



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB)/780 (MB)/2024

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

In the matter of

**Sankalp Siddhi Developers Private
Limited**

**Through its Resolution Professional
Mr. Arun Bagaria**

[CIN -U70102MH2010PTC209143]

...Financial Creditor/Applicant

Versus

Sahyog Homes Limited

[CIN- U45202MH2009PLC198080]

...Corporate Debtor/Respondent

Order Pronounced on 28.05.2025

Coram:

Hon'ble Member (Judicial)	:	Justice V. G. Bisht (Retd.)
Hon'ble Member (Technical)	:	Sh. Prabhat Kumar

Appearances:



For the Financial Creditor : Adv. Shadab Jan a/w Adv.
Prerana Wagh, Adv. Shivam
Bhagwat i/b Crowford Bayley
& Co., Ld. Counsel

For the Corporate Debtor : Sr. Adv. Prateek Seksaria,
Adv. Jeet Gandhi, Ld. Counsel

ORDER

Brief Facts:

1. This Company Petition is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) by **Sankalp Siddhi Developers Private Limited through its Resolution Professional Mr. Arun Bagaria** ("hereinafter referred to as the Financial Creditor/Applicant "), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Sahyog Homes Limited** ("hereinafter referred to as the Corporate Debtor/Respondent ").
2. The Financial Creditor is registered under the Companies Act, 1956 and incorporated on 19.10.2010, bearing CIN U70102MH2010PTC209143. Its registered office is at Ground floor, Rajpipla, Opp. Standard Chartered Bank, Linking Road, Santacruz (West), Mumbai City, Mumbai, Maharashtra, India-400054.
3. The Respondent is incorporated under the Companies Act, 1956 on 23.12.2009 bearing CIN U45202MH2009PLC198080 with its registered office at 321, Morya Estate, New Link Road, Opp. Infinity Mall, Andheri (West), Mumbai 400053. It is a Limited Company having nominal share capital Rs. 13,05,00,000/- and Paid up share Capital Rs. 7,26,90,110/-. It is involved in the business of real estate development.



4. The Corporate Debtor was entitled to develop parcels of lands aggregately admeasuring 27,335.51 sq. meters comprising of land bearing CTS Nos. 1/C(3)(pt), 218,376,376/1,377,379,380,381,385(pt), 396, 396/1 to 5,397, 391/1 to 397/12, 398, 398/1, 399(py), 400(pt), 405(pt), 406, 407(pt), 408(pt), 410(pt) and Survey Nos. 24/4, 6 & 9 of Village Oshiwara, Taluka Andheri, District Mumbai Suburban. Part of this land was owned by Government of Maharashtra and MHADA and Corporate Debtor had obtained development right from them. Further, part of said land was enclosed by slum dwellers who had formed 11 societies and constructed various structures/hutments on that part. The Corporate Debtor obtained the LOI in this relation from Slum Rehabilitation Authority (SRA) for development of that area also. Under the proposed layout plan for this land, 4 free sale buildings i.e., S1, S2, S3 and S4 apart from leaving certain area for further development on which Rehabilitation/compensation building were to be constructed under the LOI.
5. The Financial Creditor acquired development rights of 1,99,884 sq. feet sale FSI for constructing and selling corresponding free sale area in S1 & S2 Buildings that may be constructed on S1 S2 property and Corporate Debtor agreed, in consideration of and subject to terms and conditions stated in development agreement dated 29.07.2012 exclusively and irrevocably grant the Financial Creditor said FSI. On the said FSI the Financial Creditor was to construct Residential Tower named “BBJ Verona” (also referred as “Verona” hereinafter).
6. The total amount of default as stated in Part IV of the Application is Rs.10,00,00,000/- (Rupees Ten Crores Only), and the date of default is stated to be 12.05.2017.
7. In the year 2014, the Corporate Debtor had undertaken development works with respect to a real estate project named "BBJ Verona" for which it required funds from time to time.



8. Accordingly, the parties had entered into an understanding that the Financial Creditor would make available and disburse a sum of Rs. 10,00,00,000/- (Rupees Ten Crores Only) as and by way of Refundable Security Deposit, which would be repaid by Corporate Debtor after reaching a particular stage of construction in the said project. The letter dated 04.12.2014 ("said letter") recorded the said undertaking, the factum of disbursement, timeline and terms for repayment of the debt.

Submissions of the Financial Creditor:

9. On 04.12.2014, the Financial Creditor advanced a sum of Rs. 10,00,00,000/- (Rupees Ten Crores Only) to the Corporate Debtor. The said amount was disbursed as a Refundable Security Deposit to be repaid on completion of construction of building known as "BBJ Verona" upto 19th Slab, being constructed on pieces and parcels of land.
10. The disbursement and corresponding receipt of the above sum of Rs. 10,00,00,000/- has been admitted and acknowledged by the Corporate Debtor.
11. From time to time, the Corporate Debtor has applied for Commencement Certificate (CC) with the concerned authorities in SRA for seeking sanction to construct the project building in phased manner. Accordingly, the Corporate Debtor received CC to commence construction of the project building in the following phase wise manner:

Sr. no.	Date of CC	Phase
1.	21.02.2013	Plinth
2.	25.04.2014	From plinth to 18 th floor
3.	08.08.2016	From 19 th floor to 20 th floor
4.	12.05.2017	From 21 st floor to 27 th floor



12. Therefore, the concerned authorities had certified the completion of the project building up to 19th floor on 12th May 2017 while issuing CC for construction from 21st floor onwards, accordingly, the amounts disbursed by the Financial Creditor became due and payable in terms of the said letter.
13. Notably, the Financial Creditor has disbursed funds to the Corporate Debtor from time to time in addition to the aforesaid sum of Rs.10,00,00,000/-. Such sums have been continually admitted and acknowledged by the Corporate Debtor as loans in its books of accounts and financial statements filed with the Registrar of Companies.
14. Upon initiation of corporate insolvency resolution process of the Financial Creditor, the Resolution Professional assumed control of the Financial Creditor on 23.02.2024. On examining the records of the Financial Creditor, it was learnt that despite completion of the 19th slab of Verona building, the said sum of Rs. 10,00,00,000/- was not repaid by the Corporate Debtor to the Financial Creditor.
15. The Financial Creditor through the Resolution Professional issued a Notice dated 04th September 2024 calling upon the Corporate Debtor to repay the sum of Rs. 10,00,00,000/- (Rupees Ten Crores Only) to the Financial Creditor, failing which, the Corporate Debtor would be liable to pay interest at the current rate of interest as per the provisions of the Interest Act, 1978, for each day of delay till payment of the entire amount and the Financial Creditor would initiate necessary proceedings.
16. Despite receipt of the Notice dated 04th September 2024, the Corporate Debtor has neither responded nor paid the outstanding dues to the Financial Creditor till date.
17. The Financial Creditor has placed on record balance sheets of the Corporate Debtor for the period between 2018 to 2022 vide an additional affidavit to substantiate the limitation aspect.

Submissions of the Respondent:



The Respondent has contested the present application on the following grounds:

18. The amount in default was advanced under Development Agreement dated 9th July 2012, and the understanding was captured in the letter dated 4th December 2014 addressed by the Financial Creditor to the Respondent as under:

a. The amount was to be returned by the Respondent upon completion of 19th slab of building 'Verona', by way of the Financial Creditor depositing a post-dated cheque of the said amount furnished by the Respondent. However, no such cheque was ever deposited by the Financial Creditor either after completion of the 19th Slab of Building 'Verona' or till date.

b. The Financial Creditor was obligated to bear interest on an amount of Rs. 22.5 crores @15.5% p.a. payable monthly till 19th slab is completed, which the Respondent was forced to borrow due to the delay in construction by the Financial Creditor. It is submitted that the Respondent had to borrow further sums to the tune of Rs. 90 crores to sustain the project in September 2014.

19. No alleged debt is due and/or payable in view of the express, categorical and unequivocal waiver of monies alleged to be claimed in the Petition, since the Financial Creditor admittedly defaulted in payment of aforesaid interest towards the liability of Rs. 22.5 crores mentioned above, leading to a letter by the Respondent dated 6th September 2018 wherein the Respondent stated that since the construction of Verona is significantly delayed, pursuant to discussions and towards reimbursement of interest on Rs. 22.5 crores @15.5% p.a., the interest free refundable security deposit of Rs. 10 crores stands completely waived off and nothing is payable by the Respondent to the Financial Creditor. The Respondent asked the Financial Creditor to acknowledge and confirm the same.

20. The Financial Creditor discharged the Respondent by a categorical and unequivocal endorsement on the letter dated 6th September 2018, which has been suppressed by the Financial Creditor, signed by its director Mr. Gautam



Ahuja and stamped with the common seal of the Financial Creditor confirming as under:

"... we confirm that now nothing is payable by you to us."

21. The belated claim of the Financial Creditor in its rejoinder of such letter dated 6th September 2018 not being traceable and not being backed by a board resolution is ex facie false and otherwise contrary to law since the doctrine of indoor management protects the Respondent, an outsider dealing with a company from any such contentions being raised since the Respondent is entitled to presume that the requisite formalities by any company have been duly complied with. The Respondent has relied upon the decision given in ***Tulip Hotel Private Limited vs. JC Flowers Asset Reconstructions Pvt. Ltd. & Ors. [Company Appeal (AT) (Insolvency) No. 1146 of 2023]***.
22. Reliance was also placed on ***Nathani Steels Ltd. v. Associated Constructions, 1995 Supp (3) SCC 324, para 3*** to contend that once the parties have arrived at a settlement, unless the settlement is set-aside in proper proceedings, it does not lie in the mouth of one of the parties to renege from it. Hence, in view of the full and final discharge, waiver and extinguishment, there exists no debt, much less a financial debt that is due or payable. Thus, in view of the express acknowledgment of the Financial Creditor, the settlement was accepted by both parties and acted upon and thus there existed an accord and satisfaction by a substituted agreement. All earlier rights of the parties were abandoned and the prior rights are extinguished. The Respondent has also relied upon the decision given in ***Union of India v. Kishorilal Gupta & Bros., AIR 1959 SC 1362, para 5***.
23. Further, the Petition is not maintainable since the amount claimed in the Petition is not a Financial Debt inasmuch as the sine qua non for a petition u/s. 7 not having been met being as follows:
 - a. The Applicant is the Financial Creditor;



- b. There exists a financial debt;
- c. The financial debt is a legally enforceable debt and/or is due and/or payable in fact and in law; and
- d. The Corporate Debtor is in default in payment of such a debt;
24. The Respondent has relied upon decisions given in ***Global Credit Capital Ltd. & Anr. Vs. Sach Marketing Pvt. Ltd. & Anr. [(2024) 5 S.C.R. 215- paras 20, Corob India Pvt. Ltd. vs. Birendra Kumar Agrawal & Ors. [Company Appeal (AT) (Insolvency) No. 749 of 2024), para 18*** wherein it has been held that the amount in the nature of security deposit, if it has a correlation with the underlying service subject matter of the agreement, is not a financial debt.
25. The amount alleged to be in default arises out of the Development Agreement dated 9th July 2012 (“said agreement”) which contains reciprocal obligations in terms of which the Respondent had advanced Rs. 10 Crore as a security deposit. The amount claimed to be in default does not arise out of an independent lending transaction and is intrinsically linked to the reciprocal obligations under the said Agreement. The Respondent has relied upon the decisions given in ***Ansal Housing Vs. Samyak Projects Pvt. Ltd. Company Appeal (AT) (Insolvency) No.542 of 2023, NCLAT, Realpro Realty Vs. Sanskar Projects- (2023) ibclaw.in 763 NCLAT — Realpro Realty solutions Pvt. Ltd. v. Sanskar Projects and Housing Ltd., (2023) ibclaw.in 763 NCLAT*** and ***decision given by this bench in RT Advisory Services Vs. Sardesai Engineering.***
26. The Petition is barred by the law of limitation as the alleged date of default is 12th May 2017 and the Petition is filed on 16th October 2024. The Respondent has relied upon the decision given in ***Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd., (2020) 15 SCC 1, Paras 35 & 35.1*** wherein it was held that Limitation is a mixed question of fact and law and that when a party seeks application of a particular provision for extension or enlargement of period of limitation, relevant facts are required to be pleaded and requisite evidence is required to be adduced.



27. The contention of the Financial Creditor that the debt and default has been allegedly admitted by the Respondent in its financial statements is untenable since no documents in support of such assertion are placed on record. Assuming such entries do exist in the books of accounts, the same are only on account of the Respondent following project completion method for accounting purposes and the said entry can only be dealt with at the time of project completion. Such entries can in any event not constitute an acknowledgment in the face of the letter dated 6th September 2018 and the acknowledgment of the Financial Creditor contained therein. It has been held in ***Himani Alloys Ltd. v. Tata Steel Ltd, (2011) 15 SCC 273, para 11*** that unless an admission is clear, unambiguous and unconditional, the Respondent should not be precluded from contesting the claim.
28. The reliance placed on the scheme petition by the Financial Creditor as an acknowledgement of liability is misconceived since the same is filed in May 2024, there being no evidence adduced for the period between the pleaded alleged date of default and May 2024. The Same has been held in ***Reliance Asset Reconstruction Co. Ltd. v. Hotel Poonja International (P) Ltd., (2021) 7 SCC 352, Paras 21, 26, 27 & 29.***

Submissions of the Financial Creditor vide its rejoinder:

29. The Corporate Debtor has admitted availing the financial debt i.e. the interest free refundable security deposit and has not disputed the default in repayment of the same to the Financial Creditor.
30. The Corporate Debtor has contended that there was a waiver of the debt by the Financial Creditor. However, the Corporate Debtor has failed to explain why the amount in default has continued to be verified in its books by its Statutory Auditors for 10 years i.e., from 2015 to 5th February 2024. Thus, the Corporate Debtor has unequivocally accepted and admitted that it has failed to repay the amount disbursed by the Financial Creditor.



31. With respect to the Development Agreement dated 9th July, 2012, the genesis of the present dispute is solely from the letter dated 4th December 2014 whereby the Corporate Debtor agreed to repay the amount in default to the Financial Creditor upon occurrence of a specific event. The disbursal letter is an independent contract in itself and is distinct from any other transactional arrangement entered between the parties.
32. The parties entered into a Supplemental Agreement dated 14th September 2018 which is executed barely (08) eight days after the purported waiver letter. There is no mention of any such letter in the Supplemental Agreement. Had the Second Agreement not been an independent arrangement, the fact of such arrangement and its purported waiver would have been definitely mentioned in the Supplemental Agreement.
33. The existence of waiver letter has been disputed by the Financial Creditor. Even the Resolution Professional could not trace any such waiver letter in the records of the Financial Creditor after conducting a thorough search of the records thereof. In fact, such purported waiver of loan is neither authorized by any board resolution nor discussed in any board meeting.
34. The Corporate Debtor has taken contradictory and mutually destructive pleas in the Affidavit in Reply. Admittedly, the Corporate Debtor has filed a claim dated 7th May 2024 with Financial Creditor which is annexed as "Exhibit H" of their Affidavit in Reply wherein it has specifically claimed an amount of Rs. 8.29 crores being amount due from January 2016 till date of filing of claim, whereas on the other hand in the Affidavit in Reply at para 4 page 811 (Volume I) the Corporate Debtor has stated that the Financial Creditor has waived the amounts receivables against the liability of the Corporate Debtor by way of the Second Agreement through a purported waiver letter.
35. Further, the Corporate Debtor has admitted that the Financial Creditor has honored its commitment under the Second Agreement upto January 2016. Hence, the only amount remaining to be served by the Financial Creditor upto



the date of completion of the 19th Slab i.e., 12th May 2017 would be approx. Rs. 4.75 crores (15.50% p.a. on Rs. 22.50 crores for 497 days i.e., from 01.01.2016 to 12.05.2017). Hence, a question would arise as to why would the Financial Creditor waive an amount of Rs. 10 crores against a liability of Rs. 4.75 crores, specifically in the backdrop where the Financial Creditor was itself struggling financially.

36. It is denied that the Financial Creditor disbursed money in the nature of an investment as the disbursal letter clearly records (i) specific terms of disbursal (ii) terms of repayment as well as (iii) the exact timeline for repayment.

Findings-

37. Heard learned counsel for both the parties and perused the material produced on record.
38. As regards limitation, we do not find any merit in the contention of the Corporate Debtor when the amount claimed to be in default in this petition is reflecting under “Deposits Received” in Annexure A to the certificate dated 29.3.2024 issued by V.P. Agrawal & Co., Chartered Accountant, who has stated in the said certificate that -

“We have verified the books of accounts of Sahyog Homes Limited (the 'Company') having ON: U45202MH2009PLC198080 and its registered office at 321, Morya Estate, New Link Road, Opp. Infinity Mall, -Andheri (West), Mumbai - 400053, Maharashtra, India.

Based on such verification and explanation provided to us by the management of the Company, we do hereby certify that the attached list of unsecured creditors of the Company as on February 5, 2024, has been duly authenticated by us and attached as Annexure A.”



39. It clearly shows that the amount of Rs. 10 Crores is admitted in the books of accounts of the Corporate Debtor as payable on account of “Deposit Received” in the name of Financial Creditor. It is relevant to note that the opening balance of each year is a carry over from preceding year, accordingly, it cannot be said the said amount was not reflecting in the books of the Corporate Debtor prior to relevant financial year.
40. The issue for consideration before us is whether the amount claimed to be in default is a financial debt in terms of Section 5(8) of the I B Code.
41. Inevitably, the Financial Creditor acquired development rights of 1,99,884 sq. feet sale FSI for constructing and selling corresponding free sale area in S1 & S2 Buildings that may be constructed on S1 S2 property and Corporate Debtor agreed, in consideration of Rs. 58,30,66,886/- and subject to terms and conditions stated in development agreement dated 29.07.2012 exclusively and irrevocably grant the Financial Creditor said FSI.
42. Clause 4 of this Development Agreement confirms that the Financial Creditor had acquired development rights from the Corporate Debtor in consideration of above stated amount and also undertaken to bear the cost development and construction of Corporate Debtor’s minimum FSI. Clause 5 of said Agreement states that both the parties shall demarcate and physically identify the flats relatable to their share of FSI in S1 S2 building. The Financial Creditor was to bear the cost of construction in relation to its share of FSI in terms of clause 7 and was obligated to pay Rs. 50 Crores as interest free Refundable Security Deposit in terms of Clause 11. Both the parties were to comply with their respective obligation to complete construction of free sale building within the period stated in Clause 20(iv). Clause 24 provides the remedies available to the parties on occurrence of event of default, which is defined in Clause 26. Further, in terms of Clause 34, the parties had agreed that the transfer of development rights in favor of Financial Creditor shall be irrevocable and exclusive of any third party interest. The Supplemental Agreement dated 14.09.2018, the parties



had agreed only in relation to construction of Corporate Debtor's FSI in S1 building on 38th and 39th floor by the Financial Creditor and the consideration payable for that purpose, accordingly, no inference could be drawn from execution of such agreement as it was for different work altogether.

43. From the above clauses contained in the Development Agreement, it follows that Financial Creditor had purchased saleable FSI on which it was required to carry out construction at its own cost apart from construction of minimum FSI area falling in the share of Corporate Debtor. The Financial Creditor had made certain upfront payment out of the total agreed consideration and had also agreed to pay an interest free Refundable Security Deposit of Rs. 50 Crores.
44. In this context it is relevant to refer to letter dated 04.12.2014 which reads as follows:

"Re: Development Agreement 09/07/2012 executed between us in respect of SRA Project at Village Oshiwara, Taluka Andheri, District- Mumbai Suburban -Security Deposit of amount of Rs. 1000,00,000/- (Rupees Ten Crore only) towards completion of construction of Building known as "SBJ Verona" upto 19th slab.

With reference to the captioned subject and in pursuance of execution of the Development Agreement executed by and between ourselves, we have paid you an amount of Rs. 1000,00,000/- (Rupees Ten Crores only) by way of RTGS in your favour vide UTR no. ICIC5201412040009083 as and by way of interest free Refundable Security Deposit towards completion of construction of Building Known as "BBJ Verona" upto 19th slab , being constructed on pieces and parcels of land aggregately admeasuring 27,335.51 sq. meters comprising of land bearing CTS Nos.1/C(3)(pt), 218, 376, 376/1, 377, 379, 380, 381, 385(pt), 396, 396/1 to 5,397, 397/1 to 397/12, 398, 398/1, 399(pt), 400(pt), 405(pt), 406, 407(pt), 408(pt), 410(pt) and Survey Nos. 24/4, 6 & 9



of Village Oshiwara, Taluka Andheri, District · Mumbai Suburban. You have handed over to us Post Dated Cheque amounting to Rs 10 Crores as and by way of your admitted liability.

We further record that the aforesaid Refundable Security Deposit of Rs.1000,00,000/- (Rupees Ten Crores only) shall be payable as an admitted liability refundable on completion of 19th Slab of the aforesaid Building, the completion of 19th Slab shall be certified by an Architect. Upon completion of 19th slab ,we shall deposit the Post Dated Cheque amounting to Rs.1000,00,000/- (Rupees Ten Crores only).

We further record that we shall bear the interest on an amount of Rs.22.5 Crores @ 15.5 % p.a. payable monthly basis till 19th slab is completed. the interest shall be payable on or before 14th of each month commencing from 8th November, 2014.

Kindly acknowledge the receipt in confirmation of aforesaid arrangement.”

45. The letter dated 04.12.2014 clearly shows that this amount was paid in terms of Development Agreement dated 09.07.2012 and there was counter obligation on the financial creditor to reimburse interest on Rs. 22.50 crores to the Corporate Debtor on monthly basis. The Financial Creditor has taken the date of grant of CC for construction of next phase i.e. from 21st floor onward contending that CC for each phase was granted after completion of preceding phase. The CC for next phase was granted on 12.5.2017.
46. It is relevant to note that Financial Creditor was obligated to pay such deposit in terms of Clause 11 also, however such obligation was to be discharged against settlement of obligation of Corporate Debtor in a loan facility due from Corporate Debtor to IIFL as averred in Clause 13 and such deposit was repayable after 24 months from the date of such payment in accordance with



clause 13. The recital F read with clause 4 of the development agreement clearly demonstrates that the understanding between the parties was to sell free sale FSI in favor of the Financial Creditor and the construction on the relevant portion of land was to be carried out jointly by the parties. Thereafter, in terms of clause 5 of the development agreement, the flats and the parking area falling in share of each of the party were to be demarcated and physically identified in terms of clause 5 & 6. In terms of clause 7 the cost of construction in relation to Corporate Debtor's share of FSI was to be borne by Corporate Debtor together with the cost for obtaining plinth CC (in terms of Clause 9). Clause 21 provides that both the parties shall appoint a contractor for construction of S1 S2 buildings and the Financial Creditor, in terms of Clause 20(i) was to bear and pay the interest payable to India Info Line from 1st April 2012 till final repayment.

47. These clauses clearly indicate that the development agreement was not a simplicitor FSI sale agreement but was in the nature of a joint venture arrangement between the parties in relation to S1 S2 buildings and FSI sale determined the share of each party in such joint development. Since the Financial Creditor had certain obligation to perform under the development agreement, it was required to deposit interest free Refundable Security in addition to the agreed consideration. Even though the arrangement does not specifically speaks of the profit sharing between the parties, but the demarcation and physical allocation of share of each party coupled with the right to sell and keep the proceeds clearly indicate that the arrangement was to share the developed part in the pre-defined FSI ratio whereby the parties were enabled to recover the cost incurred by them and make out profit as and when each of the party proceeds to sell allocated flats. Accordingly, the payments made under the development agreement does not constitute financial debt in terms of the decision in the case of *Realpro Realty solutions Pvt. Ltd. (Supra)* and *Ansal Housing (Supra)*.



48. It is pertinent to note that the Applicant has not filed present petition in relation to payments made under clause 4 or 11 of the Development Agreement. The amount, in question, is payment of Rs. 10 Crores, in terms of letter dated 04.12.2014 which refers to the development agreement also. The question is whether this payment was also made in terms of and in furtherance of said development agreement.
49. Letter dated 4.12.2014 records two transaction i.e. (i) payment of Refundable Security Deposit of Rs.1000,00,000/- by the Financial Creditor to Corporate Debtor which was refundable after completion of 19th slab, and (ii) Payment of interest on 22.50 crores by the Financial Creditor on monthly basis till completion of 19th Slab commencing from 8th November, 2014. CC for construction from plinth to 18th floor was granted on 5.04.2014 and this letter was exchanged on 4.12.2014. In our considered view the understanding in terms of said letter constitute a separate contract independent of development agreement having been entered into in course of development agreement, as both of these transactions, though connected to the development of the S1S2 tower in terms of development agreement, casts new obligations upon the parties, which were not forming part of the original development agreement, and the security deposit paid under said letter 4.12.2014 was not governed by the said development agreement. The said letter only contemplates repayment, which was to fall due on completion of 19th Slab, which is admittedly completed before 12.5.2017 as CC for next phase i.e. 20th slab onwards was granted by competent authority on that date. In our considered view, mere reference to the development agreement in the said letter, it can not be said that these transactions shall also take color from the transaction under the development agreement.
50. In case of *Global Credit Capital Limited vs Sach Marketing Pvt. Ltd. [Civil Appeal No. 1143 of 2022]*, the Hon'ble Supreme Court held at Para 20 that



“c. While deciding the issue of whether a debt is a financial debt or an operational debt arising out of a transaction covered by an agreement or arrangement in writing, it is necessary to ascertain what is the real nature of the transaction reflected in the writing; and

d. Where one party owes a debt to another and when the creditor is claiming under a written agreement/ arrangement providing for rendering 'service', the debt is an operational debt only if the claim subject matter of the debt has some connection or co relation with the 'service' subject matter of the transaction.”

51. In the present case, the amount of 10.00 crores disbursed as Interest Free Refundable Deposit was over and above the terms and conditions envisaged under the Development Agreement, hence, it cannot be said that such deposit was to ensure timely construction of S1S2 building upto 17th slab, as the letter dated 4.12.2014 does not contemplate any time period for such construction also. The test to determine whether a debt is a financial debt within the meaning of sub-section (8) of section 5 is the existence of a debt along with interest, if any, which is disbursed against the consideration for the time value of money. Since, the security deposit was disbursed and has a commercial effect of borrowing, the said deposit constitutes financial debt. Hon'ble Supreme Court in ***Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd. [(2021) SCC OnLine SC 513]*** held that “31. The definition of 'Financial Debt' in Section 5(8) of IBC does not expressly exclude an interest free loan. 'Financial Debt' would have to be construed to include interest free loans advanced to finance the business operations of a corporate body.” Accordingly, we are of considered view that interest free refundable security deposit is a financial debt in terms of Section 5(8) of the I B Code.

52. The Corporate Debtor has contended that the obligation to refund said amount of Rs. 10.00 crores was waived by the Financial Creditor vide letter dated 6th



September, 2018 admitting default in payment of interest towards the liability of Rs. 22.5 crores and significant delay in the construction of Verona. The said letter is counter signed by one of the Directors, however, the Resolution Professional has informed that he could not find a copy of such letter in the records handed over to him. The Respondent asked the Financial Creditor to acknowledge and confirm the same. It is noted that the interest on Rs. 22.5 crores was payable @ 15.5% p.a. monthly from 8.11.2014 till completion of 19th slab i.e. before 12.5.2017 (date of completion of 19th slab is not on record, assuming it to be date of obtaining CC for next phase) comes to Rs. 8.71 crores approximately, and the Corporate Debtor is stated to have filed a claim dated 7th May 2024 for a sum of Rs. 8.29 crores on this account in the CIRP of the Financial Creditor. The amount of security deposit payable to the Financial Creditor is reflected as liability in the books of accounts of the Corporate Debtor as on 5.12.2024, as certified by Chartered Accountant. Both of these facts contradict the claim of the Corporate Debtor that the said amount of Rs. 10.00 crores was waived by the Financial Creditor to settle its liability for interest payment and delayed construction.

53. The learned counsel for Corporate Debtor has submitted that it was following 'Project completion method' for accounting of revenues from development activities, accordingly, the deposit of Rs. 10.00 crores shown as payable in its books of account remained as it is and was to be adjusted while recognizing the revenue in terms of said accounting policy. Note 9 of the significant Accounting Policy disclosed in the Corporate Debtor's financial statements for the year ended 31.3.2022 reads as "*Revenue (Income) is recognised only when it is reasonably certain that the ultimate collection will be made. Revenue and Expenses are accounted on an accrual basis and at historical cost. Revenue from project is recognised on completion of the project basis*". The said accounting policy only deals with the time when the revenue (income) from the development/construction activities shall be recognized, and not when the cessation of liabilities, claimed to have ceased, shall be accounted for. Accordingly, we do not find any force in this contention.



54. In view of the above, we are of considered view that there exists a financial debt, exceeding the threshold limit prescribed u/s 4 of IB Code and the same is in default. The Petition is complete in all respects. Therefore, the Petition bearing CP (IB) 780/MB/2024 filed by **Sankalp Siddhi Developers Private Limited through its Resolution Professional Mr. Arun Bagaria**, the Financial Creditor, under section 7 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Sahyog Homes Limited [CIN- U45202MH2009PLC198080]**, the Corporate Debtor, is **admitted/allowed**.
55. The Financial Creditor has proposed the name of **Mr. Dilipkumar Natvarlal Jagad**, Registration No. **IBBI/IPA-001/IP-P00233/2017-2018/10462**, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
56. It is, accordingly, hereby ordered as follows: -
- I. The Petition bearing **CP(IB)/780(MB)/2024** filed by **Sankalp Siddhi Developers Private Limited through its Resolution Professional Mr. Arun Bagaria**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Sahyog Homes Limited [CIN-U45202MH2009PLC198080]**, the Corporate Debtor, is **admitted**.
 - II. There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;



- b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - d. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- III. Notwithstanding the above, during the period of moratorium: -
- a. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - b. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- IV. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- V. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- VI. **Mr. Dilipkumar Natvarlal Jagad**, Registration No. **IBBI/IPA-001/IP-P00233/2017-2018/10462**, having registered address at **803/ 804, Ashok Heights, Opp. Saraswati Apartments, Old Nagardas X Road, Gundavali, Andheri-East, Mumbai- 400069, Maharashtra**, E-mail Id: **dilipjagad@hotmail.com**, is hereby appointed as Interim Resolution



Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

VII. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

VIII. The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims and such amount shall be treated as Interim Finance. These expenses are subject to approval by the Committee of Creditors (CoC).

57. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

58. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

59. Ordered accordingly.

Sd/-

Prabhat Kumar

Member (Technical)

MK

Sd/-

Justice V. G. Bisht (Retd.)

Member (Judicial)