



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT-II)

IN

IA-3665/ND/2026, IA-3396/ND/2026,
IA-3397/ND/2026 AND IA-3403/ND/2026

IN

CP (IB) NO. 207/(ND)/2026

IN THE MATTER OF CP (IB) NO. 207/(ND)/2026

(Under Section 7 of IBC, 2016)

Omkara Assets Reconstruction Pvt. Ltd.

**... Petitioner/
Financial Creditor**

Versus

ESPO Developers Pvt. Ltd.

**... Respondent/
Corporate Debtor**

IN THE MATTER OF IA-3665/ND/2026

(Under Section 60(5) of IBC, 2016)

Anil Bhalla

S/o Shri Raj Kumar Bhalla,
Resident of 4, Hyde Park, Sultanpur,
Mehrauli, New Delhi-110030

... Applicant

Versus

Omkara Asset Reconstruction Private Limited

Through Authorized Signatory Mr. Sunny Gujral,
No. 9, M.P. Nagar First Street,
Kongu Nagar Extension, Coimbatore,
Tirupur, Tamil Nadu – 641607

... Respondent

IN THE MATTER OF IA-3396/ND/2026 and IA-3403/ND/2026

(Under Section 60(5) of IBC, 2016)

ESPO Developers Private Limited

Flat No. 224A, 2nd Floor, Devika Tower,
6, Nehru Place, New Delhi - 110019



E 34, Greenwood City-
Sector 46, Jharsa, Gurgaon - 122002

... Applicant

Versus

Omkara Asset Reconstruction Private Limited

Through Authorized Signatory Mr. Sunny Gujral,
No. 9, M.P. Nagar First Street,
Kongu Nagar Extension, Coimbatore,
Tirupur, Tamil Nadu – 641607

... Respondent

IN THE MATTER OF IA-3397/ND/2026

(Under Rule 11 of NCLT Rules, 2016)

ESPO Developers Private Limited

Flat No. 224A, 2nd Floor,
Devika Tower, 6, Nehru Place,
New Delhi - 110019

... Applicant

Versus

Omkara Asset Reconstruction Private Limited

Through Authorized Signatory Mr. Sunny Gujral,
No. 9, M.P. Nagar First Street,
Kongu Nagar Extension, Coimbatore,
Tirupur, Tamil Nadu – 641607

... Respondent

Order Delivered on: 29.09.2026

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. ATUL CHATURVEDI, HON'BLE MEMBER (T)

For the Applicant : Sr. Adv. Sudhir K Makkar, Adv. Meghna Mishra,
Adv. Nikhil Ratti Kapoor, Adv. Yashodhara
Gupta, Adv. Aadhya Shrotiya, Adv. Kevin
Chadha, Adv. Sanya C Oberoi, Adv. Yash Singh
Sr. Adv. K.K. Manan, Sr. Adv. Prashani Mehta,
Adv. Raghav Marwaha, Adv. Paarth Nandwani,
Adv. Ninad Bohidar, Adv. Abhay Chaudhari in IA-



3665/2026 Sr. Adv. Gaurav Mitra, Adv. Meghna Mitra, Adv. Yashodhara Gupta, Adv. Kevin Chadha, Adv. Yash Singh for OMKARA ARC/FC

For the Respondent : Sr. Adv. Virender Ganda, Adv. Vishal Ganda, Adv. Ayandeb Mitra, Adv. Riya Palnitkar, Adv. Pulkit Goyal

ORDER

PER: ASHOK KUMAR BHARDWAJ, MEMBER (J)

IA-3403/ND/2026

The prayer made in the captioned application reads thus:-

- “a. Allow the present Application;*
- b. Take on record the aforesaid additional facts and documents on record for the proper adjudication of the Insolvency Application.*
- c. Extend the time for filing of the written submissions”*

2. The Insolvency application against the Applicant here was heard at length and the order was reserved on 10.07.2026.

3. The Corporate Debtor/Applicant in the present IA considered the documents referred to in para 8 of the application absolutely relevant for the adjudication of the insolvency application and pleaded that the same were omitted to have been placed on record. The paras 5 to 8 of the application reads thus:-

“5. That, the Insolvency Application has been heard at length and the orders were reserved on July 10, 2026 with a direction to the parties to file written submissions within a week (i.e.) by July 17, 2026.



6. *That, the Corporate Debtor on a deeper scrutiny of old records found that the entire debt has been repaid through banking channels as early as up to March 2023.*
7. *That, since, as per the Insolvency Application, the disbursement was not made to the Corporate Debtor, the Corporate Debtor had filed a limited reply seeking dismissal of the Insolvency Application. In the process however, the Corporate Debtor had inadvertently missed to place on record the relevant documents and bank statements evidencing the payment of the entire loan.*
8. *That, the following documents are therefore absolutely relevant for the adjudication of the Insolvency Application which were inadvertently omitted to have been placed on record.*
 - a. *A copy of the OTS Letter is annexed at Annexure A/ 12 [pg. 1010-1020] to the Insolvency Application and is also annexed as **Annexure-A2**;*
 - b. *A tabular chart showing the amounts paid pursuant to the OTS Letters dated September 1, 2021, the actual payment made and the balance amount as on March 2023 as **Annexure-A3**; and*
 - c. *A copy of the bank statements evidencing that the entire loan amount as per the letter dated September 1, 2021 is paid as **Annexure-A4**.”*

4. As can be seen from the aforementioned, there is contradiction in the contents made in para 8 and 8(a) of the application. When in para 8, it has been alleged that the document referred to in clauses a, b and c of the application were omitted to have been placed on record, in clause ‘a’ itself it has been averred that a copy of OTS Letter was annexed as Annexure-A/12 (pg. 1010-10200) to insolvency application. Such a contradiction in itself can be ground, sufficient to reject the application. Nevertheless, in ***Innoventive Industries Ltd. vs. ICICI Bank and Anr. [Company Appeal (AT)***



(Insolvency) No. 1 and 2 of 2017], Hon'ble NCLAT has ruled that this Tribunal cannot ignore adherence to Principle of Natural Justice. Thus, in due deference to the Principle of Natural Justice and fair play, we deem it apt to take the additional facts and documents sought to be placed on record by the Applicant.

5. Ordered accordingly. The application stands allowed.

IA-3397/ND/2026

6. The prayer made in the captioned application reads thus:-

- "a. Allow the present Application;*
- b. Recall/Modify the order dated June 08, 2026 and July 10, 2026.*
- c. Pass any other of further order(s) as the Hon'ble Adjudicating Authority deems fit in the interest of justice."*

7. The orders dated 08.06.2026 and 10.07.2026 sought to be recalled in terms of the prayer made in IA-3397/ND/2026 reads thus:-

*"Arguments to continue on 10.06.2026.
In the meantime, Mr. Virender Ganda, Ld. Sr. Counsel will bring the affidavit of the Corporate Debtor and the rejoinder in hard form on the next date of hearing.*

XXX

At 11:15 am, as prayed by the Ld. Counsel on behalf of the Corporate Debtor, the matter be scheduled for hearing at 12:30 pm. As prayed by Ld. Sr. Counsel, we post the matter for hearing at 12:30 pm. It is made clear that as we have heard the argument at length irrespective of the presence of the Ld. Counsels for the parties, we will reserve the matter for orders.

At 12:30 pm, arguments heard. Order reserved.

Ld. Counsels for the parties are directed to file written submissions not exceeding seven pages within one week."



8. As can be seen from the above, on 08.06.2026, as also 10.07.2026, this Tribunal recorded the proceedings only and no effective order as such was passed. Reserving of an order itself means that no order has been passed and the same is yet to be passed. Thus, when the order in itself was reserved, no order can be said to be in existence for being recalled. We see from the provisions of Rules 48 and 49 of NCLT Rules, 2016 that an order can be set aside or recalled only if the requirement of aforementioned rules is satisfied. In the present case, there is no justification to recall the proceedings recorded regarding hearing of an application and reserving the order. However, we heard Mr. KK Manan, Ld. Sr. Advocate as also Mr. Virendra Ganda, Ld. Sr. Advocate at length and addressed their concern while hearing IA-3665/ND/2026 and IA-3396/ND/2026 wherein we proceed to pass detailed order herein below. **Subject to aforementioned, the application is disposed of.**

IA-3665/ND/2026 and IA-3396/ND/2026

9. The prayer in these applications is for rejection of Company Petition bearing CP (IB) No. 207/ND/2026 and imposition of penalty upon the FC under Section 65 of IBC, 2016. The salient contentions espoused in the IA-3665/ND/2026 are:-

- a. In terms of the Sanction letter dated 17.01.2019 and Loan Agreement dated 18.01.2019, bearing Loan Account No. S000240693, Indiabulls sanctioned a facility of Rs. 136,00,00,000/- in the name of the Corporate Debtor viz. ESPO Developers Private Limited. However, the sum under the Sanction Letter and the Loan Agreement was never disbursed to the Corporate Debtor. Nevertheless, an amount of Rs.

IA-3665/ND/2026, IA-3396/ND/2026, IA-3397/ND/2026 AND IA-3403/ND/2026 in
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135,15,00,000/- was disbursed to the bank account of Vatika Limited and not to the Corporate Debtor.

- b. On 01.09.2021, Indiabulls entered into a One Time Settlement with the Corporate Debtor whereunder the outstanding liability of the Corporate Debtor stood reduced to Rs. 67,31,93,314/- along with interest @ 11.62% per annum, despite the fact the loan was not disbursed to the Corporate Debtor but was disbursed to Vatika Limited.
- c. Further On 29.03.2023, Indiabulls along with Indiabulls Commercial Credit Limited (ICCL) and the borrowers therein executed a composite Settlement Agreement with 34 Vatika Group Entities including the Corporate Debtor recording various obligations to be performed by each party therein. The Settlement Agreement dated 29.03.2023 specifically recorded that Indiabulls was entitled to a sum of Rs. 68,48,79,961/- (Rupees Sixty Eight Crores Forty Eight Lakhs Seventy Nine Thousand and Nine Hundred Sixty One Only) and a sum of Rs. 5,70,44,875/- (Rupees Five Crores Seventy Lakhs Forty Four Thousand Eight Hundred And Seventy Five Only) along with interest at the rate of 11.62% p.a. from Vatika IT Parks alone and not from any other entity. The Settlement Agreement also provide for the execution of ATS in respect of certain properties with a corresponding right to buy-back by Vatika Group of 34 entities.
- d. The Settlement Agreement was later modified by an Addendum dated 30.04.2023 and a Second Addendum dated 22.04.2024. Through the Second Addendum dated 22.04.2024, the Indiabulls Group had assigned the rights and obligations under the ATS forming part of the



Settlement Agreement dated 23.03.2023 (sic 29.03.2023) to SSL Infrastructure Private Limited, Saisrushti Bidalpar Projects Private Limited and Saisrushti (Devanahalli-Lakshmipura) Projects Private Limited (collectively, the SSL Entities).

- e. Having received the payment towards discharge of the financial obligation and further having assigned its rights of ATS Agreement in favour of the SSL Entities, Indiabulls and ICCL issued a notice dated 11.07.2024 (hereinafter referred to as “**Termination Notice**”) terminating the Settlement Agreement, alleging non-fulfilment of the ATS Obligations. The dispute arising out of and in relation to the Settlement Agreement including specifically the legality and validity of the purported termination vide Termination Notice dated 11.07.2024 are the subject matter of arbitral proceedings which were invoked and are pending adjudication and which admittedly predate the Insolvency Petition.
- f. The CD vide letter dated 19.07.2024 addressed to Indiabulls, informed that the financial obligations stood fully discharged and the payment of the entire settlement consideration had been remitted. Further, vide Assignment Agreement dated 28.12.2024, Indiabulls and ICCL purportedly assigned their rights under the loan documents to the Financial Creditor. Despite the fact that the entire loan had been repaid, the Financial Creditor initiated CIRP, claiming default qua a debt amounting to Rs. 164,04,41,432/-.
- g. To buttress that the initiation of CIRP is malicious, the Applicant has further espoused:-



- (i) The liability recorded in OTS Letter dated 01.09.2021 was paid off through bank transfers by March 2023 i.e., even before the Settlement Agreement dated 29.03.2023 was executed. In any event, the financial obligation under the Settlement Agreement were remitted in full on and around July 19, 2024. The Financial Creditor and its assignor were at all material times in receipt of, and had full knowledge of, each of the payments.
- (ii) The Financial Creditor has itself admitted in its own petition and also in its written submission that the sum of Rs. 135,15,00,000/- was disbursed into the bank account of M/s Vatika Limited on 29.03.2019 and that the Corporate Debtor received no funds out of the credit facility in its own bank accounts. Though the loan agreement and the sanction letter were issued in the name of ESPO Developers Pvt. Ltd., but the sum of Rs. 135,15,00,000 was disbursed in the bank account of Vatika Limited and not to the Corporate Debtor. Since the documents were executed in the name of CD, the settlement agreement dated 29.03.2022 and the addendum thereof, were entered into with ESPO Developers Pvt. Ltd. only for the purpose of completeness of record as well as internal housekeeping. It was only on insistence of Indiabulls that the loan amount was repaid by ESPO Developers Pvt. Ltd. even though no disbursement whatsoever was made to it.



- (iii) On the one hand the financial creditor is actively pursuing arbitral proceedings and seeking recovery of amounts, on the other hand, it is attempting to effect recoveries through the present proceedings.
- (iv) In terms of the termination notice, Indiabulls had terminated the settlement agreement by pleading non-fulfilment of the ATS Obligations by the Corporate Debtor and M/s Vatika Limited, but by the time the termination notice came to be issued, the India bulls and ICCL had in terms of amended agreement to sell dated 16.05.2023 assigned and transferred all their rights and obligations qua the ATS Properties to the SSL Entities and the Financial Obligations had been assigned to Catalyst Trusteeship Limited [now assigned to the Financial Creditor on 28.12.2024]
- (v) As assignor who has divested itself of its rights under a contract cannot thereafter assert or enforce those very rights, much less terminate the Settlement Agreement for an alleged breach of obligation which are no longer owed to it. In other words, the Termination Notice dated 11.07.2024 was issued by the party bereft of any authority to do so, thus the same is void ab initio.
- (vi) The dispute arising out of and in relation to the Settlement Agreement as also legality and validity of Termination Notice dated 11.07.2024 are the subject matter of arbitral proceedings, pending adjudication.



- (vii) In *Lalit Kumar Jain v. Union of India* (2021) 9 SCC page 321, the Hon'ble Supreme Court ruled that the liability of the Personal Guarantor is distinct and independent, enforceable under Part III of Code and if the Insolvency Petition is admitted on a non-existent debt, the PG faces immediate prospect of proceedings under Section 95 of the Code.
- (viii) Section 65(1) of the Code provides that where any person initiates the insolvency resolution process fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, this Adjudicating Authority may impose upon such person a penalty which should not be less than Rs. 1 Lakh but may extend to Rs. One Crore.

10. Most of the contentions raised in IA-3396/ND/2026 are same as have been espoused in IA-3665/ND/2026. However, as the Applicant in IA-3665/ND/2026 stood as PG for the financial facility in issue, he has also raised concern regarding his liability in such capacity.

11. The case set up by the Applicant in CP (IB)-207/ND/2026 is:-

- I. The Financial Creditor Omkara Assets Reconstruction Pvt. Ltd. is an Asset Reconstruction Company incorporated under the Companies Act, 1956, registered as a Securitization and Reconstruction Company pursuant to Section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).
- II. The Corporate Debtor, ESPO Developers Pvt. Ltd. is a company incorporated under the Companies Act, 1956, engaged in the business



of real estate development, with its registered office at Flat No. 224a, 2nd Floor, Devika Tower, 6, Nehru Place, New Delhi-110019. The Corporate Debtor is part of the Vatika Group of Companies.

- III. In 2019, the Corporate Debtor approached Indiabulls Housing Finance Limited, now known as Samman Capital Limited (IHFL), seeking financial assistance. On the basis of representations and undertakings furnished by the Corporate Debtor, IHFL issued a Sanction Letter dated January 17, 2019, sanctioning a loan of Rs. 136,00,00,000/- (Rupees One Hundred and Thirty Six Crores only).
- IV. Pursuant to the Sanction Letter, a Loan Agreement dated January 18, 2019 bearing Loan Account Number S000240693, was executed between IHFL and the Corporate Debtor. An amount of Rs. 135,15,00,000/- (Rupees One Hundred Thirty-Five Crores and Fifteen Lakhs Only) was disbursed to the Corporate Debtor on March 29, 2019. In terms of Schedule I of the Loan Agreement, the tenure of the loan was 73 months from the date of disbursement, scheduled to run until April 29, 2025.
- V. Under the Loan Agreement, the disbursed amount was repayable together with interest at the rate of 14.45% per annum, in accordance with the Repayment Schedule set out in Clause 3 read with Schedule I of the Loan Agreement. In the event of default, the Corporate Debtor was liable to pay default interest at the rate of 2% per month over and above the agreed interest rate, in terms of Clause 4 read with Schedule I. The obligation to repay outstanding amounts in a prompt and regular manner was unconditional and arose irrespective of whether any



demand was made in that behalf. The Corporate Debtor was further liable for costs, expenses, and other charges in terms of Clause 8 of the Loan Agreement.

VI. The Clause 12 of the Loan Agreement defined 'Events of Default' to include, inter alia, non-payment of any amount due and payable thereunder. Upon the occurrence of an 'Events of Default', the Lender was entitled, with or without notice to the Corporate Debtor, to exercise any or all of the rights specified in Clause 12.2, including cancellation or recall of the Loan Agreement, initiation of proceedings and exercise of all rights, actions, remedies and power under the Loan Documents, and enforcement of security. The clause 13 of the Loan Agreement permitted IHFL to assign the rights and obligations thereunder to any person or entity on such terms as it deemed fit, and the Corporate Debtor could in no manner restrain IHFL from exercising this right of assignment.

VII. The loan facility is secured by certain securities created by the Corporate Debtor and related parties.

VIII. In addition to the CD various other entities of the Vatika Group availed loans aggregating to Rs. 4,090,45,00,000/- (Rupees Four Thousand Ninety Crores Forty-Five Lakhs only) pursuant to 50 separate loan agreements executed with IHFL and Indiabulls Commercial Credit Limited ("ICCL"), both of which were entities forming part of the erstwhile Indiabulls Group. Against these facilities, an aggregate amount of Rs. 3,917,30,32,967/- (Rupees Three Thousand Nine Hundred and Seventeen Crores Thirty Lakhs Thirty-Two Thousand



Nine Hundred and Sixty-Seven only) was disbursed to the Vatika Group entities, including the Corporate Debtor.

- IX. The Corporate Debtor, along with various other Vatika Group entities, executed 46 agreements to sell in respect of parcels of land situated Gurgaon, Haryana (ATS Properties). Under these agreements to sell (ATS), IHFL and ICCL made advance payments aggregating to Rs. 23,62,11,73,486/- (Rupees Two Thousand Three Hundred Sixty-Two Crores Eleven Lakhs Seventy-Three Thousand Four Hundred and Eighty-Six only), out of a total consideration of Rs. 26,69,28,83,223/- (Rupees Two Thousand Six Hundred Sixty-Nine Crores Twenty-Eight Lakhs Eighty-Three Thousand Two Hundred and Twenty-Three only).
- X. The Corporate Debtor along with other Vatika Group entities, thereafter committed default in the payment obligations under the Loan Agreement. With a view to resolving the default, IHFL agreed to grant concessions to the Corporate Debtor and other Vatika Group entities.
- XI. Vide One-Time Settlement Letter dated September 01, 2021 (OTS Letter), IHGL agreed to modify the original payment obligation of the Corporate Debtor. In lieu of the amounts then outstanding, the Corporate Debtor was required to pay a reduced sum of Rs. 39,18,14,859/- (Rupees Thirty-Nine Crores Eighteen Lakhs Fourteen Thousand Eight Hundred and Fifty-Nine Only), together with applicable interest, on or before January 31, 2023. Corresponding OTS was issued to other Vatika Group entities, each requiring payment of similarly reduced amounts. The OTS Letter constitutes an



unequivocal written acknowledgment by the Corporate Debtor of its subsisting liability under the Loan Agreement within the meaning of Section 18 of the Limitation Act, 1963, and the period of limitation in respect of the said debt stands extended accordingly.

XII. The CD and other Vatika group entities committed default in terms of the OTS Letters. Following several rounds of negotiations, the Corporate Debtor and other Vatika Group entities, on the one hand, and IHFL and ICCL, on the other, executed a Settlement Agreement dated March 29, 2023 (Settlement Agreement). Under the Settlement Agreement, the CD and other Vatika Group entities undertook to fulfil Financial Obligations (Clause 1), ATS Obligations [Clause 3(i)], Buy-Back Obligations [Clause 3(ii)], and Milestone Obligations [Clause 3(iii)]. The continuation of the Settlement Agreement was expressly contingent upon the Corporate Debtor and other Vatika Group entities performing all obligations thereunder, and any breach thereof could result in its termination. The execution of the Settlement Agreement constitutes a further written acknowledgment by the CD of its subsisting liability under the Loan Agreement within the meaning of Section 18 of the Limitation Act, 1963, and the period of limitation stands extended from March 29, 2023.

XIII. However, the Corporate Debtor and other Vatika Group entities committed default in the terms of the OTS Letters.

XIV. Following several rounds of negotiations, the Corporate Debtor and other Vatika Group entities, on the one hand, and IHFL and ICCL, on the other, executed a Settlement Agreement dated March 29, 2023



("Settlement Agreement"). Under the Settlement Agreement, the Corporate Debtor and other Vatika Group entities undertook to fulfil Financial Obligations [Clause 1], ATS Obligations [Clause 3(i)], Buy-Back Obligations [Clause 3(ii)J], and Milestone Obligations [Clause 3(iii)]. The continuation of the Settlement Agreement was expressly contingent upon the Corporate Debtor and other Vatika Group entities performing all obligations thereunder, and any breach thereof would result in its termination. The execution of the Settlement Agreement constitutes a further written acknowledgment by the Corporate Debtor of its subsisting liability under the Loan Agreement within the meaning of Section 18 of the Limitation Act, 1963, and the period of limitation stands extended from March 29, 2023.

- XV. A conjoint reading of Clauses 5 and 11 of the Settlement Agreement establishes that upon any breach by the Corporate Debtor or other Vatika Group entities, the Loan Agreement would stand revived automatically, and the Corporate Debtor and other Vatika Group entities would, jointly and severally, and without prejudice to the rights and remedies of the lender(s) and/or purchaser(s) under the Loan Documents, would be liable to pay the revised settlement amount of Rs. 520,34,74,688/- (Rupees Five Hundred Twenty Crores Thirty-Four Lakhs Seventy-Four Thousand Six Hundred and Eighty-Eight only), together with interest at 11.62% per annum from February 01, 2023, in addition to all amounts due and payable under the original Loan Agreement.



XVI. The Settlement Agreement was subsequently modified vide Addendum dated April 30, 2023 and Addendum dated April 22, 2024 (collectively, "Addendums"). The Corporate Debtor executed both Addendums, and each Addendum constitutes an independent written acknowledgment by the Corporate Debtor of its subsisting liability within the meaning of Section 18 of the Limitation Act, 1963. The last of such acknowledgments, being the Addendum dated April 22, 2024, extends the period of limitation to April 22, 2027.

XVII. In the interim, on May 11, 2023, IHFL and ICCL assigned 41 out of 51 loan agreements - including the Loan Agreement - in favour of Catalyst Trusteeship Limited ("Catalyst") vide Assignment Agreement dated May 11, 2023, in terms of Section 5 of the SARFAESI Act. Simultaneously, Catalyst executed a Sub-Servicer Agreement in favour of IHFL, delegating to IHFL certain rights and duties in respect of the assigned loan agreements, including the right to recover and enforce dues from the borrowers thereunder, subject to the terms of Clause 3 thereof. Accordingly, notwithstanding the assignment to Catalyst, IHFL retained the right to exercise all rights available under the Loan Agreement and to take all steps necessary to recover the outstanding amounts due and payable thereunder, on behalf of Catalyst. Subsequently, by way of Amended and Restated Agreement to Sell dated May 16, 2023, IHFL assigned its rights and obligations in respect of the ATS Properties to SSL Infrastructure Private Limited, Saisrushti Bidalpur Projects Private Limited, and Saisrushti (DevanahalliLakshmipura) Projects Private Limited ("SSL Group").



XVIII. The Corporate Debtor and other Vatika Group entities failed to fulfil their obligations under the Settlement Agreement. In particular, the Corporate Debtor and other Vatika Group entities failed to perform the ATS Obligations and Milestone Obligations under Clauses 3(i) and 3(iii) of the Settlement Agreement respectively.

XIX. Under Clauses 5 and 11 of the Settlement Agreement, breach of any obligation thereunder automatically revived the Loan Agreement and rendered all amounts due thereunder immediately payable. This revival operated by force of contract upon the occurrence of the breach itself; it was not contingent upon the issuance of any notice or the exercise of any discretion by IHFL. The Corporate Debtor cannot deny the breach of the ATS Obligations and Milestone Obligations, and the revival of the Loan Agreement follows as an explicit contractual consequence thereof. Vide Notice dated July 11, 2024, IHFL and ICCL formally recorded the occurrence of the breach and communicated the consequent termination of the Settlement Agreement, whereupon all amounts outstanding under the original Loan Agreement became immediately due and payable by the Corporate Debtor.

XX. Pursuant to termination of the Settlement Agreement, a payment of Rs. 77,03,00,000/- (Rupees Seventy-Seven Crores and Three Lakhs only) was made. The said amount was adjusted towards the amounts due and payable under the various Loan Agreements executed by the Vatika Group, including the Corporate Debtor.



XXI. Thereafter, Catalyst assigned all its rights and obligations under the Loan Agreement in favour of IHFL vide Assignment Deed dated December 27, 2024. IHFL, in turn, assigned the Loan Agreement to the Financial Creditor vide Assignment Agreement dated December 28, 2024, in terms of Section 5 of the SARFAESI Act. All rights in the loan agreements in which ICCL was the original lender were similarly assigned to the Financial Creditor. The Financial Creditor thereby stepped into the shoes of IHFL and ICCL and became legally entitled to enforce all rights under the Loan Agreement.

XXII. Subsequent to the assignment, the Financial Creditor issued a letter dated February 28, 2025, informing the Corporate Debtor and other Vatika Group entities that IHFL had assigned the financial assets and outstanding dues under the Loan Agreement to the Financial Creditor in terms of Section 5 of the SARFAESI Act, and calling upon the Corporate Debtor to remit all outstanding amounts to the Financial Creditor forthwith.

XXIII. Owing to the continuing default by the Corporate Debtor, the Financial Creditor issued a notice under Section 13(2) of the SARFAESI Act dated November 19, 2025, calling upon the Corporate Debtor to pay an amount of Rs. 171,67, 18,488/- (Rupees One Hundred Seventy-One Crores Sixty-Seven Lakhs Eighteen Thousand Four Hundred and Eighty-Eight only), calculated as on November 18, 2025, together with applicable future interest at the rate of 14.45% from November 19, 2025 until the date of actual payment, within 60 days of receipt of the said notice.



XXIV. In response, the Corporate Debtor, vide its letter dated January 19, 2026, replied to the Section 13(2) notice and falsely asserted that it had fully discharged its obligations.

XXV. Thereafter, the Financial Creditor issued a rejoinder dated February 03, 2026, refuting the said contentions, highlighting the continuing defaults committed by the Corporate Debtor, and reiterating the demands made in the Section 13(2) notice.

XXVI. Upon the breach and consequent termination of the Settlement Agreement on July 11, 2024, owing to prior and continuing defaults by the Corporate Debtor and other Vatika Group entities, all amounts outstanding under the original Loan Agreement became immediately due and payable. In terms of Clauses 5 and 11 of the Settlement Agreement, upon the occurrence of a default and termination thereof, the concessions granted under the Settlement Agreement stood withdrawn and the Financial Creditor became entitled to enforce its rights under the original Loan Agreement. Further, in terms of Clause 12.2 of the Loan Agreement, upon the occurrence of an Event of Default," the consequences are as follows:

"12.2 Consequence of an Event of Default On and at any time after the occurrence of an Event of Default, Lender may with or without any notice to any of the Obligor(s) and with or without the intervention of the court/arbitrator, (1) cancel/recall the Loan whereupon the Borrower's Dues shall become immediately repayable/payable by the Obligor(s); and/or (ii) initiate/exercise any or all of its rights, actions, remedies and powers under the Loan Documents and/or applicable Jaws (including issuance of show-cause notice(s) to the Obligor(s) and



for making submissions before the relevant committee of the Lender); and/or (iii) enforce, allot, sell, invoke, deliver, deal with, take possession, convey, transfer, assign, lease, sub-lease, encumber and/or dispose of in any manner (including by private treaty and/or auction), on such terms and conditions including the sale/transfer price of the Security or any part/unit thereof as deemed fit by the Lender, any/ all part of the Security including the guarantees and/or the demand promissory notes, and/or do such other things in relation to and/or with respect to the Security (any part thereof) which may be permitted under law."

XXVII. In view of the above, the Financial Creditor is entitled to recall the loan, whereupon the entire dues become forthwith payable without any further notice. Accordingly, upon termination of the Settlement Agreement, the entire outstanding amount under the original Loan Agreement became due and payable as on July 11, 2024. Therefore, the date of default for the purposes of the present Application is July 11, 2024, being the date on which the Loan Agreement stood reinstated, and the entire outstanding loan became due and payable.

XXVIII. As of April 09, 2026, the total amount outstanding and payable by the Corporate Debtor to the Financial Creditor, comprising of Principal Amount, Interest, Default Interest, Penal and Other charges is Rs. I 64,03,41,432/- (Rupees One Hundred and Sixty-Four Crores Three Lakhs Forty-One Thousand Four Hundred and Thirty-Two only), as set out in the Statement of Accounts annexed herewith and marked as Annexure A/24.

XXIX. A break-up of the outstanding amount is as follows:



Particulars	Amount (Rs.)
Principal	78,61,09,611/-
Interest outstanding	34,27,66,769/-
Default interest	28,85,44,431/-
Legal & Other Charges	22,29,20,620/-
Total	164,03,41,432/-

XXX. **Amount in Default:** Rs. 164,03,41,432/- (Rupees One Hundred and Sixty-Four Crores Three Lakhs Forty-One Thousand Four Hundred and Thirty-Two only) which comprises of the Principal Amount, Interest, Default Interest, Penal and Other charges.

12. It would not be out of context here to refer to the reply to application preferred under Section 7 of IBC, 2016, filed on behalf of the Corporate Debtor. The reply espouses thus:-

- a)** The Financial Creditor is an assignee of credit facilities granted by Indiabulls Group [Indiabulls Housing Finance Limited (now known as Samman Capital Limited) and Indiabulls Commercial Credit Limited collectively referred to as “Indiabulls Group”], in respect of their rights drawn from the Settlement Agreement dated March 29, 2023, along with First Addendum dated April 30, 2023 and second addendum dated February 22, 2024, with Vatika Group of 34 different entities, including the Respondent, being one of them, together forming part of the Vatika Group as follows:-

S.No.	Name of the Entity
1.	Vatika Limited
2.	Vatika Inxt 2 Private Limited
3.	Vatika One India Next Private Limited
4.	Crazy Properties Private Limited
5.	Fermina Developers Private Limited
6.	Mendell Developers Private Limited
7.	Pegasus Infrastructure Private Limited



8.	Sh Tech Park Developers Private Limited
9.	Sahar Land and Housing Private Limited
10.	Espo Developers Private Limited (<i>Respondent</i>)
11.	Caspar Developers Private Limited
12.	Minorca Developers Private Limited
13.	Feldon Developers Private Limited
14.	Pandora Builders Private Limited
15.	Vlm Projects Private Limited
16.	Vatika Farm Private Limited
17.	Everlast Projects Private Limited
18.	Famous Dwellers Private Limited
19.	Vatika It Parks Private Limited
20.	Kepa Developers Private Limited
21.	Vatika Seven Elements Private Limited
22.	Nakshatra Buildcon Private Limited
23.	Vatika One On One Private Limited
24.	Salton Developers Private Limited
25.	Aplin Developers Private Limited
26.	Haldis Developers Private Limited
27.	Ignacio Developers Private Limited
28.	Acklin Developers Private Limited
29.	Haben Developers Private Limited
30.	Bioko Developers Private Limited
31.	Aster Promoters and Developers Private Limited
32.	Timor Developers Private Limited
33.	Blossom Properties Private Limited
34.	Bacon Developers Private Limited

- b) The Settlement Agreement has been unlawfully terminated by Indiabulls Group vide its letter dated July 11, 2024, which has since been challenged by Vatika Group of 34 entities along with the other claims, in an arbitration proceeding initiated in pursuance of an order by the Hon'ble High Court of Delhi vide order dated December 2, 2024. The said arbitration proceedings are pending before the Hon'ble Sole Arbitrator, Justice (Retd.) V. Ramasubramanian, Former Judge,



Supreme Court of India. The Financial Creditor with its specific consent has been impleaded as Respondent in the arbitral proceedings and has been participating therein. It is trite law that an assignee (Financial Creditor), having stepped into the shoes of the assignor (Indiabulls Group), cannot have rights superior to those of the assignor (Indiabulls Group). Since the rights drawn from the aforesaid Settlement Agreement by Indiabulls Group were a subject matter of arbitration proceeding pending adjudication, the Financial Creditor cannot have any rights whatsoever, other than those of the Indiabulls Group, which are yet to be adjudicated.

- c)** The debt claimed by the Financial Creditor, forms part of 51 credit facilities collectively sanctioned to 34 entities of the Vatika Group along with land owning companies by Indiabulls Group. As explained hereinafter in detail, the credit facilities eventually culminated into Settlement Agreement dated March 29, 2023 along with the First Addendum dated April 30, 2023 and Second Addendum dated February 22, 2024 along with the Vatika Group of 34 entities with a determined financial obligation of Rs. 77.03 crores without indicating an amount separately for any of the entities. It may be pointed out that as per the bank statement relied upon by the Financial Creditor as a proof of disbursement (Annexure 27 to the Insolvency Application), the debt was not disbursed by the Indiabulls Group to the Respondent.
- d)** As per separate 51 OTS Letters dated September 1, 2021, in terms of which Indiabulls Group entered into settlement with Vatika Group of 34 entities, the entities were to sell certain identified mortgaged assets



and pay an aggregate sum collectively, without a specific liability attributed to any specific entity. It was decided that the mortgage documents should be substituted by the execution of ATSs by the Vatika Group of 34 entities in favour of Indiabulls Group. The considerations payable by the Indiabulls Group towards the ATS, were squared off against the amounts payable by the Vatika Group of 34 entities under the IB Credit Facilities. Accordingly, 39 ATSs were executed between 2021-2022, with the 34 entities of Vatika Group each containing a corresponding right to buy-back. It is pertinent to mention herein that the Vatika Group of 34 entities would now identify potential buyers and exercise the buy-back option by approaching the Indiabulls Group for its no-objection. Upon receipt of the requisite documents/no-objection from the Indiabulls Group, the Vatika Group would sell the inventory and shall return the said ATS consideration to the Indiabulls Group.

- e) The Vatika Group of 34 entities continued to exercise the buyback options, and Indiabulls Group continued to provide no-objection and received the refund of the corresponding ATS consideration in terms of the buyback arrangements. However, the Indiabulls Group, without any provocation, suddenly withdrew the OTS Letters vide the recall notices dated November 10, 2022. The Vatika Group of 34 entities had promptly objected to the recall notices for being in contravention to the terms of the OTS Letters vide replies dated November 16, 2022 and December 1, 2022. As a consequence, the parties embroiled in a series of disputes and litigation before various *fora*, including the Hon'ble



Supreme Court, the Hon'ble High Court of Delhi, Hon'ble High Court of Punjab & Haryana, this Tribunal, and Hon'ble District and Sessions Court, Gurugram, which were settled with a comprehensive Settlement Agreement dated March 29, 2023, which served as the umbrella agreement for the resolution of all disputes. From the perusal of the clauses of the Settlement Agreement, the following points emerges:-

- i. The obligations on part of the Vatika Group of 34 entities were categorized under the following two heads:

1. **Financial Obligations** - Clause 1(i) of the Settlement

Agreement clearly defines the aggregate financial liability as INR 74,19,24,836 (Rupees Seventy-Four Crores Nineteen Lakh Twenty-Four Thousand Eight Hundred and Thirty-Six) in respect of the 51 IB Credit Facilities, which was payable along with interest at the rate of 11.62% per annum to be cleared on or before April 5, 2024.

Clause 1(ii) of the Settlement Agreement further clarifies that the financial obligation of the Vatika Group of 34 entities was limited to the payment of INR 74,19,24,836 (Rupees Seventy-Four Crores Nineteen Lakh Twenty-Four Thousand Eight Hundred and Thirty-Six) along with the interest at the rate of 11.62% per annum payable monthly, without attributing specific amount to any of the specific entity.

2. **ATS Obligations** - Since the Settlement Agreement was an umbrella agreement, it consolidated all the ATS executed between the Vatika Group of 34 entities and the Indiabulls Group. Clause 3(ii) of the Settlement Agreement provides the Vatika Group of 34



entities could terminate the 46 ATS in respect of the IB Inventories, by exercising a buy-back, which was available till June 30, 2025.

However, as per Clause 3(ii) of the Settlement Agreement, the Vatika Group of 34 entities had the option to make the IB Inventories marketable/ saleable fit for occupation, in which case, the Vatika Group of 34 entities were no longer required to buy-back the respective IB Inventories as per Clause 3(1) of the Settlement Agreement.

ii. **Withdrawal of all Litigations** - Clause 8 of the Settlement

Agreement mandates that the parties thereto, are required to withdraw all the pending litigations within a period of 30 days from the date of execution of the Settlement Agreement.

- f) On February 22, 2024, the Vatika Group of 34 entities and the Indiabulls Group executed an addendum (Second Addendum) to the Settlement Agreement. The relevant terms of the addendum as reproduced in the reply filed by the Corporate Debtor reads thus:-

"(1) The Parties hereby agree that Payment/Repayment Plan as mentioned/reflected in Schedule V of the Settlement Agreement shall stand revised and replaced by "Payment/Repayment Plan", as more particularly mentioned in Annexure - A attached herewith.

Payment/Repayment Plan

<i>Particulars</i>	<i>Principal (in Rs. Crores)</i>	<i>Interest (in Rs. Crores)</i>
<i>31.01.2024</i>	<i>8.00</i>	<i>0.71</i>
<i>29.02.2024</i>		<i>0.63</i>
<i>31.03.2024</i>		<i>0.63</i>
<i>30.04.2024</i>		<i>0.63</i>
<i>31.05.2024</i>		<i>0.63</i>



<i>30.06.2024</i>	<i>13.34</i>	<i>0.63</i>
<i>31.07.2024</i>		<i>0.50</i>
<i>31.08.2024</i>		<i>0.50</i>
<i>30.09.2024</i>	<i>13.34</i>	<i>0.50</i>
<i>31.10.2024</i>		<i>0.37</i>
<i>30.11.2024</i>		<i>0.37</i>
<i>31.12.2024</i>	<i>17.01</i>	<i>0.37</i>
<i>31.01.2025</i>		<i>0.21</i>
<i>28.02.2025</i>		<i>0.21</i>
<i>31.03.2025</i>	<i>21.41</i>	<i>0.21</i>
<i>Total Obligation</i>	<i>73.10</i>	<i>7.10</i>

(9) In case of any inconsistency between the terms of this Addendum Agreement and any of the other Settlement Documents, the provisions of this Addendum Agreement shall prevail, unless otherwise agreed in writing by the Lender(s) and the Purchaser(s)."

g) The Second Addendum gives rise to the following points:-

a. Financial Obligations - Clause 1 of the Second Addendum provides that the financial obligations as provided in the Settlement Agreement shall stand revised as under:

Principal Amount - INR 73,10,00,000 (Rupees Seventy-Three Crore and Ten Lakhs)

Period of clearance of dues - March 31, 2025

b. ATS Obligations - Clause (vi) of the Second Addendum records that the rights and obligations as contained in the ATS stand transferred in favour of the SSL Parties.

c. Overriding effect - Clause 9 of the Second Addendum provides that in the event of a conflict between the Second Addendum and the



Settlement Agreement, the terms of the Second Addendum are to prevail.

- h)** The revised financial obligation contemplated under the Second Addendum was in respect of the Vatika Group of 34 entities and was not apportioned or bifurcated amongst the individual group entities. In such circumstances, no specific portion of the liability is attributed to any particular entity. The amount repayable under the Settlement Agreement constituted a consolidated and unified obligation, without any company wise segregation.
- i)** It transpired later that 41 out of the Credit Facilities [as per (vi) (a) (1) above] were assigned to India Wholesale Trusts [IWT 9, IWT 10, IWT 11 and IWT 12], represented by Catalyst Trusteeship Limited (Catalyst) and the ATS Obligations [as per vi (a)(2) above] were assigned to SSL Infrastructure Pvt. Ltd. Saisrushti Bidalpur Projects Private Limited and Saisrushti (Devanahalli-Lakshmipura) Projects Private Limited (“SSL Parties”).
- j)** In the meantime, a sum of Rs. 77.03 Crores has since been paid, resulting in the discharge of all financial obligations in its entirety. The same has been admitted by the petitioner in paragraph (v) of Part IV of Form I in the Insolvency Application. Consequently, upon the discharge of financial obligations as aforesaid, Vatika Group of 34 entities vide its e-mail dated July 19, 2024, requested the Indiabulls Group to provide the following:
- a. Issuance of NOC for vacating charges registered with the

Registrar of Companies.



- b. Release/return of all the original title deeds.
- c. Return of all the post-dated cheques.
- d. Informing the escrow banks to discontinue the escrow arrangement.
- k)** On July 11, 2024, the Indiabulls Group served a notice dated July 11, 2024, whereby it unilaterally terminated the Settlement Agreement on the ground of violation of ATS obligations and not on account of any violation financial obligations whatsoever.
- l)** The Vatika Group of 34 entities served a notice dated 07.08.2024 upon the Indiabulls Group calling upon it to withdraw the Termination Notice.
- m)** The Vatika Group of 34 entities also approached the Hon'ble High Court of Delhi, by way of a petition under Section 9 of IBC, 2016 of Arbitration and Conciliation Act, 1996. Hon'ble High Court vide its order dated December 2, 2024, on the mutual consent by the parties, was pleased to appoint, Justice (Retd.) V. Ramasubramanian, Former Judge, Supreme Court of India as the Sole Arbitrator.
- n)** During the pendency of arbitral proceedings, it transpired that on December 27, 2024, the Catalyst, re-assigned 43 IB Credit Facilities (instead of 41 credit facilities, as indicated by Catalyst earlier, without giving details) to Indiabulls Group. On December 28, 2024, the Indiabulls Group assigned 43 IB Credit Facilities to the Financial Creditor again without specifying any details.
- o)** The Financial Creditor with its specific consent is impleaded as respondent no. 10 vide order dated September 1, 2025 and has been participating in the arbitration proceedings. The Vatika Group of 34



entities has filed its Statement of Claims, and in response thereto, the Financial Creditor has filed its Statement of Defense and Statement of Counter Claim.

- p)** The claim filed by Vatika Group of 34 entities without attributing a specific amount to any of the entities, inter alia includes the following:-

"iii. Declaration that the Claimants have discharged it obligations in respect of the IB Credit Facilities and a consequent direction to the Respondent No. 1, 2, 3 and 10, including its nominees or assignees to:

- a. Issue No Due Certificate to the Claimants in respect to the IB Credit facilities;*
- b. Release the securities and discharge the corporate and personal guarantees provided to secure the IB Credit Facilities;*
- c. Issue NOC for vacating charges registered with the Registrar of Companies;*
- d. Release/handover of all the original title deeds deposited to secure the IB Credit Facilities;*
- e. Return of all the post-dated cheques; and*
- f. Inform the escrow banks to discontinue the escrow arrangement.*

- q)** Statement of counter-claim filed by the Financial Creditor inter alia includes the following prayers:-

" ...

- a. Reject the claims raised by the Claimant.*
- b. Allow the counterclaims raised by Respondent No. 10*
- c. Direct that Claimant to pay Respondent No. 10 an amount of INR 30,71,31,37,084/- (Rupees Three Thousand Seventy one Crore Thirty One Lacs Thirty Seven Thousand Eighty Four*



only) towards all outstanding amounts, interest, and default interest payable as per the reinstated Loan Agreements.

d. Direct the Claimants to pay Respondent No. 10 an amount of INR 520,34,74,688/- (Rupees Five Hundred Twenty Crore Thirty-Four Lakh Seventy-Four Thousand Six Hundred Eighty-Eight only). together with interest thereon at the rate of 11.62% per annum from 01.02.2023 until the date of actual and final realisation, in accordance with Clause 5 of the Settlement Agreement.
...”

r) When the claim of Vatika Group of 34 entities and the counter-claim of the Financial Creditor against 34 entities without attributing any of the said entities, are pending adjudication before the Hon’ble Tribunal, the Financial Creditor has not determined debt due and payable in terms of the provisions contained in the I&B Code.

s) In the absence of any adjudication debt due by Arbitral Tribunal, the question of default by the Respondent whatsoever does not arise.

13. We heard the counsels for the parties and perused the record. It is not in dispute that in terms of Sanction Letter dated 17.01.2019, the financial facility amounting to Rs. 136,00,00,000/- was sanctioned to CD viz. M/s Espo Developers Pvt. Ltd. Once, the financial facility was sanctioned to CD, it is not relevant that in which account the disbursement of the loan amount is made. The CD never questioned the disbursement. We also see from the Loan Agreement dated 18.01.2019 that the same was entered into between Indiabulls Housing Finance Limited and the Corporate Debtor ESPO Developers Pvt. Ltd. As can be seen from clause 1.1 (iv) of the Agreement, borrower means the companies/persons/firms named in the Schedule I to the



Agreement. Indubitably, it is the name of M/s ESPO Developers Pvt. Ltd., mentioned as borrower in Schedule I to the Agreement. The clause 2.1 of the Agreement specifically provides that the disbursement of the loan was to be made as per request for disbursal of the loan or any part thereof. It was not necessary that disbursement was to be made in bank account opened in the name of borrower. The clause 2.1 of the Loan Agreement reads thus:-

“2.1 Loan Amount

Subject to the provisions of the Loan Documents, the Lender agrees to lend to the Borrower(s), and the Borrower(s) agree to borrow from the Lender, the Loan mentioned in Schedule I hereunder. The Lender may disburse the Loan (or any part thereof) only upon the fulfillment by the Obligor(s) of all the conditions precedent as may be specified by the Lender. The Loan (subject to deductions, if any) may be disbursed in full or in such tranches as mentioned in the request for disbursal of the Loan (or any part thereof) by the Borrower(s) or as deemed fit by the Lender or upon receipt of any intimation from the builder/vendor/other person(s) to whom the Loan (or any part thereof) is to be disbursed on behalf of the Borrower(s). At the discretion of the Lender, the Loan (or any part thereof) may be disbursed in any manner or mode to (i) the Borrower(s) and/or (ii) the Borrower(s)' other lender(s), a developer/seller of any Said Properties and/or any other assets from whom the Obligor(s) or any of them has/have purchased/intend to purchase and/or any other person(s) on behalf of the Borrower(s) (and such disbursement shall be deemed to have been made to the Borrower(s)). Subject to the provision of the Loan Documents, the Tenure of the Loan (or part thereof) shall be as mentioned in Schedule I of this Agreement. The Obligor(s) shall be jointly and severally liable to pay the Borrower's Dues to the Lender.”



14. The clause 5 of the Loan Agreements provides that the lender was entitled to require the borrower to repay/pay the borrower's dues (or any part thereof) immediately or in shorter period and in one lump-sum or such other suitable instalments as may be specified by the lender notwithstanding the tenure of the loan. The clause 5 reads thus:-

“5. PREPAYMENT/FORECLOSURE AND CANCELLATION

If due to any law or any other reason(s), the Lender shall be entitled to require the Borrower(s) to repay/pay the Borrower's Dues (or any part thereof) immediately or in shorter period and in one lumpsum or such suitable installment/s as may be specified by the Lender notwithstanding the Tenure of the Loan. The Borrower(s) undertake to pay/repay the Borrower's Dues (or any part thereof) on the date(s) as may be specified in the notice issued by the Lender to the Borrower(s) under this clause. Notwithstanding anything to the contrary, the Lender may, at its sole and absolute discretion, cancel and/or withhold the disbursement of the Loan in part or full at any stage under this Agreement due to any reason whatsoever. Subject to any applicable laws, the Borrower(s) shall forthwith pay to the Lender the prepayment/ foreclosure charge/premium, if any, specified in Schedule I hereunder in case any prepayment/ foreclosure of the Loan (or any part thereof) is made by the Obligor(s). Such prepayment and/or foreclosure of the Loan (or any part thereof) shall be made in accordance with the provisions of this Agreement. The Borrower(s) agree(s) to give a notice of such days as mentioned in Schedule I hereunder to the Lender in case the Obligor(s) wants to make any prepayment/foreclosure of the Loan (or any part thereof). In case of Loan recall (in part or in full) by the Lender as per the provisions of this Agreement, no prepayment/foreclosure charges/penalty shall be payable by



the Borrower(s) on the amount payable by the Borrower(s) pursuant to the Loan recall (in part or in full) by the Lender.”

15. In terms of the clause 9.2 of the Loan Agreement, in the event of default under the Loan Agreement the lender was entitled to sell or dispose of the security (or any part thereof) on such terms and in such manner the Lender deems fit. The clause 9.2 reads thus:-

“9.2 The obligations of the Obligor(s) in each Loan Document are /will be legal, valid, binding and enforceable obligations and will be enforceable against the Obligor(s), the Obligor(s)' heirs, executors, successors, assigns and estate as if they have been parties to such Loan Documents. The Obligor(s)' heirs, executors, successors, assigns and legal representatives shall have no right or interest in the Security and on or after occurrence of an Event of Default under the Loan Documents, the Lender shall be entitled to sell or dispose of the Security (or any part thereof) on such terms and in such manner as the Lender deems fit. The Security created under the Loan Documents are will be a first-ranking charge/lien/mortgage/pledge/encumbrance/hypothecation in favour of the Lender and such Security are/ will not be subject to any other charge/lien/mortgage/pledge/encumbrance/hypothecation/negative lien (except as otherwise agreed in writing with the Lender). Each Security Document validly creates the Security which is expressed to be created by that Security Document. The Obligor(s) has/have a good, valid and marketable title to, or valid leases or licenses of, and all appropriate Authorisation(s) to use the assets necessary to carry on its/their business. The Obligor(s) is/are (a) the absolute legal owner(s) and beneficial owner(s) of the assets subject to the Security and/or (b) entitled to create charge/ mortgage/ lien/



pledge/encumbrance/hypothecation in favour of the Lender over the assets subject to the Security. The Borrower(s) shall ensure and shall cause the Obligor(s) to ensure that, without the prior written consent of the Lender, it/they shall not transfer or create/allow to be created in any manner any charge, lien, hypothecation, negative lien, mortgage, pledge and/or other encumbrance whatsoever on or create and/or allow to be created any interest in any of the Security (or any part thereof) in favour of anyone other than the Lender. The Borrower(s) shall, and shall cause the Obligor(s) to, execute at its own cost and in favour of the Lender or any nominee of the Lender any further/additional/fresh deeds/documents etc. whenever required by the Lender to do so in respect of the Loan/Borrower's Dues/Security. The Borrower(s) shall ensure that the Obligor(s), by reason of holding of the Security and/or by creation of a charge/mortgage/pledge thereon in favour of the Lender, do not contravene the provisions of any applicable laws.”

16. On 08.11.2022, the ESPO Developers Pvt. Ltd. sent a letter to Indiabulls House, 448-451 (Udyog Vihar), Phase-V, Gurugram espousing that the balance amount payable by the CD viz. ESPO Developers Pvt. Ltd. was Rs. 39,18,14,859/- (Rupees Thirty-Nine Crore Eighteen Lakh Fourteen Thousand Eight Hundred Fifty-Nine only) and the same would be paid as the full and final amount as on 31.01.2023. The text of letter dated 08.11.2022 reads thus:-

“Dear Sir,

This is in reference to above mentioned Loan Account no., an amount of Rs. 118,54,29,443/- (Rupees One Hundred Eighteen Crores Fifty Four Lakhs Twenty Nine Thousand Four Hundred and Forty Three only) was payable to you (Lender) as on 30th September 2021.



However as per discussion, it has been agreed and confirmed by Lender through above mentioned letter, dated September 1, 2021 that upon receipts of Rs. 67,31,92,314/- (Rupees Sixty Seven Crores Thirty One Lakhs Ninety Two Thousand Three Hundred and Fourteen only) (the "Said Amount") plus interest thereon @11.62% per annum, payable on monthly basis ("p.a./p.m.") or the amount that remains outstanding out of the Said Amount with effect from October 1, 2021 till the date of actual payment of the Said Amount, on or before January 31, 2023 ("Final Payment Date"), the above referred loan shall stand closed and the Lender will issue a "No Dues Certificate" to the borrower. The letter dated September 1, 2021, is attached herewith as Annexure-1.

On the basis the above letter, the total amount payable (along with interest) against the above referred Loan Account No. till 31st October 2022, works out to Rs.74,06,60,062/- (Seventy-Four Crore Six Lakh Sixty Thousand Sixty-Two only) and against this, we have already paid Rs.34,88,45,204/- (Rupees Thirty-Four Crores Eighty-Eight Lakhs Forty-Five Thousand Two Hundred and Four only). The work Sheet (Annexure-II) along with Bank Statement (Annexure-III) to this support is attached hereunder for your ready reference.

The balance amount outstanding of Rs. 39,18,14,859/- (Rupees Thirty-Nine Crore Eighteen Lakh Fourteen Thousand Eight Hundred Fifty-Nine only) along with Interest (from 1st November 2022 till the time of payment), is payable to you as the full & final amount on and before 31st January 2023.

Once the total amount payable as per the terms of the aforementioned letter has been fully paid, the loan account number S000240693 will be closed. As soon as this transaction takes place, you are requested to issue "No Due Certificate" for the same and instruct the Security Trustee for issuance of NOC towards removal of respective charges in ROC and also release the Inventory of 11,100 Sqr Yrd of Plots 2 in the



project Vatika India Next 2, Gurgaon which was embarked against this Loan account.”

17. The letter was replied by Indiabulls Housing Finance, in terms of its letter dated 01.09.2021, espousing therein that the amount payable as on 31.01.2023 is Rs. 673,192,314/- alongwith interest @ 11.62% p.a/p.m. The text of the letter reads thus:-

“We, Indiabulls Housing Finance Limited (the "Lender"), had sanctioned an aggregating loan amount of INR 1360000000/- (Indian Rupees One Hundred Thirty Six Crores only) to M/s. ESPO Developers Pvt Ltd (the "Borrower"), details of which loans are provided under Schedule I to this letter (the "Loan").

The Borrower has now confirmed to the Lender that they intend to sell the inventory mentioned in Schedule II hereunder, for a total consideration of INR 673192314/- (Indian Rupees Sixty Seven Crores Thirty One Lakhs Ninety Two Thousand Three Hundred Fourteen only). The Borrower shall obtain a no-objection from the Lender before any sale (which shall not be unreasonably withheld) and deposit all proceeds out of sale of the inventory in the project escrow account that has been opened in connection with the Loan. The sale rate shall not be lower than as mentioned in Schedule II to this letter.

We state that as on September 30, 2021, an amount of INR 1185429443/- (Indian Rupees One Hundred Eighteen Crores Fifty Four Lakhs Twenty Nine Thousand Four Hundred Forty Three only) (the "Outstanding Amount") is outstanding and payable to the Lender. However, as per discussions with the Borrower, we confirm that upon the receipt of INR 673192314/- (Indian Rupees Sixty Seven Crores Thirty One Lakhs Ninety Two Thousand Three Hundred Fourteen only) (the "Said Amount") plus an interest of 11.62% per annum payable on a monthly basis ("p.a/p.m") on INR



673192314/- or the amount that remains outstanding out of the Said Amount with effect from October 1, 2021 till the date of actual payment of the Said Amount, on or before January 31, 2023 ("Final Payment Date"), the above referred Loan shall stand closed and the Lender will issue a no dues certificate to the Borrower. It is however clarified that in the event that the Borrower is able to make payment of only a part of the Said Amount by the Final Payment Date (excluding the interest costs as mentioned above) on or prior to January 31, 2023, then the same proportion of the Outstanding Amount as on September 30, 2021 shall stand repaid and the portion of the Outstanding Amount together with interest of 11.62% p.a/p.m and related amounts thereon shall remain payable and outstanding. The proportion of the Outstanding Amount payable (along with interest of 11.62% p.a/p.m) post January 31, 2023 in case of a part payment is illustrated numerically below:

ILLUSTRATION:

Instead of payment of the entire Said Amount of INR 673192314/- by the Final Payment Date, the Borrower only pays 80% of the Said Amount, then the Outstanding Amount shall stand reduced by 80%, and Borrower shall be liable to pay only the balance 20% of the Outstanding Amount along with interest at the rate of 11.62% p.a/p.m.

This letter is issued without prejudice to the rights of the Lender under applicable laws and contract, and all terms of the Loan Agreement other than the terms specifically covered herein shall remain unchanged."

18. To establish transaction between Indiabulls Housing Finance Ltd., and CD, the FC has placed on record, the entries from the banker's book and Statement of Account, showing transaction between Indiabulls Housing Finance Limited, Corporate Debtor and Vatika Limited. The same are



available on record at Annexure-III to above letter dated 31.01.2023 (Page Nos. 1014-1020) of the paper book. The Settlement Agreement dated 29.04.2023 is placed on record as Annexure A/13 (Volume 6 of IB-207/ND/2026). The Settlement Agreement has been signed by as many as 51 parties, including the Corporate Debtor viz. ESPO Developers Pvt. Ltd. It is seen from the Settlement Deed that vide the letters dated 01.09.2021, issued by the respective lenders to the borrowers mentioned, in Schedule I to the agreement in connection with the loans, it was agreed inter alia that in view of the total outstanding amount of Rs. 27,07,27,30,623/- ((Rupees Two Thousand Seven Hundred Seven Crores Thirty Thousand Six Hundred Twenty Three Only) as on 30.09.2021 in connection with the loans the borrowers were liable to pay to the respective lenders, a sum of Rs. 15,37,43,05,286/- (Rupees One Thousand Five Hundred Thirty Seven Crore Forty Three Lakh Five Thousand Two Hundred Eighty Six Only) in the aggregate on or before 31.01.2023 along with interest @ 11.62% p.a., payable on a monthly basis to the lenders for the period commencing from 01.10.2021 till payment of all amounts to the Lenders. However, the borrowers were paid a sum of Rs. 1468,94,25,325/- (Rupees One Thousand Four Hundred Sixty Eight Crore Ninety Four Lakh Twenty Five Thousand Three Hundred Twenty Five Only) towards the principal amount and Rs. 142,49,00,00/- (Rupees One Hundred Forty Two Crore Forty Nine Lakh Only) towards interest in the aggregate till 31.01.2023 to the lenders under the respective Loan Documents. Thus, as on 01.02.2023, a sum of Rs. 68,48,79,961/- (Rupees Sixty Eight Crore Forty Eight Lakh Seventy Nine Thousand Nine Hundred Sixty One Only) is still



outstanding and payable by the Borrowers in connection with the loans which is payable along with interest thereon at the rate of 11.62% p.a.

19. In terms of the settlement, it was agreed between the borrowers and the lenders that in order to settle the total amount payable by the borrowers to the lenders in connection with the loans, the borrowers and the sellers (subject to clause 5 of the Agreement) had undertaken to pay the lenders the amount mentioned in the settlement on or before 05.04.2025. In terms of the settlement, the borrowers had undertaken to make timely payment of the amount along interest thereon to the lenders as per the agreed payment/repayment plan, more particularly mentioned in Schedule 5 to the Settlement Agreement, so as to ensure that the loan remain standard at all times in the books of accounts of the lenders along with interest thereon. The settlement further clarified that subject to borrowers and sellers timely fulfilment of all their obligations contained in the agreement the maximum liability of the borrowers under this Agreement shall not exceed the amount mentioned therein along with interest thereon at the rate of 11.62% p.a.

20. As per clause 2 of the Agreement, all the securities/guarantees provided in favour of/for the benefit of the lenders under the Loan Documents shall continue to subsist and such securities/guarantees shall remain cross-collateralized to secure the fulfilment of all the obligations including payment of all amounts along with interest thereon to the lenders and the purchasers in terms of the Agreement.

21. With reference to the ATS, it was agreed between the parties that:-



- (i) The Sellers shall get all the ATS registered (cost of registration of ATS shall be borne as per the terms of the ATS) with the concerned sub-registrar as per the agreed schedule of registration more particularly mentioned in Schedule II-A hereunder.
- (ii) The Sellers undertakes to, and shall be under an obligation to, buy back from the Purchaser(s) all the ATS-Inventories as per the agreed schedule of buy back (more particularly mentioned in Schedule IV hereunder), except as specifically mentioned in sub-clause (iii) of Clause 3 of this Agreement. Such buy back (including payment of consideration for such buy back) shall be completed on or before 30th June 2025, in terms of the agreed schedule of buyback. The total consideration payable by the Sellers to the Purchaser(s) for such buy back shall be Rs. 23,62,11,73,486/- (Rupees Two Thousand Three Hundred Sixty Two Crore Eleven Lakh Seventy Three Thousand Four Hundred Eighty Six Only) plus interest thereon at the rate of 11.62% per annum and such interest shall be payable for the period commencing from the date of the ATS till the date of completion of the buy back by the Sellers ("Buy-Back Consideration"). It is clarified that interest (as part of the Buy-Back Consideration) shall be payable by the Sellers to the Purchaser(s) only for such ATS-Inventories as indicated in Schedule IV hereunder. Upon completion of the buy back by the Sellers from the Purchaser(s) of all the ATS-Inventories, the ATS shall stand cancelled and the Purchaser(s) shall issue requisite documents within 15(Fifteen) days of receipt of the Buy-Back Consideration from the Sellers for cancellation of the relevant ATS or release of the relevant ATS-Inventories (for which the Buy-Back Consideration is received by the Purchaser(s) in terms of this Agreement). Failure to complete the buy-back of the ATS-Inventories as aforesaid will be a clear breach of the terms of this Agreement and further, such breach does not absolve the Sellers of its/their obligations/undertaking to buy back the ATS-Inventories.
- (iii) The Sellers shall not be required to buy back the ATS-Inventories as aforesaid ONLY when the following are complied with by the Sellers:
- all permissions, occupation/completion certificates, regularisations and/or sanctions are obtained by the Sellers (at its/their cost) (including achievement/completion of the milestones mentioned in Schedule III hereunder by the Sellers) on or before the dates mentioned in Schedule III hereunder to make the ATS-Inventories marketable/salable/fit for occupation. The Sellers shall forthwith i.e. within four days of intimation from the Purchaser(s) under the ATS, execute and register the sale deed(s) for sale/transfer (free from encumbrance) of the ATS-Inventories in favour of such Purchaser(s) and/or any nominee(s)/assignee(s)/transferee(s) of such Purchaser(s). The balance sale consideration payable to the Sellers by the Purchaser(s) and/or any nominee(s)/assignee(s)/transferee(s) of such Purchaser(s) at the time of execution and simultaneous registration of the sale deed(s) shall be the balance sale consideration (as per the respective ATS) minus/less interest at the rate of 11.62% per annum calculated on the amount(s)/advance paid towards the sale consideration by the Purchaser(s) under the respective ATS (details/break-up of such amounts/advance paid by the Purchaser(s) under the ATS are more particularly mentioned in Schedule II hereunder), from the date of the ATS till the date of execution and simultaneous registration of the sale deed(s), in favour of such Purchaser(s) and/or any nominee(s)/assignee(s)/transferee(s) of such Purchaser(s).



- (iv) Upon intimation from the Lender(s)/Purchaser(s), the Sellers under the ATS shall forthwith, within 7 (seven) days of receipt of such intimation from the Lender(s)/Purchaser(s), create mortgage/encumbrance over the ATS-Inventories (including encumbrance on the receivable from such ATS-Inventories) in favour of/for the benefit of the lender(s)/creditor(s)/debenture holders/trustee of the Lender(s)/Purchaser(s) or any other person/entity to whom the rights under the ATS may be transferred/assigned by the Lender(s)/Purchaser(s). The Sellers shall also forthwith execute requisite documents as mortgagor(s) in connection with such mortgage/encumbrance. This sub-clause (iv) shall not absolve/affect the buy-back obligations of the Sellers as mentioned in sub-clause (ii) of Clause 3 of this Agreement. Further, upon buy back of ATS- Inventories by the Sellers, the Lender(s)/Purchaser(s) shall ensure that such lender(s)/creditor(s)/debenture holders/trustee of the Lender(s)/Purchaser(s) shall release their mortgage/encumbrance within 7 (seven) days of such buy back by the Sellers.
- (v) Until such buy back is completed by the Sellers as aforesaid, the Sellers shall not in any manner, directly or indirectly, deal with the ATS-Inventories (with respect to which buy-back has not been completed in terms of sub-clause (ii) above) without prior written approval of the Lender(s)/Purchaser(s).

22. As can be seen from clause 3(ii) above, the sellers had undertaken to and were under obligation to buy-back from the purchasers all the ATS-Inventories as per the agreed schedule of buy back (more particularly mentioned in Schedule IV to the Settlement Agreement). The buy back, payment of consideration for the same was to be completed on or before 30.06.2025 in terms of the agreed schedule of buy back. The total consideration payable by the sellers to the purchasers for the buy-back was to be Rs. 23,62,11,73,486/- (Rupees Two Thousand Three Hundred Sixty Two Core Eleven Lakh Seventy Three Thousand Four Hundred Eighty Six Only) plus interest thereon at the rate of 11.62% per annum and such interest was payable for the period commencing from the date of the ATS till the date of completion of the buy back by the sellers (Buy Back Consideration). The relevant excerpt of the Settlement Deed reads thus:-

(3) With respect to the ATS, it has now been agreed between the parties thereto that:



(i) The Sellers shall get all the ATS registered (cost of registration of ATS shall be borne as per the terms of the ATS) with the concerned sub-registrar as per the agreed schedule of registration more particularly mentioned in Schedule II-A hereunder.

(ii) The Sellers undertakes to, and shall be under an obligation to, buy back from the Purchaser(s) all the ATS-Inventories as per the agreed schedule of buy back (more particularly mentioned in Schedule IV hereunder), except as specifically mentioned in sub-clause (iii) of Clause 3 of this Agreement. Such buy back (including payment of consideration for such buy back) shall be completed on or before 30th June 2025, in terms of the agreed schedule of buyback. The total consideration payable by the Sellers to the Purchaser(s) for such buy back shall be Rs. 23,62,11,73,486/- (Rupees Two Thousand Three Hundred Sixty Two Crore Eleven Lakh Seventy Three Thousand Four Hundred Eighty Six Only) plus interest thereon at the rate of 11.62% per annum and such interest shall be payable for the period commencing from the date of the ATS till the date of completion of the buy back by the Sellers ("Buy-Back Consideration"). It is clarified that interest (as part of the Buy-Back Consideration) shall be payable by the Sellers to the Purchaser(s) only for such ATS-Inventories as indicated in Schedule IV hereunder. Upon completion of the buy back by the Sellers from the Purchaser(s) of all the ATS-Inventories, the ATS shall stand cancelled and the Purchaser(s) shall issue requisite documents within 15(Fifteen) days of receipt of the Buy-Back Consideration from the Sellers for cancellation of the relevant ATS or release of the relevant ATS-Inventories (for which the Buy-Back Consideration is received by the Purchaser(s) in terms of this Agreement). Failure to complete the buy-back of the ATS-Inventories as aforesaid will be a clear breach of the terms of this Agreement and further, such breach does not absolve the Sellers of its/their obligations/undertaking to buy back the ATS-Inventories.

(4) In case, during any specific calendar quarter, (i) the Borrower(s) pays 90% of the amounts payable to the Lender(s) in that specific calendar quarter as per the Payment/Repayment Plan more particularly mentioned in Schedule V of this Agreement, and (ii) the Sellers fulfill milestones (as mentioned in Schedule III of this Agreement) for atleast 90% of the ATS-Inventories during that specific calendar quarter, then the time for (i) payment of the balance 10% amount under the Payment/Repayment Plan by the Borrower(s) to the Lender(s) in that specific calendar quarter; and (ii) fulfillment of milestones (as mentioned in Schedule III of this Agreement) for the balance 10% of the ATS-Inventories by the Seller(s) in that specific calendar quarter, shall be extended by a period of 90(Ninety) days provided that, the Borrower(s) undertakes to ensure that the Loan(s) shall remain standard at all times in the books of the Lender(s).

(5) In case of breach of any of the terms of this Agreement by the Borrower(s) and/or the Sellers, then, without prejudice to the rights and remedies of the Lender(s) and/or the Purchaser(s) in terms of this Agreement, the Loan Documents and the ATS (including the right to enforce/invoke/sell/transfer the securities and the guarantees by the Lender(s) and/or the Purchaser(s) in terms of this Agreement, the Loan Documents and the ATS) and in addition to any other obligations of the Borrower(s) and/or the Sellers as per the terms of this Agreement, the Borrower(s) and/or the Sellers undertake to, shall be liable to forthwith pay within 7(Seven) days of such breach by the Borrower(s) and/or the Sellers to, the Lender(s) the revised settlement amount of Rs. 520,34,74,688/- (Rupees Five Hundred Twenty Crore Thirty Four Lakh Seventy Four Thousand Six Hundred Eighty Eight only) (instead of the Said Amount mentioned in sub-clause (i) of Clause 6 of this Agreement) along with interest thereon at the rate of 11.62% per annum and such interest shall be payable with effect from 1-02-2023 till the payment of all such amounts by the Borrower(s) and/or the Sellers.

Further, notwithstanding anything to the contrary contained in this Agreement and without prejudice to the obligations of the Borrower(s) and/or the Sellers under this Agreement, in case of any breach of the terms of this Agreement by the Borrower(s) and/or the Sellers, the Lender(s) and/or the Purchaser(s) shall have absolute right at its/their sole discretion to (a) take any action as it/they deems fit including action/proceedings for specific performance and/or (b) enforce/invoke/sell/transfer the securities and the guarantees, in order to recover all amounts payable by the Borrower(s) and/or the Sellers to the Lender(s) and/or the Purchaser(s) in terms of this Agreement including the right of the Purchaser(s) to sell/transfer the ATS-Inventories.



(6) Any amounts paid by the Borrower(s) pursuant to this Agreement shall be appropriated/adjusted against the dues payable in connection with such Loan(s) as per the choice of the Lender(s) provided that the liability of the Borrower(s) under this Agreement shall not be in any manner be affected by this clause.

(7) The Parties agree that time is of essence and timely fulfilment of the respective obligations for agreed to this agreement shall be an integral part of the terms of this Agreement.

23. As can be seen from Schedule I to the Settlement Agreement, the CD has been included therein and it is party to the deed. The relevant excerpt of the schedule I reads thus:-

20	18-Jan-19	Indiabulls Housing Finance Limited	Name: Espo Developers Private Limited Constitution: Company Age (if applicable):N/a Father's name(if applicable):N/a Address/Registered Office Address: Flat No. 224A, 2nd Floor Devika Tower, 6, Nehru Place New Delhi South Delhi-110019	Not Applicable	Upto Rs. 1360000000 /-(Rupees One Hundred Thirty Six Crores Only)
		Authorized Signatory		Auth. Signature	
		Corporate Identity Number (if applicable): U45400DL2008PTC175044 Permanent Account Number:AABCE9734D			

24. The Corporate Debtor also signed the repayment plan (Schedule V) to the Settlement Agreement. The relevant excerpt of the schedule reads thus:-

SCHEDULE V Payment/Repayment Plan		
S.No	Date	Principal Repayment (Interest Payment is over and above)
1	05-01-2023	-
2	05-04-2023	1,06,59,007
3	05-07-2023	-
4	05-10-2023	-
5	05-01-2024	-
6	05-04-2024	-
7	05-07-2024	13,34,58,937
8	05-10-2024	13,34,58,937
9	05-01-2025	20,01,88,405
10	05-04-2025	26,41,59,550
	Total	74,19,24,836



Signed and delivered by the Borrower(s), Obligor(s) and Sellers:

For M/s. Vatika Limited For Indiabulls Commercial Credit Ltd. Authorised Signatory
For VATIKA LIMITED [Signature] Moudali Developers Private Limited
Authorised Signatory [Signature]
Name: Auth. Signatory For Vatika One on One Private Limited
Authorised Signatory [Signature]
For Caspar Developers Pvt Ltd. Authorised Signatory [Signature]
Caspar Developers Private Limited [Signature]
Authorised Signatory [Signature]
Name: [Signature]
For M/s. Crazy Properties Pvt Ltd. Authorised Signatory [Signature]
Crazy Properties Private Limited SH Tech Park Developers Private Limited [Signature]
Authorised Signatory [Signature]
Name: Authorised Signatory [Signature]
For M/s. Esso Developers Pvt Ltd. Authorised Signatory [Signature]
Name: [Signature]
Femina Developers Private Limited [Signature]
Authorised Signatory [Signature]
For Famous Dwellers Private Limited [Signature]
Authorised Signatory [Signature]

25. The addendum to Settlement Agreement dated 30.04.2023, to which Corporate Debtor is also party has been placed on record as Annexure A/14.

26. In the written submissions filed on behalf of FC it has been espoused that the applications viz. IA-3396/2026 and IA-3665/2026 are not maintainable, as in Loramitra Rath v. JM Financial Asset & Anr. CA(AT) 1359-1360/2023 decided on 01.11.2023, Hon'ble NCLAT viewed that no application could be moved after arguments were heard and order was reserved in a matter.

27. It is the case of the FC that the Corporate Debtor defaulted in payment of the amount of Rs. 39,18,14,859/- with interest @ 11.62% p.m. As the lender terminated the OTS and recalled the Loan, an amount of Rs. 106,31,70,920/- became due and payable. Since, the payment of the amount of Rs. 39,56,12,574/- was made only on 24.03.2023, after recall of loan on 10.11.2022, the entire amount of debt which could reach to Rs. 106,31,70,290/- as a result of settlement cannot be treated as discharged.

The tricky argument on behalf of the FC is that it was the result of settlement

IA-3665/ND/2026, IA-3396/ND/2026, IA-3397/ND/2026 AND IA-3403/ND/2026 in
IB-207/ND/2026

Omkara Assets Reconstruction Pvt. Ltd. vs. ESPO Developers Pvt. Ltd.



dated 01.09.2021 that instead of of Rs. 118,54,29,443/-, the CD was required to pay only an amount of Rs. 67,31,92,314/- with interest @ 11.62% p.a. payable on monthly basis per annum and the entire amount was to be paid on 31.01.2023. According to FC, when settlement was not honoured by 08.11.2022, on 10.11.2022 the OTS was terminated and there was a default. Technically there could be default committed by the CD on 08.11.2022/10.11.2022 as also on 11.07.2024. Legally also, once any settlement is violated, the original amount of debt payable by the debtor stands restored with all consequences and only the amount which is paid in terms of settlement is deducted from the original amount payable, but for settlement. Thus, it cannot be said that there was no default in payment of debt. As far as the issue of disbursement of amount is concerned, since Corporate Debtor had been party not only to Loan Agreement but also to Settlement Agreement, the account in which amount is disbursed is of no consequence and all the parties to the Loan Agreement/Settlement Agreement would have concurrent liabilities. The amount of default in any case, is in excess of Rs. 1 Crore viz. the threshold limit. As on 10.11.2022, the Indiabulls had not assigned debt to anyone, thus was well within its competence to rescind the settlement. The assignment was made on 16.05.2023. Additionally, there was a Sub-Servicer Agreement between Catalyst and Original Lender under which Original Lender was delegated certain rights and duties in respect of the assigned loan agreements, including the right to recover and enforce dues from the borrowers thereunder. The SSA is enclosed as Annexure A/17 to CP (IB)-207/ND/2026. Later, the catalyst assigned all its rights and interest under the Loan Agreement in favour of the Original



Lender vide Assignment Deed dated 27.12.2024 (Annexure A/19 to CP (IB)-207/ND/2026). Thus, also on 11.07.2024, the original lender was well authorised to rescind the Settlement Deed, as it had obligation to recover. The relevant excerpt of the Sub-Servicer Agreement dated 11.05.2023 reads thus:-

“3. DUTIES OF THE SUB-SERVICER

3.1 *The Sub-Servicer hereby irrevocably and unconditionally agrees and undertakes to provide the Services (as contained under **Schedule II**), in compliance with Applicable Law and the industry standards (including for collection and data integrity) as are customary (to banks and financial institutions) including the following ("**Service Standards**"):*

- (a) it shall exercise due diligence and vigilance in performing the Services and in protecting the rights and interests of the Collection & Servicing Agent;*
- (b) it shall perform the Services within the applicable timelines, as stipulated herein;*
- (c) it shall put in place appropriate internal procedures to avoid any conflict of interest between its role as the Sub-Servicer and its other businesses;*
- (d) it shall put in place appropriate internal procedures to ensure compliance with Schedule III (Anti-Bribery Laws, Money Laundering Laws, or Sanctions Laws and Regulations);*
- (e) it shall maintain adequate operational systems and resources to administer the Aggregate Receivables, the Loans, the Loan Documents and performance of the Services;*
- (f) it shall ensure the performance of Services including pertaining to customer data, customer service, collections and recovery shall be in accordance with its Internal Policies and subject to strict compliance with the guidelines prescribed by RBI and the NHB (where*



applicable) including the HFC Directions 2021. The Services shall be performed at least on par with the standards applied by it for collection of its own assets or pools of assets;

- (g) subject to provisions of Clause 8.2 (Alternate Sub-Servicer), it shall continue to provide Services during the term of this Agreement, including in the event of either a portfolio sale of any part of the Sub-Servicer's business to a third party or a merger/amalgamation of the Sub-Servicer into another company, unless otherwise instructed by the Collection & Servicing Agent;*
- (h) it shall in rendering the Services as per the terms of this Agreement act in accordance with the directions of the Collection & Servicing Agent; and*
- (i) without prejudice to the generality of the provision above, it shall not refrain or refuse to take any such actions on the grounds that it would jeopardize its interest, or otherwise and it shall at all times give effect to and act in accordance with the instructions issued by the Collection & Servicing Agent in relation to the Services, the Aggregate Receivables, the Loans, the Loan Documents and its obligations contained in the Transaction Documents, so long as the said directions /instructions are in compliance with the provisions of Applicable Law including Anti-Bribery Laws, Money Laundering Laws, or Sanctions Laws and Regulations.*

3.2 *The Sub-Servicer further recognises and acknowledges that:*

- (a) any and all the amounts collected by the Sub-Servicer in relation to the Aggregate Receivables, belong exclusively to the respective Trusts and*



- the Sub-Servicer shall hold the same for and on behalf of the respective Trusts in accordance with the terms of this Agreement without any claim or exercise of any security interest, lien, set-off, counterclaim, suspension of performance or other right or claim received by it in respect of the amounts and/or the Loan Documents;*
- (b) *the Collection & Servicing Agent shall have the sole right of collecting and enforcing payment of all the Aggregate Receivables in whatever manner, in its absolute discretion, as it may consider necessary and prudent, subject only to the delegation of such rights and powers by the Collection & Servicing Agent to the Sub-Servicer in accordance with and to the extent provided in this Agreement. The Sub-Servicer shall, if so required by the Collection & Servicing Agent, lend its name as plaintiff or co-plaintiff to any proceedings that the Collection & Servicing Agent may institute or require the Sub-Servicer to institute;*
- (c) *the staff, agents/personnel employed, retained or otherwise engaged in providing the Services are the responsibility of the Sub-Servicer only, and the Collection & Servicing Agent shall not have any responsibility to, nor shall be held directly or indirectly responsible or liable for such Persons;*
- (d) *the Collection & Servicing Agent, NHB and RBI (including any employees, internal and external auditors, advisors or consultants or other regulators, as well as regulatory examiners acting on instructions of the regulators) shall at*



all times have the right to access, to cause an inspection of its premises, books, accounts, data, records, documents, equipment and other property relevant to the performance of the Services and its obligations as provided herein, including for the purpose of audit and inspection and verifying compliance by the Sub-Servicer (including the Designated Agent) with its obligations as contained herein, under the Agreement and under Applicable Law and its likely capacity to continue to comply with its future obligations during the term of its obligations undertaken in terms of this Agreement.

Without prejudice to anything contained herein the Sub-Servicer shall be entitled and the Collection & Servicing Agent hereby grants its express consent, until revoked by written intimation, to the Sub-Servicer, to access the Loan Documents relating to the Aggregate Receivables, record of transactions and any other document given to, stored or possessed by the Collection & Servicing Agent.”

28. Here, it would be useful to extract the table, wherein the complete progress regarding the extension of financial facility and default is mentioned, as given by Mr. Gaurav Mitra in his written submissions. The table reads thus:-

<u>Dues of the Corporate Debtor</u>		
Date	Stage & Particulars	Amount
18.01.2019	Sanctioned Loan to Corporate Debtor.	Rs. 136,00,00,000/-
29.03.2019	Disbursement to Vatika Limited on Borrower's request dated 29.03.2019.	Rs. 135,15,00,000/-
-	Breach of Loan.	Due: Rs. 118,54,29,443/-
01.09.2021	One-Time Settlement.	OTS Amount: Rs. 67,31,92,314/- + 11.62% p.a./p.m.



-	Payment by Corporate Debtor.	Rs. 34,88,45,204/-
08.11.2022	Admitted Dues:	Rs. 39,18,14,859/- + 11.62% p.a. payable p.m.
-	Default in serving monthly interest under the OTS.	-
10.11.2022	Loan recalled by the Lender.	Due: Rs. 106,31,70,920/-
24.03.2023	Part Payment by Vatika Limited.	Rs. 39,56,12,574/-
-	Balance Loan, upon adjusting payments.	Balance: Rs. 66,75,58,346/-
29.03.2023	Settlement Agreement for 51 Loans. Financial Obligations capped to Rs. 74,19,24,836/- + 11.62% p.a./p.m., as the Lender intended to recover dues under the 51 Loans through corresponding ATS, Milestone and Buy-Back Obligations.	Due under 51 Loans: Rs. 68,48,79,961/- + 11.62% p.a./p.m. & Rs. 5,70,44,875/- + 11.62% p.a./p.m.
11.07.2024	Termination of the Settlement Agreement. Revival of the 51 Loans.	Present Loan Revived.
19.07.2024	Part Payment made for 51 Loans.	Part Payment towards 51 Loans: Rs. 44,83,00,000/-
09.04.2026	Due against the Corporate Debtor upon adjusting the amounts paid by Corporate Debtor.	Outstanding Dues: Rs. 164,03,41,432/-

Dues of Vatika Group Entities (51 Loans).

Date	Stage & Particulars	Amount
2019	Sanctioned Loan Amount under 51 Loans.	Rs. 4090,45,00,000/-
2019	Amounts Disbursed for 51 Loans.	Rs. 3917,30,32,967/-
2019 - 2022	Funds given to Vatika Group Entities under the ATS.	Rs. 2362,11,73,486/-
-	Total funds extended to Vatika Group Entities under Loans and ATS.	Total: Rs. 6279,42,06,453/-

-	Breach of the Loan Agreements.	-
01.09.2021	51 One-Time Settlement for the Loans.	OTS Amount: Rs. 1537,43,05,286/- + 11.62% p.a./p.m.
-	Default in serving monthly interest under the OTS.	-
10.11.2022	51 Loans recalled.	Due under the Loans: Rs. 2745,17,77,960/-
29.03.2023	Settlement Agreement for 51 Loans. Financial Obligations capped to Rs. Rs. 74,19,24,836/-, as the Lender intended to recover funds under the 51 Loans through corresponding ATS, Milestone and Buy-Back Obligations.	Due under 51 Loans: Rs. 68,48,79,961/- + 11.62% p.a./p.m. & Rs. 5,70,44,875/- + 11.62% p.a./p.m.
29.03.2023	Buy-Back Obligations.	Due: Rs. 2362,11,73,486/- + 11.62% P.A.
11.07.2024	Termination of the Settlement Agreement.	Revival of the 51 Loans.
19.07.2024	Part Payment made for 51 Loans.	Rs. 44,83,00,000/-
16.11.2025	Total Dues under 51 Loans, including the Loan of the Corporate Debtor, upon adjustment of part-payments.	Due under the Loans: Rs. 3071,31,37,084/- (Inclusive of charges/default interest)



29. As far as the issue of pendency of arbitral proceedings is concerned, in ***Dena Bank (Now Bank of Baroda) vs. C. Shiv Kumar Reddy and Anr.*** (Civil Appeal No. 1650/2020), Hon'ble Supreme Court ruled that IBC has overriding effect over other laws, thus pendency of arbitral proceedings would not come in the way of consideration of an application filed under Section 7 of IBC, 2016. Para 84 of the judgment reads thus:-

“84. IBC has overriding effect over other laws. Section 238 of the IBC provides that the provisions of the IBC shall have effect, notwithstanding anything inconsistent therewith contained in any other law, for the time being in force, or any other instrument, having effect by virtue of such law.”

30. As far as question of admission of a case is concerned, the statute leaves limited scope for this Tribunal to analyze so many things. In terms of the provisions of Section 7(5) of the Code, this Tribunal should admit the application if it is satisfied that a default has occurred and the application under sub-Section 2 is complete and there are no disciplinary proceedings pending against the proposed RP. It is not so that all these conditions are not satisfied in the present case. Once, the CD was party to Loan Agreement, Settlement Agreement and Addendum to Settlement Agreement, the disbursement of amount of debt in the account of third party would not make any difference. As per explanation to Section 7(1) of the Code, a default includes the one in respect of financial debt not only to the Applicant Financial Creditor but to any other Financial Creditor of the Corporate Debtor. The Section 7(1) and (5) of the Code reads thus:-

“Section 7(1) in Insolvency And Bankruptcy Code, 2016



(1) A financial creditor either by itself or jointly with [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government,] [Substituted 'other financial creditors' by Act No. 26 of 2018, dated 17.8.2018.] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

[Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.] [Inserted by Act No. 1 of 2020, dated 13.3.2020.]



Explanation. - For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

XXX

7[(5) *The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—*

(a) admit the application, if it is satisfied that a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceeding pending against the proposed resolution professional; or

(b) reject the application, if it is satisfied that a default has not occurred or the application under sub-section (2) is incomplete or a disciplinary proceeding is pending against the proposed resolution professional:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b), give a notice to the applicant to rectify the defect in his application within seven days from the date of receipt of such notice from the Adjudicating Authority:

Provided further that if the Adjudicating Authority has not passed an order under this sub-section within a period of fourteen days from the date of receipt of the application under sub-section (2), it shall record the reasons for such delay in writing.

Explanation I.— For the purposes of this sub-section, it is hereby clarified that where the requirements under clause (a) have been complied with, no other ground shall be considered to reject an application filed under this section.

Explanation II. — For the removal of doubts, it is hereby clarified that where a record of default in respect of a financial debt owed to a



financial institution recorded with the information utility has been furnished along with the application filed by such financial institution under this section, such record shall be considered sufficient for the Adjudicating Authority to ascertain the existence of default under this section.]”

31. Even the delay in admission of an application on account of filing of applications under Section 65 of the Code would give rise to wrong perception, as in terms of the provisions of Section 7(5) (ibid) of the Code, an application need to be admitted or rejected within 14 days. The consideration of IA-3665/ND/2026, IA-3396/ND/2026, IA-3397/ND/2026 and IA-3403/ND/2026 has already resulted in delay in considering the CP (IB)-207/ND/2026 for admission. In ***M/s Acute Daily Media Pvt. Ltd. & Ors. vs. M/s Sharp Eye Advertising Pvt. Ltd.***, the application under Section 65 of IBC, 2016 could be allowed even at a stage, where resolution plan had been approved by CoC. Thus, where considerable issues are raised in such applications, the same can be examined at any stage, but if admission of an application is delayed on account of filing of an application under Section 65 of the Code, the process may be hugely abused by CD. We do not propose to say that the admission of an application cannot be denied if the same is found collusive or fraudulent, nevertheless, the fraudulent and malicious intent should writ large and should be established. In the present case, on 11.05.2023, the original lender assigned the Loan Agreement to Catalyst Trusteeship Limited vide Assignment Agreement dated 11.05.2023, thereafter, on 16.05.2023 it assigned its rights an obligation in respect of the ATS properties to SSL Group. However, the notice of occurrence of breach of settlement was issued by original lender viz. IHFL and ICCL. Again, on

IA-3665/ND/2026, IA-3396/ND/2026, IA-3397/ND/2026 AND IA-3403/ND/2026 in
IB-207/ND/2026

Omkara Assets Reconstruction Pvt. Ltd. vs. ESPO Developers Pvt. Ltd.



27.12.2024, the Catalyst Trusteeship assigned its rights and obligations under Loan Agreement in favour of original lender. Just a day later, original lender assigned the Loan Agreement to FC before us. Thus, there is no legal, technical or procedural infirmity in such process. Besides, there is no such material or circumstances projected before us, which may be perceived as sufficient to take a view that the steps were taken by FC with malicious intent. It is not for us to examine as to why and how the settlements could fail both with reference to amount due and timeline. The vital issue is, “whether on the dates of default the debtor was potent to make the payment and it took keen steps to discharge the debts and these were creditors who avoided to receive the payments, to give rise to the present proceedings or the debtor itself was not in a position to make the payment to give rise to default. For the present, the factual circumstances, weigh in favour of creditor, as during the hearing of CP (IB)-207/ND/2026, the Corporate Debtor never offered to honour the settlement or enter into fresh settlement with the FC. In the totality of the facts and circumstances, being not convinced that the ingredients of Section **65 of IBC are satisfied, we reject the applications. No cost.**

**Sd/-
(ATUL CHATURVEDI)
MEMBER(T)**

**Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**



INATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IN

CP (IB)-207 (ND) 2026

IN THE MATTER OF:

Omkara Asset Reconstruction Private Limited

Through authorized signatory: Mr. Sunny Gujral

Having its registered office at

No. 9, M.P. Nagar First Street,

Kongu Nagar Extension, Coimbatore,

Tirupur, Tamil Nadu – 641607

**... Applicant/
Financial Creditor**

Versus

Espo Developers Private Limited

Having its registered office at

Flat No. 224A, 2nd Floor, Devika Tower 6,

Nehru Place, New Delhi-110019

**... Respondent/
Corporate Debtor**

Order Pronounced On: 29.09.2026

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. ATUL CHATURVEDI, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Sr. Adv. Sudhir K Makkar, Ms. Meghna Mishra,
Mr. Nikhil Ratti Kapoor, Mr. Yashodhara Gupta,
Ms. Aadhya Shrotiya, Mr. Kevin Chadha, Ms.
Sanya C Oberoi, Mr. Yash Singh, Advocates.

For the Respondent : Sr. Adv. Virender Ganda, Sr. Adv. Rashmi
Chopra, Mr. Vishal Ganda, Mr. Ayandeb Mitra,
Ms. Riya Palnitkar, Mr. Pulkit Goyal,
Mohammad Sharukh Qureshi, Advocates.



ORDER

PER: ASHOK KUMAR BHARDWAJ, MEMBER (J)

The captioned application has been filed by Omkara Asset Reconstruction Private Limited, the Applicant/Financial Creditor ("FC") before this Adjudicating Authority, under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("Adjudicating Authority Rules"), for initiating the Corporate Insolvency Resolution Process ("CIRP"), declaring moratorium and for appointment of Interim Resolution Professional ("IRP"), against ESPO Developers Private Limited, the Respondent/Corporate Debtor ("CD") on the ground that the Corporate Debtor has defaulted in payment towards financial debt of total Amount in Default: Rs. 164,03,41,432/- (Rupees One Hundred and Sixty Four Crores Three Lakhs Forty One Thousand Four Hundred and Thirty Two only) which comprises of the Principal Amount, Interest, Default Interest, Penal and Other charges). Date of Default, as mentioned in Part IV of the Application is 11.07.2024 being the date on which the Loan Agreement stood reinstated, and the entire outstanding loan became due and payable.

2. The Corporate Debtor i.e. ESPO Developers Private Limited is a company registered under the provisions of Companies Act, 1956 with Corporate Identification No. U67100TZ2014PTC020363. The registered office of the Corporate Debtor is at Flat No. 224A, 2nd Floor, Devika Tower 6, Nehru Place, New Delhi-110019. Since the registered office of the Corporate Debtor is situated in New Delhi, this Tribunal having jurisdiction over the NCT of



Delhi is the Adjudicating Authority under sub-section (1) of section 60 of the Code in relation to the prayer for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

3. Submissions of The Applicant/Financial Creditor:

- i.** The Applicant is an Asset Reconstruction Company incorporated under the Companies Act, 1956 and registered as a Securitisation and Reconstruction Company pursuant to Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
- ii.** ESPO Developers Private Limited, is a company incorporated under the Companies Act, 1956, engaged in the business of real estate development and is a part of the Vatika Group of Companies.
- iii.** In 2019, the Corporate Debtor approached Indiabulls Housing Finance Limited, now known as Sammaan Capital Limited ("IHFL"), seeking financial assistance. On the basis of representations and undertakings furnished by the Corporate Debtor, IHFL issued a Sanction Letter dated January 17, 2019, sanctioning a loan of Rs. 136,00,00,000/- (Rupees One Hundred and Thirty-Six Crores only).
- iv.** Pursuant to the Sanction Letter, a Loan Agreement dated January 18, 2019 ("Loan Agreement"), bearing Loan Account Number S000240693, was executed between IHFL and the Corporate Debtor. An amount of Rs. 135,15,00,000/- (Rupees One Hundred Thirty-Five Crores and Fifteen Lakhs only) was disbursed to the Corporate Debtor on March 29, 2019. In terms of Schedule I of the Loan Agreement, the tenure of



the loan was 73 (seventy-three) months from the date of disbursement, scheduled to run until April 29, 2025.

- v.** Under the Loan Agreement, the disbursed amount was repayable together with interest at the rate of 14.45% per annum, in accordance with the Repayment Schedule set out in Clause 3 read with Schedule I of the Loan Agreement. In the event of default, the Corporate Debtor was liable to pay default interest at the rate of 2% per month over and above the agreed interest rate, in terms of Clause 4 read with Schedule I. The obligation to repay outstanding amounts in a prompt and regular manner was unconditional and arose irrespective of whether any demand was made in that behalf. The Corporate Debtor was further liable for costs, expenses, and other charges in terms of Clause 8 of the Loan Agreement.
- vi.** Clause 12 of the Loan Agreement defined "Events of Default" to include, inter alia, non-payment of any amount due and payable thereunder. Upon the occurrence of an Event of Default, the Lender was entitled, with or without notice to the Corporate Debtor, to exercise any or all of the rights specified in Clause 12.2, including cancellation or recall of the Loan Agreement, initiation of proceedings and exercise of all rights, actions, remedies, and powers under the Loan Documents, and enforcement of security.
- vii.** Clause 13 of the Loan Agreement permitted IHFL to assign the rights and obligations thereunder to any person or entity on such terms as it



deemed fit, and the Corporate Debtor could in no manner restrain IHFL from exercising this right of assignment.

- viii.** The loan facility was secured by the following securities created by the Corporate Debtor and related parties:
- a.** Corporate Guarantee Deeds dated January 19, 2019, executed by M/s Vatika Limited, and other Vatika Group entities.
 - b.** Personal Guarantee Deeds of Mr. Anil Bhalla, Mr. Gautam Bhalla and Mr. Gaurav Bhalla dated January 19, 2019.
 - c.** Seven Declaration and Acknowledgements dated February 13, 2019, executed by the entities as mentioned in Schedule I of the said agreements over the properties mentioned in Schedule I-A of the said agreements.
 - d.** Seven Memorandum of Entry recording deposit of title deeds by way of constructive delivery dated February 13, 2019, executed by the entities as mentioned in Schedule I of the said agreements over the properties mentioned in Schedule II of the said agreements.
 - e.** Seven Deed of Hypothecations dated February 13, 2019, executed by the entities as mentioned in Schedule I of the said agreements over the properties mentioned in Schedule II of the said agreements.
- ix.** In addition to the Corporate Debtor, various other entities of the Vatika Group availed loans aggregating to Rs. 4,090,45,00,000/- (Rupees Four Thousand Ninety Crores Forty-Five Lakhs only) pursuant to 50 separate loan agreements executed with IHFL and Indiabulls Commercial Credit Limited ("ICCL"), both of which were entities forming



part of the erstwhile Indiabulls Group. Against these facilities, an aggregate amount of Rs. 3,917,30,32,967/- (Rupees Three Thousand Nine Hundred and Seventeen Crores Thirty Lakhs Thirty-Two Thousand Nine Hundred and Sixty-Seven only) was disbursed to the Vatika Group entities, including the Corporate Debtor.

- x.** Additionally, the Corporate Debtor, along with various other Vatika Group entities, executed 46 agreements to sell in respect of parcels of land situated in Gurgaon, Haryana ("ATS Properties"). Under these agreements to sell ("ATS"), IHFL and ICCL made advance payments aggregating to Rs. 23,62,11,73,486/- (Rupees Two Thousand Three Hundred Sixty-Two Crores Eleven Lakhs Seventy-Three Thousand Four Hundred and Eighty-Six only), out of a total consideration of Rs. 26,69,28,83,223/- (Rupees Two Thousand Six Hundred Sixty-Nine Crores Twenty-Eight Lakhs Eighty-Three Thousand Two Hundred and Twenty-Three only).
- xi.** The Corporate Debtor, along with other Vatika Group entities, thereafter committed default in the payment obligations under the Loan Agreement. With a view to resolving the default, IHFL agreed to grant concessions to the Corporate Debtor and other Vatika Group entities. Vide One-Time Settlement Letter dated September 01, 2021 ("OTS Letter"), IHFL agreed to modify the original payment obligation of the Corporate Debtor. In lieu of the amounts then outstanding, the Corporate Debtor was required to pay a reduced sum of Rs. 39,18,14,859/- (Rupees Thirty-Nine Crores Eighteen Lakhs Fourteen



Thousand Eight Hundred and Fifty-Nine only), together with applicable interest, on or before January 31, 2023. Corresponding OTS letters were issued to other Vatika Group entities, each requiring payment of similarly reduced amounts. The OTS Letter constitutes an unequivocal written acknowledgment by the Corporate Debtor of its subsisting liability under the Loan Agreement within the meaning of Section 18 of the Limitation Act, 1963, and the period of limitation in respect of the said debt stands extended accordingly.

- xii.** However, the Corporate Debtor and other Vatika Group entities committed default in the terms of the OTS Letters.
- xiii.** Following several rounds of negotiations, the Corporate Debtor and other Vatika Group entities, on the one hand, and IHFL and ICCL, on the other, executed a Settlement Agreement dated March 29, 2023 ("Settlement Agreement"). Under the Settlement Agreement, the Corporate Debtor and other Vatika Group entities undertook to fulfil Financial Obligations [Clause 1], ATS Obligations [Clause 3(i)], Buy-Back Obligations [Clause 3(ii)], and Milestone Obligations [Clause 3(iii)]. The continuation of the Settlement Agreement was expressly contingent upon the Corporate Debtor and other Vatika Group entities performing all obligations thereunder, and any breach thereof would result in its termination. The execution of the Settlement Agreement constitutes a further written acknowledgment by the Corporate Debtor of its subsisting liability under the Loan Agreement within the meaning of



Section 18 of the Limitation Act, 1963, and the period of limitation stands extended from March 29, 2023.

- xiv.** A conjoint reading of Clauses 5 and 11 of the Settlement Agreement establishes that upon any breach by the Corporate Debtor or other Vatika Group entities, the Loan Agreement would stand revived automatically, and the Corporate Debtor and other Vatika Group entities would, jointly and severally, and without prejudice to the rights and remedies of the lender(s) and/or purchaser(s) under the Loan Documents, be liable to pay the revised settlement amount of Rs. 520,34,74,688/- (Rupees Five Hundred Twenty Crores Thirty-Four Lakhs Seventy-Four Thousand Six Hundred and Eighty Eight only), together with interest at 11.62% per annum from February 01, 2023, in addition to all amounts due and payable under the original Loan Agreement.
- xv.** The Settlement Agreement was subsequently modified vide Addendum dated April 30, 2023 and Addendum dated April 22, 2024 (collectively, "Addendums"). The Corporate Debtor executed both Addendums, and each Addendum constitutes an independent written acknowledgment by the Corporate Debtor of its subsisting liability within the meaning of Section 18 of the Limitation Act, 1963. The last of such acknowledgments, being the Addendum dated April 22, 2024, extends the period of limitation to April 22, 2027. The present Application is accordingly well within the period of limitation.



- xvi.** In the interim, on May 11, 2023, IHFL and ICCL assigned 41 out of 51 loan agreements - including the Loan Agreement - in favour of Catalyst Trusteeship Limited ("Catalyst") vide Assignment Agreement dated May 11, 2023, in terms of Section 5 of the SARFAESI Act. Simultaneously, Catalyst executed a Sub-Servicer Agreement in favour of IHFL, delegating to IHFL certain rights and duties in respect of the assigned loan agreements, including the right to recover and enforce dues from the borrowers thereunder, subject to the terms of Clause 3 thereof. Accordingly, notwithstanding the assignment to Catalyst, IHFL retained the right to exercise all rights available under the Loan Agreement and to take all steps necessary to recover the outstanding amounts due and payable thereunder, on behalf of Catalyst. Subsequently, by way of Amended and Restated Agreement to Sell dated May 16, 2023, IHFL assigned its rights and obligations in respect of the ATS Properties to SSL Infrastructure Private Limited, Saisrushti Bidalpur Projects Private Limited, and Saisrushti (DevanahalliLakshmipura) Projects Private Limited ("SSL Group").
- xvii.** The Corporate Debtor and other Vatika Group entities failed to fulfil their obligations under the Settlement Agreement. In particular, the Corporate Debtor and other Vatika Group entities failed to perform the ATS Obligations and Milestone Obligations under Clauses 3(i) and 3(iii) of the Settlement Agreement respectively.
- xviii.** Under Clauses 5 and 11 of the Settlement Agreement, breach of any obligation thereunder automatically revived the Loan Agreement and



rendered all amounts due thereunder immediately payable. This revival operated by force of contract upon the occurrence of the breach itself; it was not contingent upon the issuance of any notice or the exercise of any discretion by IHFL. The Corporate Debtor cannot deny the breach of the ATS Obligations and Milestone Obligations, and the revival of the Loan Agreement follows as an explicit contractual consequence thereof. Vide Notice dated July 11, 2024, IHFL and ICCL formally recorded the occurrence of the breach and communicated the consequent termination of the Settlement Agreement, whereupon all amounts outstanding under the original Loan Agreement became immediately due and payable by the Corporate Debtor.

- xix.** Pursuant to termination of the Settlement Agreement, a payment of Rs. 77,03,00,000/- (Rupees Seventy-Seven Crores and Three Lakhs only) was made. The said amount was adjusted towards the amounts due and payable under the various Loan Agreements executed by the Vatika Group, including the Corporate Debtor.
- xx.** Thereafter, Catalyst assigned all its rights and obligations under the Loan Agreement in favour of IHFL vide Assignment Deed dated December 27, 2024. IHFL, in turn, assigned the Loan Agreement to the Financial Creditor vide Assignment Agreement dated December 28, 2024, in terms of Section 5 of the SARFAESI Act. All rights in the loan agreements in which ICCL was the original lender were similarly assigned to the Financial Creditor. The Financial Creditor thereby



stepped into the shoes of IHFL and ICCL and became legally entitled to enforce all rights under the Loan Agreement.

- xxi.** Subsequent to the assignment, the Financial Creditor issued a letter dated February 28, 2025, informing the Corporate Debtor and other Vatika Group entities that IHFL had assigned the financial assets and outstanding dues under the Loan Agreement to the Financial Creditor in terms of Section 5 of the SARFAESI Act, and calling upon the Corporate Debtor to remit all outstanding amounts to the Financial Creditor forthwith.
- xxii.** Owing to the continuing default by the Corporate Debtor, the Financial Creditor issued a notice under Section 13(2) of the SARFAESI Act dated November 19, 2025, calling upon the Corporate Debtor to pay an amount of Rs. 171,67,18,488/- (Rupees One Hundred Seventy-One Crores Sixty-Seven Lakhs Eighteen Thousand Four Hundred and Eighty-Eight only), calculated as on November 18, 2025, together with applicable future interest at the rate of 14.45% from November 19, 2025 until the date of actual payment, within 60 days of receipt of the said notice.
- xxiii.** In response, the Corporate Debtor, vide its letter dated January 19, 2026, replied to the Section 13(2) notice and falsely asserted that it had fully discharged its obligations.
- xxiv.** Thereafter, the Financial Creditor issued a rejoinder dated February 03, 2026, refuting the said contentions, highlighting the continuing



defaults committed by the Corporate Debtor, and reiterating the demands made in the Section 13(2) notice.

xxv. Upon the breach and consequent termination of the Settlement Agreement on July 11, 2024, owing to prior and continuing defaults by the Corporate Debtor and other Vatika Group entities, all amounts outstanding under the original Loan Agreement became immediately due and payable. In terms of Clauses 5 and 11 of the Settlement Agreement, upon the occurrence of a default and termination thereof, the concessions granted under the Settlement Agreement stood withdrawn and the Financial Creditor became entitled to enforce its rights under the original Loan Agreement. Further, in terms of Clause 12.2 of the Loan Agreement enlisted the consequences that would follow upon the occurrence of an Event of Default.

xxvi. In view of the above, the Financial Creditor is entitled to recall the loan, whereupon the entire dues become forthwith payable without any further notice. Accordingly, upon termination of the Settlement Agreement, the entire outstanding amount under the original Loan Agreement became due and payable as on July 11, 2024.

4. Submissions of the Respondent/Corporate Debtor:

- i.** It is submitted that the Financial Creditor is merely an assignee of the rights of the Indiabulls Group arising from the Settlement Agreement dated 29.03.2023 and the subsequent addendums, and therefore cannot claim any rights superior to those of its assignor.



- ii.** According to the Corporate Debtor, the Settlement Agreement was unlawfully terminated by the Indiabulls Group vide notice dated 11.07.2024, which termination, along with the rights and obligations arising therefrom, is the subject matter of pending arbitration proceedings before the learned Sole Arbitrator appointed by the Hon'ble Delhi High Court. Since the Financial Creditor has been impleaded as a respondent and is actively participating in the arbitral proceedings, it is contended that its rights remain subject to the outcome thereof, rendering the present insolvency proceedings premature and not maintainable.
- iii.** The Corporate Debtor further submitted that between 2017 and 2019, the Vatika Group comprising 34 entities, including the Corporate Debtor, had availed 51 separate credit facilities from the Indiabulls Group.
- iv.** The disputes relating to repayment were initially resolved through One-Time Settlement Letters dated 01.09.2021, which contemplated sale of identified mortgaged assets through ATS arrangements and adjustment of the consideration against the outstanding dues. Thereafter, the parties entered into a comprehensive Settlement Agreement dated 29.03.2023, together with the First and Second Addendums, which superseded all earlier arrangements and consolidated the rights and obligations of the parties.
- v.** It is contended that under the Settlement Agreement, the financial obligations were consolidated at the group level without attributing any



separate liability to the individual entities. The Settlement Agreement also governed the ATS obligations, required withdrawal of pending litigations, and provided arbitration as the exclusive dispute resolution mechanism. According to the Corporate Debtor, the Settlement Agreement did not contain any clause permitting unilateral termination and therefore constituted a non-determinable contract.

- vi.** It is further submitted that the Second Addendum revised the repayment schedule and reduced the consolidated financial obligation of the Vatika Group to Rs. 73.10 crore, payable by 31.03.2025, while continuing to treat the liability as a collective obligation without any company-wise allocation. According to the Corporate Debtor, the Vatika Group has paid an aggregate amount of Rs 77.03 crore towards the revised financial obligations, thereby completely discharging the financial liability under the Settlement Agreement.
- vii.** It is contended that despite such discharge, the Indiabulls Group wrongfully issued the termination notice dated 11.07.2024 solely on the alleged breach of ATS obligations and not on account of any default in repayment of the financial obligations. Consequently, the Corporate Debtor asserts that it sought issuance of No Due Certificates, release of securities, title deeds, guarantees, post-dated cheques and discontinuation of the escrow arrangements, all of which have been wrongfully withheld.
- viii.** The Corporate Debtor further submitted that it challenged the termination notice before the Hon'ble Delhi High Court and thereafter



invoked arbitration. It is stated that the learned Sole Arbitrator is presently seized of the disputes arising from the Settlement Agreement, including the validity of its termination and the respective rights and liabilities of the parties. It is further submitted that the Financial Creditor has been impleaded in the arbitral proceedings, wherein the Vatika Group has sought declarations that its obligations under the IB Credit Facilities stand discharged together with consequential reliefs, while the Financial Creditor has filed counterclaims seeking recovery of amounts under the allegedly revived loan agreements as well as under the Settlement Agreement. According to the Corporate Debtor, both the claims and counterclaims concern the collective liability of the Vatika Group and do not attribute any specific liability to the Corporate Debtor individually.

- ix.** It is further contended that the alleged debt sought to be enforced forms part of the consolidated obligations arising from the 51 credit facilities extended to the 34 group entities and no determined liability has been apportioned to the Corporate Debtor. It is submitted that even the bank statement relied upon by the Financial Creditor does not evidence disbursement of the alleged loan amount to the Corporate Debtor. According to the Corporate Debtor, in the absence of any adjudication by the Arbitral Tribunal regarding the debt allegedly due and payable by the individual entities, no default can be said to have occurred so as to attract the provisions of Section 7 of the Code.



- x.** The Corporate Debtor further alleges that the present petition has been filed despite the pendency of arbitration concerning the same subject matter and is therefore malicious, vexatious and an abuse of the process of law, warranting initiation of proceedings under Section 65 of the Code against the Financial Creditor. Accordingly, the Corporate Debtor has prayed that the present Section 7 application be dismissed as not maintainable.

5. Further Submissions of the Applicant/Financial Creditor:

- i.** The Applicant submitted that the Corporate Debtor has failed to dispute the essential jurisdictional requirements under Section 7 of the Code, namely the existence of a financial debt and the occurrence of default. According to the Applicant, instead of disputing the debt and default, the Corporate Debtor has attempted to convert the present proceedings into an adjudication of contractual disputes relating to the Settlement Agreement, its alleged termination, and the pending arbitral proceedings, which are beyond the limited scope of enquiry under Section 7. The Corporate Debtor has not disputed the execution of the sanction letter, loan agreement, security documents, One-Time Settlement, Settlement Agreement, subsequent addendums or the assignment in favour of the Applicant. These documents, according to the Applicant, constitute clear acknowledgements of the financial debt and the Corporate Debtor's liability.
- ii.** The Applicant further submitted that the financial facilities were duly disbursed by the original lender and that the Corporate Debtor's



contention regarding non-disbursal is contrary to the documentary record. Reliance is placed upon the sanction letter, loan agreement, security documents, settlement documents and contemporaneous correspondence, including the Corporate Debtor's letter dated 28.03.2019 requesting that the loan amount be disbursed into the account of Vatika Limited.

- iii.** With regard to the Settlement Agreement, the Applicant submitted that the same was conditional in nature and granted concessions subject to strict compliance with the obligations undertaken thereunder. Since the Corporate Debtor admittedly failed to comply with the ATS and milestone obligations, the Settlement Agreement stood terminated, resulting in revival of the original loan agreements in terms of its provisions. Reliance was placed on ***Gaurav Jaiswal v. Indian Renewable Energy Development Agency Limited, Company Appeal (AT) (Insolvency) No. 594 of 2025*** and ***Bahadur Ram Mallah v. ARC (India) Limited & Anr. Civil Appeal Diary No. 28126/2025***. It is contended that the alleged payment of Rs. 77.03 crore was made after the termination of the Settlement Agreement and merely constitutes partial repayment and does not extinguish the underlying liability, an amount of Rs. 164,03,41,432/- continues to remain outstanding and payable by the Corporate Debtor. Partial payment does not cure the default, part debt is also debt for the purposes of Section 7 Petition. Reliance has been placed on ***M. Suresh Kumar Reddy v. Canara Bank & Ors., (2023) 8 SCC OnLine SC 608***.



- iv.** The Original Lender had the right and the consent of the SSG Group to terminate the Settlement Agreement. Catalyst assigned all its rights and interests under the Loan Agreement in favour of the Original Lender vide Assignment Deed dated 27.12.2024. Thereafter, Original Lender assigned all its rights and interests under the Loan Agreement in favour of the Applicant herein vide Assignment Deed dated 28.12.2024. Upon such assignment, the Applicant herein stepped into the shoes of the original lender, i.e. Original Lender and was entitled to exercise all rights and remedies available to it under the Loan Agreement.
- v.** The Applicant further contends that the pendency of arbitration proceedings does not render the present petition under Section 7 non-maintainable, as insolvency proceedings are distinct from arbitral proceedings and the only enquiry before the Adjudicating Authority is the existence of a financial debt and occurrence of default. It is submitted that the defence of a pre-existing dispute is not available in proceedings under Section 7 of the Code. Reliance has been placed upon the decisions in *Innoventive Industries Ltd. v. ICICI Bank*, *Indus Biotech Pvt. Ltd. v. Kotak India Venture Fund*, *E.S. Krishnamurthy v. Bharath Hi-Tech Builders (P) Ltd.*, *Catalyst Trusteeship Ltd. v. Ecstasy Realty Pvt. Ltd.* and *Century Aluminium Company Ltd. v. Religare Finvest Ltd.* in support of the said proposition.
- vi.** The Applicant has also denied the allegations under Section 65 of the Code, submitting that the present petition is founded on admitted



financing documents, settlement documents, acknowledgements of liability and other documentary evidence establishing the debt and default. It is further contended that the Corporate Debtor cannot simultaneously seek the benefit of the Settlement Agreement while failing to comply with its obligations thereunder, and that its prayer seeking adjudication of maintainability as a preliminary issue is contrary to the summary framework of Section 7 of the Code.

- vii.** The Corporate Debtor has filed an application to place additional documents on record bearing Filing No. 0710102057582026 after the order was reserved on 10.07.2026. The application should not be taken on record in view of the judgment of the Hon'ble NCLAT in ***Loramitra Rath v. JM Financial Asset & Anr. CA(AT) 1359-1360/2023***. Moreover, the application is belated and offers no explanation for the delay in producing documents already within the Applicant's knowledge; (ii) the documents annexed thereto do not pertain to the Corporate Debtor, and the alleged payments were not made by it; and (iii) even if the Corporate Debtor paid Rs. 74,44,57,778/-, the same was merely a part payment towards the recalled loan under the Loan Agreement and, in any event, the entire debt became due upon the breach and termination of the Settlement Agreement on 11.07.2024.

6. Further Submissions of the Respondent/Corporate Debtor

- i.** Further, the Corporate Debtor reiterated that the additional documents filed by the Financial Creditor along with the rejoinder cannot be relied



upon as they were not part of the original application and were not taken on record by this Adjudicating Authority.

- ii.** It is submitted that the Financial Creditor has failed to establish disbursement of the alleged loan to the Corporate Debtor, as the bank statements relied upon indicate disbursement to Vatika Limited and not to the Corporate Debtor. Reliance is placed on *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*, *Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd.* and *Ocean Deity Investment Holdings Ltd. v. Suraksha Asset Reconstruction Ltd.* to contend that disbursement to the borrower is an essential ingredient of a financial debt.
- iii.** According to the Corporate Debtor, the subsequent Settlement Agreement dated 29.03.2023 constituted a comprehensive arrangement governing the disputes between the parties, under which the financial obligations of the 34 Vatika Group entities were consolidated, while the balance liability was restructured into Agreements to Sell (ATS) with a corresponding right of buy-back, whereby the outstanding loan amount was treated as sale consideration payable upon exercise of the buy-back. It is contended that the revised financial obligation of Rs.73.10 crore together with interest stood fully discharged upon payment of Rs. 77.03 crore, as acknowledged by the Financial Creditor.
- iv.** The Corporate Debtor further submitted that the ATSs were subsequently assigned by the Indiabulls Group to the SSL Group and, therefore, the Financial Creditor has no enforceable rights arising out



of the ATS transactions or the alleged breach thereof. It is contended that the legality of the termination of the Settlement Agreement, the parties' respective rights under the ATS arrangements and the claims and counterclaims of all stakeholders are pending adjudication before the learned Arbitral Tribunal. Accordingly, it is argued that no debt can presently be said to be due and payable by the Corporate Debtor, that the Financial Creditor, being merely an assignee, cannot claim rights superior to its assignor, and that the present matter essentially concerns contractual disputes rather than a straightforward case of financial debt and default under the Code. Reliance is placed on *Dhanlaxmi Bank Ltd. v. Mohammed Javed Sultan & Ors.* in support of the said contention.

7. Analysis nd Findings:

- i.** We have heard Ld. Counsel of both the parties and have perused the documents placed on record.
- ii.** The Applicant asserts that the Corporate Debtor had availed financial facilities from Indiabulls Housing Finance Limited, which were subsequently assigned in favour of the Applicant. According to the Applicant, despite restructuring of the liabilities through the One Time Settlement dated 01.09.2021, the Settlement Agreement dated 29.03.2023 and the subsequent Addendums, the Corporate Debtor failed to comply with the obligations undertaken thereunder. Consequently, the Settlement Agreement stood terminated in terms of its own provisions, resulting in revival of the original loan documents



and the liability arising thereunder. It is therefore contended that a financial debt continues to subsist and default has occurred, entitling the Applicant to invoke Section 7 of the Code.

- iii.** According to the Corporate Debtor, the Settlement Agreement superseded the original loan transactions and transformed the remaining obligations into property transactions through Agreements to Sell ("ATS") coupled with corresponding buy-back rights. It is contended that the consolidated financial obligation under the Settlement Agreement stood discharged upon payment of Rs. 77.03 crore and that the subsequent disputes pertain only to the validity of termination of the Settlement Agreement and the rights arising out of the ATS transactions, which are presently pending adjudication before the learned Arbitral Tribunal. It is further contended that the Applicant, being merely an assignee, cannot assert rights superior to those of the assignor and that no financial debt or default presently exists against the Corporate Debtor. Accordingly, the Corporate Debtor contends that the original debt stood extinguished, the subsequent disputes are contractual in nature, and the present proceedings constitute an attempt to bypass the pending arbitral proceedings.
- iv.** Before advertng to the rival contentions, it is necessary to delineate the scope of enquiry exercisable by this Adjudicating Authority under Section 7 of the Code. The Adjudicating Authority is not expected to adjudicate complicated contractual disputes or determine the respective rights of the parties arising under commercial arrangements.



The enquiry is confined to examining whether a financial debt exists and whether default has occurred.

- v. The Hon'ble Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank & Anr., (2018) 1 SCC 407***, authoritatively held that at the stage of admission of an application under Section 7, the Adjudicating Authority is only required to satisfy itself regarding the existence of a financial debt and occurrence of default. The same has been reiterated in ***E.S. Krishnamurthy v. Bharath Hi-Tech Builders Pvt. Ltd., (2022) 3 SCC 161*** and ***M. Suresh Kumar Reddy v. Canara Bank Civil Appeal No. 7121 of 2022***. Unlike proceedings under Section 9 of the Code, the existence of contractual disputes or other civil disputes does not by itself constitute a ground to reject a petition under Section 7 once debt and default stand established.
- vi. The principal defence advanced by the Corporate Debtor is that the execution of the Settlement Agreement dated 29.03.2023, read with the subsequent Addendums, superseded the original loan documents and transformed the remaining obligations into property transactions through Agreements to Sell ("ATS") coupled with corresponding buy-back rights. According to the Corporate Debtor, upon payment of Rs. 77.03 crore towards the revised financial obligation, no financial debt survived and the subsequent disputes pertain solely to the validity of termination of the Settlement Agreement and the parties' contractual rights thereunder.



- vii.** The Applicant, on the contrary, submitted that the Settlement Agreement did not extinguish or novate the original loan transactions. It merely granted certain concessions and prescribed a revised mechanism for repayment of the outstanding dues, subject to strict compliance with the obligations stipulated therein. It is further contended that the Settlement Agreement itself contemplated the consequences of breach and expressly provided for revival of the original loan documents and all rights and remedies available thereunder.
- viii.** Before examining the rival submissions, it would be appropriate to refer to the relevant provisions of the Loan Agreement and Settlement Agreement which read thus:

Loan Agreement dated 18.01.2019:

12. EVENTS OF DEFAULT	
12.1	Each of the events or circumstances set out herein is an Event of Default.
12.1.1	Non-payment The Borrower(s) does/do not pay by the Due Date(s) the Borrower's Dues (or part thereof) and/or any amount payable pursuant to a Loan Document.
12.1.2	Unlawful Purpose The Borrower(s) apply (ies) and/or utilize(s) the Loan (a) for such purposes which are not permitted under the Loan Documents and/or (b) for any purpose which is considered and/or deemed to be unlawful, illegal or contravene the provisions of any applicable laws, rules and regulations.
12.1.3	Other obligations The Obligor(s) commit or threaten to commit a breach/default of any provision(s) of the Loan Documents not due to any fault of the Lender (other than those referred to in Clause 12.1.1 relating to <i>Non-payment</i>) unless, if capable of remedy, such breach/default is remedied within three (3) days from such breach/default by the Obligor(s).
12.1.4	Misrepresentation Any representation or statement made or repeated by the Obligor(s) in the Loan application, Loan Documents or any other document delivered by or on behalf of the Obligor(s) under or in connection with any Loan Documents is incorrect or misleading in any respect when made or repeated. Further, if there is any suppression of facts by the Obligor(s) in the Loan application, Loan Documents or any other document delivered by or on behalf of the Obligor(s) under or in connection with any Loan Documents.
12.1.5	Unlawfulness It is or becomes unlawful for the Obligor(s) to perform any of its obligations under the Loan Documents.



12.1.6 Repudiation

The Obligor(s) repudiates a Loan Document or in the opinion of the Lender, the Obligor(s) has/have an intention to repudiate any of the Loan Documents.

12.1.7 Government Intervention

By or under the authority/order of any government/court or otherwise: (i) the management of the Obligor(s) is wholly or partially displaced or the authority of the Obligor(s) in the conduct of its business is wholly or partially curtailed; or (ii) all or a majority of the issued shares of the Obligor(s) or the whole or any part of its/their revenues or assets is seized, nationalized, expropriated or compulsorily acquired; or (iii) If any attachment, distress, execution or other process against the Obligor(s), or any of its properties is enforced or levied upon;

12.1.8 Material adverse change

Any event or circumstance occurs which the Lender believes is likely to have a Material Adverse Effect or if any circumstance or event occurs which in the opinion of the Lender, would or is likely to prejudicially or adversely affect in any manner, the ability/ capacity of the Obligor(s) to perform or comply with its/their obligations under the Loan Documents and/or to pay/repay the Borrower's Dues or any part thereof;

12.1.9 Others

- (a) If there is any deterioration or impairment of the Security, if any, or any part thereof or any decline or depreciation in the value or market price thereof (whether actual or reasonably anticipated), which causes the Security created in favour of the Lender, in the judgment of the Lender to become unsatisfactory as to character or value and the Borrower(s) fail to provide additional Security;
- (b) If there is a failure in business, commission of an act of bankruptcy, general assignment for the benefit of creditors, if any Obligor(s) suspend(s) or default(s) in making payment to any creditors / other lenders or threatens to do so, any petition in bankruptcy of, by, or against the Obligor(s) is filed or any petition for winding up of the Obligor(s) is filed and not withdrawn within 30 days of being filed;

- (c) If the Obligor(s) is/are unable to pay its/their debts (whether within the meaning of applicable laws or otherwise) or if a liquidator, or receiver is appointed in respect of any property or estate of the Obligor(s) or the Obligor(s) makes an application for/carries out/approves amalgamation, merger, arrangement, demerger and/or reconstruction of any of the Obligor(s), except with prior written approval of the Lender;

- (d) If a receiver is appointed in respect of the whole or any part of the property /assets of the Obligor(s);

- (e) If the Obligor(s) ceases or threatens to cease or carry on its/their business or if the Obligor(s) ceases to be in lawful employment or if, in the opinion of the Lender, the Obligor(s) income/revenues/remuneration has become or is likely to become inadequate or if any Obligor(s) dies or if any Obligor(s) becomes mentally unsound or if any Obligor(s) is imprisoned;

- (f) If it is certified by a firm of accountants appointed by the Lender (which the Lender is entitled and hereby authorised to so appoint at any time) that the liabilities of the Obligor(s) exceed the Obligor(s)' assets or that the Obligor(s) is/are carrying on business at a loss of more than 50% on a year to year basis or the networth of the Obligor(s)' reduces to or below 50% on a year to year basis;

- (g) If the Obligor(s), without prior written consent of the Lender, sell, transfer, assign, convey, grant, deal with and/or dispose of the Security (or any part thereof) and/or attempt or purport to create any charge, mortgage, pledge, hypothecation, lien and/or other encumbrance (including third party right, interest and/or claim) over the Security or any part thereof, except for securing any other obligations (if any) of the Obligor(s) to the Lender.

- (h) If any circumstance or event occurs which is prejudicial to or impairs or imperils or is likely to prejudice, impair and/or imperil the Security (or any part thereof) or any other security given by the Obligor(s) or any part thereof;

- (i) If any substantial change in the constitution or management or majority of Directors/ partners or any significant change in the Obligor(s) shareholding pattern/ profit sharing occurs without previous written consent of the Lender or the management ceases to enjoy the confidence of the Lender; or

- (j) If any of the foregoing events occur in relation to any third party which now or hereafter has guaranteed or provided Security for or given any indemnity in respect of any money obligation or liability hereby secured or such third party if individual shall commit an act of bankruptcy or die or become incompetent to contract.



12.2 Consequence of an Event of Default

On and at any time after the occurrence of an Event of Default, Lender may, with or without any notice to any of the Obligor(s) and with or without the intervention of the court/arbitrator, (i) cancel/recall the Loan whereupon the Borrower's Dues shall become immediately repayable/payable by the Obligor(s); and/or (ii) initiate/exercise any or all of its rights, actions, remedies and powers under the Loan Documents and/or applicable laws (including issuance of show-cause notice(s) to the Obligor(s) and for making submissions before the relevant committee of the Lender); and/or (iii) enforce, allot, sell, invoke, deliver, deal with, take possession, convey, transfer, assign, lease, sub-lease, encumber and/or dispose of in any manner (including by private treaty and/or auction), on such terms and conditions including the sale/transfer price of the Security or any part/unit thereof as deemed fit by the Lender, any/all/part of the Security including the guarantees and/or the demand promissory notes, and/or do such other things in relation to and/or with respect to the Security (any part thereof) which may be permitted under law.

If the net sum realized through the enforcement/sale/ transfer of Security is insufficient to cover the Borrower's Dues, then without prejudice to the other rights and remedies of the Lender under the Loan Documents and/or in law, the Obligor(s) agree(s) and undertake(s) to pay to the Lender forthwith at the Lender's demand such amount as will make up the shortfall. The decision made by the Lender with respect to any matter under the Loan Documents shall be final and binding on the Obligor(s).

- 12.3 If any Event of Default or any event which, after the notice or lapse of time or both would constitute an Event of Default shall have happened, the Borrower(s) shall forthwith give the Lender notice thereof in writing specifying such Event of Default, or such event. The Borrower(s) shall also promptly inform the Lender if and when any statutory notice of winding-up under the provisions of the applicable laws or of any suit or legal process intended to be filed / initiated against the Obligor(s) is received by the Obligor(s). On the question whether any of the above events/circumstances has occurred/ happened, the decision of the Lender shall be final, conclusive and binding on the Borrower(s). However, the Lender will act in a reasonable manner while exercising any such discretion given to the Lender under this Agreement. The rights, powers and remedies given to the Lender by this Agreement shall be in addition to all rights, powers and remedies given to the Lender by virtue of any other security, statute or rule of law. The Lender may exercise a lender's lien or right of set-off with respect to any obligation of the Borrower(s) to the Lender and shall have a lien on all property or securities of the Borrower(s) in the Lender's possession or custody whether for safe-keeping or otherwise. Without prejudice to what is stated hereinabove, the Parties hereby expressly agree and confirm that in the event of the Borrower(s) failing to pay the Borrower's Dues or on happening of an Event of Default, in addition to any general or specific lien to which the Lender may be entitled by law, the Lender shall, without prejudice to any of its specific rights under the Loan Documents, be at liberty to apply any other money or amounts standing to the credit of the Borrower(s) in any account with the Lender in or towards repayment of the Borrower's Dues, without any notice to the Borrower(s). In case of any deficit/shortfall, the deficit/shortfall amount may be recovered by the Lender from the Borrower(s). Notwithstanding anything to the contrary in any Loan Documents, the Borrower(s) hereby agree(s) and hereby authorize(s)/give(s) its/their consent, and the Borrower(s) shall cause the other Obligor(s) to agree and authorize/give their consent, that (a) the Lender shall be entitled to disclose/share any information relating to the Loan, the Security, the Loan Documents, the credit information and/or any other related/relevant information of the Obligor(s) (including default by the Obligor(s)) to the Reserve Bank of India, credit information company (e.g. CIBIL and/or other similar entities), credit rating agencies, statutory/regulatory/judicial/quasi-judicial authorities/bodies, statutory auditors, the Lender's banks/financial institutions and other persons/bodies pursuant to/in connection with/under, inter alia, any law, regulations, guidelines and/or circulars, legal proceedings, audit, credit rating / gradings, the provisions of the Loan Documents and/or in the ordinary course of the Lender's business; (b) in case any of the Obligor(s) commit(s) default in the payment/repayment of the Borrower's Dues (or part thereof) and/or upon occurrence of an Event of Default under the Loan Documents, the Lender, the Reserve Bank of India, any other regulator and/or credit information company will have an unqualified right to disclose or publish the name(s) of the Obligor(s) and its/their partners, promoters and/or directors as defaulter(s) in such manner and through such medium as the Lender, the Reserve Bank of India, any other regulator and/or the credit information company in their absolute discretion may think fit; and/or (c) the Lender and/or the Relevant Entities shall be entitled to use/utilize the credit information and the other related/relevant information of the Obligor(s) for the purposes of or in connection with the ordinary course of the Lender's and/or the Relevant Entities' business including for the Loan/future loan(s) and the other products/services, if any, to be obtained by any of the Obligor(s) and for marketing or promotion of such services/products.



13. ASSIGNMENT

Notwithstanding anything to the contrary in the Loan Documents, the Parties agree that, without any approval of or notice to any of the Obligor(s), the Lender shall be entitled to sell, securitize, transfer, encumber and/or assign any/all of its rights and obligations (including the Borrower's Dues/Loan or any part thereof with or without any Security) under the Loan Documents to any person(s)/entity and on such terms and conditions as the Lender, in its sole and absolute discretion deems fit. The Borrower(s) shall not and/or the Borrower(s) shall cause the Obligor(s) not to, assign or transfer any of its/their rights or obligations under the Loan Documents.

Settlement Agreement dated 29.03.2023:

Authorised Signatory For Everlast Projects Private Limited	It has been agreed between the Borrower(s) and the Lender(s), that in order to settle the total amount payable by the Borrower(s) to the Lender in connection with the Loan(s), (i) subject to compliance/fulfillment of all the terms of this Agreement, the Borrower(s) and the Sellers and subject to Clause 5 of this Agreement, the Borrower(s) now undertake to pay to the Lender(s) the following amounts on or before 05, April, 2025 ("Said Amount"): (a) a sum of Rs. 68,48,79,961/- (Rupees Sixty Eight Crore Forty Lakh Seventy Nine Thousand Nine Hundred Sixty One Only) along with interest thereon at the rate of 11.62% per annum (payable every month) with effect from 1st February 2023 till its complete payment to the Lender(s) under the respective Loan Documents; and (b) a sum of Rs.57044875/- (Rupees Five Crore Seventy Lacs Forty Four Thousand Eight Hundred Seventy Five only) along with interest thereon at the rate of 11.62% per annum (payable every month) with effect from March 16 2023, till its complete payment to the Lender(s) under the respective Loan Documents. (ii) Notwithstanding anything to the contrary in sub-clause (i) of Clause I of this Agreement and subject to Clause 5 of this Agreement, (a) the Borrower(s) undertakes to make timely payment of the Said Amount along with interest thereon to the Lender(s) as per the agreed Payment/Repayment Plan, more particularly mentioned in Schedule V hereunder, so as to ensure that the Loan(s) remain standard at all times in the books of the Lender(s), till the Said Amount is paid to the Lenders along with interest thereon as aforesaid; and (b) it is clarified that subject to the Borrower(s) and the Sellers timely fulfilling all their obligations contained in this Agreement, the maximum extent of liability of the Borrower(s) under this Agreement shall not exceed the Said Amount along with interest thereon at the rate of 11.62% per annum.
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(3) With respect to the ATS, it has now been agreed between the parties thereto that:

Authorised Signatory Private Limited	(i) The Sellers shall get all the ATS registered (cost of registration of ATS shall be borne as per the terms of the ATS) with the concerned registrar as per the agreed schedule of registration more particularly mentioned in Schedule II-A hereunder. (ii) The Sellers undertake to, and shall be under an obligation to, buy back from the Purchaser(s) all the ATS-Inventories as per the agreed schedule of buy back (more particularly mentioned in Schedule IV hereunder), except as specifically mentioned in sub-clause (iii) of Clause 3 of this Agreement. Such buy back (including payment of consideration for such buy back) shall be completed on or before 30th June 2025, in terms of the agreed schedule of buyback. The total consideration payable by the Sellers to the Purchaser(s) for such buy back shall be Rs. 23,62,11,73,486/- (Rupees Two Thousand Three Hundred Sixty Two Crore Eleven Lakh Seventy Three Thousand Four Hundred Eighty Six Only) plus interest thereon at the rate of 11.62% per annum and such interest shall be payable for the period commencing from the date of the ATS till the date of completion of the buy back by the Sellers ("Buy-Back Consideration"). It is clarified that interest (as part of the Buy-Back Consideration) shall be payable by the Sellers to the Purchaser(s) only for such ATS-Inventories as indicated in Schedule IV hereunder. Upon completion of the buy back by the Sellers from the Purchaser(s) of all the ATS-Inventories, the ATS shall stand cancelled and the Purchaser(s) shall issue requisite documents within 15(Fifteen) days of receipt of the Buy-Back Consideration from the Sellers for cancellation of the relevant ATS or release of the relevant ATS-Inventories (for which the Buy-Back Consideration is received by the Purchaser(s) in terms of this Agreement). Failure to complete the buy-back of the ATS-Inventories as aforesaid will be a clear breach of the terms of this Agreement and further, such breach does not absolve the Sellers of its/their obligations/undertaking to buy back the ATS from Commercial Credit Ltd.
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(iii) The Sellers shall not be required to buy back the ATS-Inventories as aforesaid ONLY when the following are complied with by the Sellers: Signatory

ed Signatory
Next Pvt. Ltd

nsed Signatory

all permissions, occupation/completion certificates, regularisations and/or sanctions are obtained by the Sellers (at its/their cost) (including achievement/completion of the milestones mentioned in Schedule III hereunder by the Sellers) on or before the dates mentioned in Schedule III hereunder to make the ATS-Inventories marketable/salable/fit for occupation. The Sellers shall forthwith i.e. within four days of intimation from the Purchaser(s) under the ATS, execute and register the sale deed(s) for sale/transfer (free from encumbrance) of the ATS-Inventories in favour of such Purchaser(s) and/or any nominee(s)/assignee(s)/transferee(s) of such Purchaser(s). The balance sale consideration payable to the Sellers by the Purchaser(s) and/or any nominee(s)/assignee(s)/transferee(s) of such Purchaser(s) at the time of execution and simultaneous registration of the sale deed(s) shall be the balance sale consideration (as per the respective ATS) minus/less interest at the rate of 11.62% per annum calculated on the amount(s)/advance paid towards the sale consideration by the Purchaser(s) under the respective ATS (details/break-up of such amounts/advance paid by the Purchaser(s) under the ATS are more particularly mentioned in Schedule II hereunder), from the date of the ATS till the date of execution and

Signatory simultaneous registration of the sale deed(s) in favour of such Purchaser(s) and/or any nominee(s)/assignee(s)/transferee(s) of such Purchaser(s).

(iv) Upon intimation from the Lender(s)/Purchaser(s), the Sellers under the ATS shall forthwith, within 7 (seven) days of receipt of such intimation from the Lender(s)/Purchaser(s), create mortgage/encumbrance over the ATS-Inventories (including encumbrance on the receivable from such ATS-Inventories) in favour of/for the benefit of the lender(s)/creditor(s)/debenture holders/trustee of the Lender(s)/Purchaser(s) or any other person/entity to whom the rights under the ATS may be transferred/assigned by the Lender(s)/Purchaser(s). The Sellers shall also forthwith execute requisite documents as mortgagor(s) in connection with such mortgage/encumbrance. This sub-clause (iv) shall not absolve/affect the buy-back obligations of the Sellers as mentioned in sub-clause (ii) of Clause 3 of this Agreement. Further, upon buy back of ATS- Inventories by the Sellers, the Lender(s)/Purchaser(s) shall ensure that such lender(s)/creditor(s)/debenture holders/trustee of the Lender(s)/Purchaser(s) shall release their mortgage/encumbrance within 7 (seven) days of such buy back by the Sellers.

(v) Until such buy back is completed by the Sellers as aforesaid, the Sellers shall not in any manner, directly or indirectly, deal with the ATS-Inventories (with respect to which buy-back has not been completed in terms of sub-clause (ii) above) without prior written approval of the Lender(s).

(5) In case of breach of any of the terms of this Agreement by the Borrower(s) and/or the Sellers, then, without prejudice to the rights and remedies of the Lender(s) and/or the Purchaser(s) in terms of this Agreement, the Loan Documents and the ATS (including the right to enforce/invoke/sell/transfer the securities and the guarantees by the Lender(s) and/or the Purchaser(s) in terms of this Agreement, the Loan Documents and the ATS) and in addition to any other obligations of the Borrower(s) and/or the Sellers as per the terms of this Agreement, the Borrower(s) and/or the Sellers undertake to, shall be liable to forthwith pay within 7(Seven)days of such breach by the Borrower(s) and/or the Sellers to, the Lender(s) the revised settlement amount of Rs. 520,34,74,688/- (Rupees Five Hundred Twenty Crore Thirty Four Lakh Seventy Four Thousand Six Hundred Eighty Eight only) (instead of the Said Amount mentioned in sub-clause (i) of Clause 3 of this Agreement) along with interest thereon at the rate of 11.62% per annum and such interest shall be payable with effect from 1-02-2023 till the payment of all such amounts by the Borrower(s) and/or the



d Signatory Sellers	Further, notwithstanding anything to the contrary contained in this Agreement and without prejudice to the obligations of the Borrower(s) and/or the Sellers under this Agreement, in case of any breach of the terms of this Agreement by the Borrower(s) and/or the Sellers, the Lender(s) and/or the Purchaser(s) shall have absolute right at its/their sole discretion to (a) take any action as it/they deems fit including action/proceedings for specific performance and/or (b) enforce/invoke/sell/transfer the securities and the guarantees, in order to recover all amounts payable by the Borrower(s) and/or the Sellers to the Lender(s) and/or the Purchaser(s) in terms of this Agreement including the right of the Purchaser(s) to sell/transfer the ATS-Inventories.
(11)	Except as specifically mentioned herein above, all other terms and conditions of the Loan Documents and/or the ATS will continue to subsist and be binding on the respective parties to such documents.

- ix.** A plain reading of the aforesaid clauses demonstrates that the Settlement Agreement cannot be construed in isolation from the original financing documents. Rather, it is an arrangement entered into between the parties with the objective of restructuring the manner in which the outstanding liabilities were to be discharged. The concessions granted thereunder were expressly made conditional upon due performance of the obligations undertaken by the Vatika Group.
- x.** The Agreement itself contemplates the consequences that would ensue upon non-compliance with its terms. The clauses dealing with default and termination indicate that the parties consciously agreed that failure to comply with the obligations under the Settlement Agreement would entitle the lender to invoke the remedies preserved under the original financing documents. Thus, the Settlement Agreement does not evidence an unconditional substitution of the earlier contracts but merely regulates the manner in which the pre-existing liabilities could be discharged.
- xi.** The contention of the Corporate Debtor that the Settlement Agreement completely extinguished the original financial debt is, prima facie,



inconsistent with the contractual framework itself. Had the parties intended to substitute the original loan agreements in their entirety, there would have been no occasion to incorporate specific provisions preserving the lender's rights upon breach or providing for the consequences of termination. The existence of such clauses clearly indicates that the original liabilities continued to subsist, albeit their enforcement remained conditional upon the occurrence of the contingencies stipulated in the Settlement Agreement.

- xii.** The Corporate Debtor has placed considerable emphasis upon the submission that the outstanding loan was converted into ATS transactions with corresponding buy-back rights, thereby changing the character of the transaction from a financial arrangement to a property transaction. This submission, however, does not commend acceptance at this stage.
- xiii.** The ATS mechanism appears to have been incorporated as one of the commercial modalities adopted by the parties to facilitate recovery and settlement of the outstanding dues. The mere incorporation of Agreements to Sell, coupled with contractual buy-back rights, cannot by itself lead to the conclusion that the underlying financial debt ceased to exist. The ATS transactions were integrally connected with the settlement of the outstanding financial liabilities and formed part of the larger restructuring arrangement. The source of the obligations continued to remain the financial facilities originally extended by the lender.



- xiv.** It is also pertinent to note that the Settlement Agreement itself records the existing liabilities arising from the original loan transactions and prescribes the manner in which those liabilities were to be resolved. The ATS mechanism was therefore ancillary to the settlement process and not an independent commercial transaction disconnected from the underlying financial debt.
- xv.** Equally untenable is the submission that payment of Rs. 77.03 crore ipso facto resulted in complete discharge of all liabilities. Whether such payment constituted complete satisfaction of the obligations necessarily depends upon the terms of the Settlement Agreement itself and the extent to which the obligations undertaken thereunder stood performed.
- xvi.** As noticed above, the Agreement expressly preserves the lender's rights in the event of default and provides for revival of the original contractual remedies.
- xvii.** This Adjudicating Authority is therefore unable to accept the broad proposition canvassed by the Corporate Debtor that the Settlement Agreement completely extinguished the original financial debt and converted the relationship exclusively into one arising out of property transactions. Such an interpretation would render the clauses preserving the lender's remedies upon breach otiose and defeat the evident commercial intention of the parties reflected in the Settlement Agreement itself.



xviii. Accordingly, this Adjudicating Authority is of the considered view that the Settlement Agreement constituted a conditional restructuring arrangement and not an unconditional novation resulting in extinction of the original financial debt. The rights flowing from the original financing documents continued to subsist, subject to the performance of the obligations stipulated under the Settlement Agreement and the consequences contractually agreed upon in the event of breach.

xix. The submission of the Corporate Debtor that the Settlement Agreement was incapable of termination is essentially a question concerning interpretation and enforceability of the contractual terms. Such issues are undoubtedly matters falling within the domain of the arbitral proceedings. However, the pendency of arbitration cannot denude this Adjudicating Authority of its jurisdiction under Section 7 where the contractual documents themselves contemplate revival of the original liability upon breach and the Applicant asserts that such contingency has arisen. Reliance in this regard is placed on ***Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund (2021) ibclaw.in 52 SC.***

xx. The enquiry under Section 7 is confined to examining whether the material placed on record prima facie establishes the existence of a financial debt and the occurrence of default. Questions concerning wrongful termination, damages or specific performance are matters appropriately left to the jurisdiction of the Ld. Arbitral Tribunal.



- xxi.** The Corporate Debtor has further argued that payment of Rs. 77.03 crore resulted in complete discharge of the financial obligations and, therefore, no debt survives. This submission, in the considered view of this Adjudicating Authority, cannot be accepted.
- xxii.** The concessions granted by the lender were conditional upon complete compliance with the obligations forming part of the settlement framework. Therefore, mere payment of the revised financial amount cannot, by itself, establish complete discharge if the other essential obligations, which formed the basis of the settlement, remained unfulfilled.
- xxiii.** The Corporate Debtor has repeatedly contended that the disputes essentially arise out of the Agreements to Sell and the corresponding buy-back rights and, therefore, the Applicant ought to pursue its remedies in respect of the property transactions rather than invoking the provisions of the Code. This submission does not merit acceptance. Merely because the contractual framework provides multiple remedies to the lender does not imply that invocation of one remedy excludes recourse to another, unless such exclusion is expressly stipulated in the contract or under the governing statute.
- xxiv.** A perusal of the Settlement Agreement indicates that the ATS transactions and the corresponding buy-back rights were incorporated as one of the commercial mechanisms devised by the parties for settlement of the outstanding financial liabilities. The genesis of the relationship between the parties, however, continued to remain the



financial facilities originally extended by the lender. The incorporation of ATS transactions as part of the settlement mechanism did not alter the underlying character of the transaction nor did it, by itself, extinguish the financial debt, particularly when the Settlement Agreement itself contemplated the consequences of default and preserved the lender's rights upon breach.

xxv. The mere availability of a contractual remedy does not denude a Financial Creditor of its statutory right to invoke the provisions of Section 7 of the Code, provided the existence of a financial debt and occurrence of default are established. The Code creates an independent statutory remedy, distinct from remedies available under contract or general law.

xxvi. Accordingly, this Adjudicating Authority is of the considered view that the ATS transactions, the contractual buy-back rights and the pending arbitral proceedings do not render the present application non-maintainable. These issues may have a bearing upon the contractual rights and obligations of the parties, but they do not negate the existence of the underlying financial debt nor do they preclude the Applicant from invoking the independent statutory remedy available under the Code. The Applicant was, therefore, well within its rights to institute the present proceedings under Section 7, and such invocation cannot be regarded as forum shopping merely because parallel contractual remedies are also available or are being pursued before the competent forum.



xxvii. The Corporate Debtor has contended that the Applicant has failed to establish disbursement of the financial debt, as the bank statement relied upon evidences disbursement in favour of Vatika Limited and not the Corporate Debtor. It is further argued that no independent liability survives against the Corporate Debtor, the liabilities having been consolidated at the group level under the Settlement Agreement.

xxviii. This contention is liable to be rejected. The material placed on record demonstrates that the present Application is not founded merely upon the bank statement evidencing disbursement but upon the entire chain of contractual documents executed between the parties, including the original financing documents, the One-Time Settlement, the Settlement Agreement dated 29.03.2023, the subsequent Addendums, and the Assignment Deed in favour of the Applicant. The Corporate Debtor was admittedly a party to the Settlement Agreement and the subsequent Addendums, wherein the outstanding liabilities and the manner of their settlement were expressly acknowledged.

xxix. The contention that the liabilities stood consolidated at the group level also does not advance the case of the Corporate Debtor. Merely because the parties adopted a consolidated mechanism for settlement of the liabilities of various group entities does not result in extinguishment of the liability of each constituent entity, particularly where the contractual documents do not evidence any release or discharge of such liability. The Settlement Agreement merely prescribed a



consolidated mode of performance and did not absolve the Corporate Debtor of its obligations arising from the original financial transactions.

xxx. The argument that the Applicant, being an assignee, cannot assert rights superior to those of the assignor is unexceptionable as a proposition of law. However, in the facts of the present case, the Applicant does not claim any independent or superior rights. It merely seeks to enforce the rights validly assigned to it under the Assignment Deed. Once the assignment is not shown to be invalid or contrary to law, the Applicant is entitled to exercise all rights vested in the assignor, including the right to invoke the remedies available under the Code.

xxxi. The objection raised under Section 65 of the Code is equally devoid of merit. Apart from making a bald allegation that the present proceedings are malicious and intended to exert pressure upon the Corporate Debtor, no material has been placed on record to establish that the present Application has been initiated fraudulently or with any purpose other than resolution of insolvency. There has to be explicit documentary proof of fraudulent or malicious intent to attract the provision of Section 65 of the Code as held in ***Monotrone Leasing Pvt. Ltd. Vs. PM Cold Storage Pvt. Ltd., [2020] ibclaw.in 21 NCLAT***. Mere pendency of arbitration or availability of contractual remedies cannot, in the absence of cogent material, lead us to an inference that the proceedings under Section 7 have been initiated maliciously or constitute an abuse of the process of law.



xxxii. In the wake of the foregoing discussion, this Adjudicating Authority is satisfied that the Applicant has successfully established the existence of a financial debt and the occurrence of default as provided in Section 5(8) and 3(12) of the Code respectively. The objections raised by the Corporate Debtor regarding maintainability, pending arbitration, alleged discharge of liability, ATS transactions, buy-back rights, assignment, collective liability and Section 65 of the Code do not merit acceptance and are accordingly rejected.

xxxiii. In view of the above, the Adjudicating Authority is of the considered view that the present Application satisfies the requirements of Section 7(5)(a) of the Code and therefore it hereby ordered that:

- a.** The application bearing **CP (IB) No. 207/ND/2026** filed by, Omkara Asset Reconstruction Private Limited, the Financial Creditor, under Section 7 of the Code for initiating CIRP against ESPO Developers Private Limited, the Corporate Debtor, is hereby **admitted**.
- b.** The Applicant in Part-III of the application has proposed the name of **Mr. Ashok Mittal** having Registration Number IBBI/IPA-001/IP-P-02549/2021-2022/13889. Accordingly, this Adjudicating Authority hereby appoints him as the Interim Resolution Professional of the Corporate Debtor. The details of the IRP are as follows:

Name - Mr. Ashok Mittal

Registration No. - IBBI/IPA-001/IP-P-02549/2021-2022/13889

Email - ashokmittal2020@gmail.com



Address- S-138, B Wing, Express Zone Mall, Western Express Highway
Goregaon East, Mumbai Suburban ,Maharashtra ,400063

- c.** The IRP so appointed shall file consent in Form-2, valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within three working days (3) of pronouncement of this order.
- d.** We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely, to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount, however, be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Financial Creditor.
- e.** 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:

 - i.** *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;*



- ii. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- iii. 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;*
- iv. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.*
- v. 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.*
- f.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the



surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3)(b) of the Code.

- g.** The Interim Resolution Professional shall perform all the functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the ‘Corporate Debtor’.
- h.** 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 Tribunal with a prayer for passing an appropriate order.
- i.** The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the ‘Corporate Debtor’ as a part of its obligation imposed by Section 20 of the Code and perform all her functions strictly in accordance with the provisions of the Code, Rules and Regulations.



j. The Registry is hereby directed to communicate a copy of the order to the FC, the Corporate Debtor, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today, and upload the same on website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the status of the Corporate Debtor, and specific mention regarding admission of this petition must be notified.

xxxiv. Accordingly, the instant application filed under section 7 of the Code, 2016 bearing **CP IB 207 (ND) 2026** stands **admitted**.

Sd/-
(ATUL CHATURVEDI)
MEMBER(T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)