minor daughter of Late Sh. Ankur Bhatia filing this present Petition through her mother i.e. the Petitioner No. 1 (legal and natural guardian). The Petitioner No. 3 i.e., Mr. Arnav Bhatia is the son of Late Sh. Ankur Bhatia.
- IV. 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.



- V. The Petitioners accordingly addressed notices for recall dated 30.11.2023. In the notice, the Petitioners clearly highlighted that being class one legal heirs, they are each entitled to an amount of Rs. 6,93,66,250/- from the Respondent /Corporate Debtor, and 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 30.11.2023 by Petitioner No. 1, 2 & 3 to the Corporate Debtor for their shares are attached herewith as **ANNEXURE-A5** of the Petition.
- VI. That the Corporate Debtor vide email dated 29.12.2023 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.
- VII. 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.
- VIII. 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
  2. Vijay Kumar Bhatia - Director
  3. Gaurav Bhatia- Additional Director

That the Corporate Debtor recognizes the rights of the Petitioners as the legal heirs of Late Shri Ankur Bhatia by issuing 750 shares each to Petitioners in lieu of 3000 shares and 42,50,000 preference shares each to the Petitioners in lieu of 1,70,00,000 preference shares, that were held by Late Sh. Ankur Bhatia. The same is evident from the fact that the share certificates for the same have been issued to the Petitioners by the Corporate Debtor.



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

- i. It is submitted that 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. That the present dispute is a family discord and under the garb of Section 7 of the Code, the Applicants are ultimately claiming a right to payment of an alleged 'financial debt', which is neither due nor payable to them, without applying for, succession certificate(s) before the appropriate Court under the Indian Succession Act, 1925 to avoid paying Court fees, which right would not only be contrary to the provisions of the Indian Succession Act, 1925, but also to the provisions of the Code and the Rules made thereunder.
- iii. 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. Being Directors of the Respondent herein, Mrs. Radha Bhatia (mother of Late Dr Ankur Bhatia) and Late Dr Ankur Bhatia used to infuse funds from time to time into the Respondent to ensure smooth operations of the Respondent.
- iv. Mrs. Radha 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 Rs. 69,74,15,000 (Indian Rupees Sixty-Nine Crores Seventy-Four



Lacs Fifteen Thousand) and Rs. 27,74,65,000/- (Rupees Twenty-Seven Crore Seventy-Four Lakhs Sixty-Five Thousand) respectively. It is reiterated that the said amounts were infused into the Respondent with the understanding that the same would remain invested in the Respondent till the Respondent could operate comfortably maintaining its level of business operations.

- v. It is submitted that it is in retaliation to her removal from the Board of the Respondent herein that the Applicant No. 1 issued notices of recall on her behalf as well as on behalf of her son (Applicant No. 2 herein) and her minor daughter (Applicant No. 3 herein) on 30 November 2023 for amounts infused into the Respondent by Late Dr Ankur Bhatia, without having sufficient or proper rights and title to the same. That petition under Section 241-242 of the Companies Act filed by the Petitioners herein titled “Smriti Bhatia & Ors vs. Amadeus India Private Limited & Ors” bearing Company Petition No. 205 of 2023, is currently pending adjudication, to which the Respondent has also been made a party.
- vi. The mala-fide and vindictive intent of the Applications is further evident from the fact that the Applicants have also issued similar recall letters to other entities wherein the Late Dr. Ankur Bhatia had infused monies in similar fashion in his capacity as the Director of the entities. Furthermore, the Applicants have also initiated proceedings under Section 7 of the Code against the said entities titled “Smriti Bhatia & Ors. vs. Bird Airport Hotel Private Limited”, “Smriti Bhatia & Ors. vs. Bird Consultancy Services Private Limited” and “Smriti Bhatia & Ors vs. Goa Inn Private Limited”.
- vii. It is on account of the Applicants’ non-cooperation that no succession certificate has been issued as on date. It is submitted that the Applicants have repeatedly refused to sign the documents for obtaining the necessary Succession Certificate as a result of which Mrs. Radha



Bhatia was constrained to file a succession case before the Ld. Patiala House District Court.

- viii. It is submitted that Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (“Rules”) expressly provides that any application made under Section 7 of the Code shall be in Form 1 and 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. Point 4 at Part V of Form 1 lists the documents required to prove the assignment or transfer of legal debt in cases of succession.
- ix. Further, Rule 10(4) of the Rules provide that the Application under Section 7 must be accompanied by these documents. In the present case, the Applicants have failed to provide these documents and is thus in violation of Rule 4 and Rule 10(4) of the Rules. It is important to mention here that as per Section 7(5)(b) of the IBC, if an application is incomplete, then the same ought to be rejected by Adjudicating Authority. Admittedly, in present case, the ‘Succession Certificate’ as required to be enclosed in Form-1 Part V Sl. No.4 has not been produced.
- x. It is submitted that the understanding between the Respondent and Late Dr. Ankur Bhatia was that these amounts were infused into the Respondent with the understanding that the same would remain invested in the Respondent till the Respondent could operate comfortably maintaining its level of business operations. Thus, such loans cannot be recalled till such a time, till the Respondent achieves self-sufficiency.
- xi. There is no written Loan Agreement between the Respondent Company and Late Dr. Ankur Bhatia which governs the infusion of such funds and thus, for all intents and purposes, the said infusion of funds



should be treated as capital infusion by the promoter and not as a “debt” under the definition of “debt” under the Code. The money infused cannot be termed as a “debt” under the Code as there is no time value of money, as the said money infused do not carry any interest.

- xii. It is submitted that there has been no default at the end of the Respondent, since the entitlement of the Applicants is not fructified and thus, there could not have been a recall, as done by the Applicants. Thus, since there is no “debt” or “default”, the prerequisites of Section 7 are not met.
- 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 said amount of INR 20,80,98,750/ - (3/4th share of the Petitioners) as loan was extended by Late Sh. Ankur Bhatia and the same is reflected in the balance sheet of the Corporate Debtor as repayable on demand. Further, any loan given by the directors comes under the ambit of Section 5 (8) of the Insolvency and Bankruptcy Code, 2016 ('Code') i.e.





definition of the financial debt.

- II. That the unsecured loan advanced are as per balance sheet of the Corporate Debtor and hence, qualifies as a financial debt as per Section 5 (8) of the Insolvency and Bankruptcy Code, 2016. Further, there is no embargo in Law for a Director of a Company to infuse the funds into the Company with a view to rescue a Company from financial distress. It is also submitted that the said loan is repayable on demand as highlighted in the Balance Sheet of the Corporate Debtor for the financial year ended on 31.03.2023 and thereafter, the Petitioners accordingly addressed notices dated 30.11.2023 for recall of loan and despite the time provided for repayment of the loan till 31.12.2023, various frivolous and moonshine defenses were used in order to avoid repayment to the Petitioners by the Corporate Debtor in its reply which was received from Corporate Debtor on 29.12.2023.
- III. By non-payment of debt, the Corporate Debtor has committed default and the date of default is 31.12.2023 which continues to accrue till date and same comes within the purview of Section 2 (12) of the Insolvency and Bankruptcy Code, 2016.
- IV. The present case is not pertaining to removal of the Petitioner No. 1 from the position of director as the same is pending before the Hon'ble NCLT, Bench-II, New Delhi for the consideration filed under Section 241-242 of the Companies Act, 2013. Therefore, the Corporate Debtor is trying to mislead this Hon'ble Adjudicating Authority by making false and irrelevant personal allegations which has no bearing on the present case and the same will be dealt in its own course.
- V. The legal position is well settled even under the Companies Act, 1956 that Succession Certificate is not mandatory for initiation of proceedings of insolvency/ winding up, the factum of family relationship and legal heirs of Late Dr. Ankur Bhatia is in the knowledge of the Corporate Debtor (as evident from the registration of transmission by the holding company and



from paragraph 6 of the Reply to the present Petition). The Petitioners are only claiming their 3/ 4th right to the debts owed to Late Dr. Ankur Bhatia and there can be no claim that Succession Certificate is mandatory. Mrs. Radha Bhatia had filed for succession certificate before Patiala House, district courts bearing Succession Case No. 103 of 2023 wherein also the legal heir status is clearly set forth and there is an admission that the Petitioners are 3/ 4th legal heirs. Copy of Succession Case No. 103 of 2023 filed before the Patiala House, District Courts.

- VI. The Petitioners have also filed an Application in the same case and given their no objection to the issuance of succession certificate in relation to such debts as are being claimed by Mrs. Radha Bhatia. Copy of Application filed before the Patiala House, district courts in Succession Case No. 103 of 2023 is annexed as **ANNEXURE A-3**. Therefore, any allegation that the Petitioners are objecting to Mrs. Radha Bhatia's right to 1/4<sup>th</sup> of the estate is incorrect. It is further submitted that 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. Further, the decision of Hon'ble Supreme Court in the matter of ***IBA Health Pvt. Ltd. vs Infodrive System Sdn. Bhd. [(2010) 10 SCC 553]*** is inapplicable in view of the aforementioned facts and circumstanced as there is no dispute in the present case, as to the legal heirs of the deceased Late Dr. Ankur Bhatia. That the decision of ***Chhayabani P. Ltd., and Ors. [Company Petition No. 32 of 1979]*** clearly covers the facts of the present case.

### **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 4<sup>th</sup> June, 2021 and the petitioners are his wife, daughter and the son.
- iii.** Admittedly the Petitioners recalled the amount to the extent of their 3/4<sup>th</sup> share by a notice dated 30.11.2023.
- 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 such infusion of money was done by the deceased as a director to keep the company in good health and was never intended to be treated as a 'loan' repayable on demand, consequently, the petitioners cannot be treated as Financial Creditors and have no locus to file this petition.
- 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.
- 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. Hence, the application is a non-starter as having been filed in violation of relevant rules. Further, that because no Succession Certificate has been enclosed 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. Their one of the



purposes is to avoid payment of court fees under the provisions of Indian Succession Act.

- 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 3/4<sup>th</sup> 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 750 equity shares in lieu of 3000 equity shares and 42,50,000 preference share each in lieu of 1,70,00,000 preference shares of the deceased. Therefore, the Respondent is now estopped from objecting to their claim.
8. This factual position is admitted by the Respondent in their 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., 3/4<sup>th</sup> 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, there status as legal heirs is unassailable as the Respondent company issued certain equity shares and preference 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 member 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 on 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 at 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 class I 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 a 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 undisputable 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, 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 2022-23, the relevant extract is as below:

Note 22 : Short Term Borrowings	Non- Current				Current			
	As	At	As	At	As	At	As	At
	March 31, 2023	March 31, 2022	March 31, 2023	March 31, 2022	March 31, 2023	March 31, 2022	March 31, 2023	March 31, 2022
Unsecured Loans from Directors *					9,74,880		974880	
					9,74,880		9,74,880	

*\* Loan from directors is repayable on demand*

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. 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 reflected 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. 62/ A4 of Rejoinder) which in itself is sufficient to prove the existence of debt and the default of payment.



23. 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."***

24. 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 code.
25. 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. This Petition was filed on 13.03.2024, and the updated debt owed to the Financial Creditor is an amount of Rs. 21,50,58,118/- (Rupees Twenty-One Crore Fifty Lakhs Fifty-Eight Thousand One Hundred Eighteen Only) which meets the threshold of Rs. One Crore as laid down under Section 4 of the Code.
26. 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)/151 (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 HOSPITALITY SERVICES PVT. LTD.**, the Corporate Debtor, is admitted and Corporate Insolvency Resolution Process (CIRP) of **BIRD HOSPITALITY SERVICES PVT. LTD.** commences.

27. The petitioner in part-III of the petition has proposed the name of Mr. Atul Kumar Kansal, as Interim Resolution Professional, having Registration Number IBBI/IPA-001/IP-P00035/2016-2017/10088 and E-mail Id [cakansal@yahoo.com](mailto:cakansal@yahoo.com). He 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.
28. 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.

29. 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.
30. 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.
31. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Mr. Atul Kumar Kansal 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.

32. 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.
33. 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.
34. 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.
35. 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.

36. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing C.P. I.B./151 (ND)/2024 stands admitted.
37. 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**