



NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT VI
SPECIAL BENCH

Item No. 01.

IA(I.B.C)/911(MB)2022 IN C.P. (IB)/102(MB)2022

CORAM

SHRI SANJIV DUTT
HON'BLE MEMBER (TECHNICAL)

SHRI K. R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED 30.05.2025

NAME OF THE PARTIES : **Moniveda Consultants LLP**

In The Matter Of

Vijaypath Management Pvt Ltd
VS

JLS Realty Private Limited

For FC : Adv. Ashta Ojah

For CD : Absent.

IBC under Sec. 7

ORDER

IA(I.B.C)/911(MB)2022 IN C.P. (IB)/102(MB)2022

1. Pronounced in the open court *vide* separate Order. The above **IA(I.B.C)/911(MB)2022** is dismissed and **C.P. (IB)/102(MB)2022** is **admitted Mr. Ashok Kumar Agrawal** appointed as IRP. Order will be uploaded today.

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

//SKS//

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI
CP (IB) No.102/MB/2022 WITH IA No.911/2022

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

IN THE MATTER OF:

1. MONIVEDA CONSULTANTS LLP & ANR.

[Formerly known as Gauri Rajeshwari Consultants Pvt. Ltd]
38, Pali Village, Bandra West
Mumbai - 400050, Maharashtra.

2. RAJAT JHUNJHUNWALA

[Designated Partner of Applicant No.1 and Director of Corporate Debtor]
1st Floor, Natasha Seaview,
Carter Road, Bandra (West)
Mumbai- 400050, Maharashtra.

...Applicants/Intervenors

WITH

VIJAYPATH MANAGEMENT PRIVATE LIMITED

[CIN-U51109WB1996PTC077629]
Unit No.2-C, Trinity Building 2261/1
A.J.C. Bose Road
Kolkata – 700020, West Bengal.

...Financial Creditor

V/s.

JLS REALTY PRIVATE LIMITED

[CIN: U45400MH2008PTC179591]
Duru house, 2nd Floor
Juhu Tara Road
Mumbai- 400049, Maharashtra.

...Corporate Debtor

Pronounced: 30.05.2025

**CORAM:****HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)****HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)****Appearances: Hybrid**

Financial Creditor: Adv. Rohit M Gupta i/b S.K Singhi & Partners, LLP
a/w Adv. Chandresh Rao

Corporate Debtor: Adv. Ryan Dsouza, Adv. Jash Shah i/b DSK Legal

Applicants/Intervenors: Adv. Anurag Singh, Adv. Maithli Parekh, Adv. Sanat
Garg, Adv.Zain Khan.

ORDER***[PER: SANJIV DUTT, MEMBER (TECHNICAL)]*****1. BACKGROUND**

- 1.1 This is an Application bearing C.P. (IB) No. 102/MB/2022 (Main Application) filed by Vijaypath Management Private Limited, the Financial Creditor on 16.12.2021 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 through Mr. Namit Jain, duly authorised *vide* Board Resolution dated 12.08.2021 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of JLS Realty Private Limited, the Corporate Debtor.
- 1.2 The Corporate Debtor approached the Financial Creditor to provide financial assistance. The Financial Creditor sanctioned two credit facilities *vide* its disbursement letter dated 04.04.2013 for an amount of Rs.35,00,000/- (Thirty-Five Lakh Rupees) and another disbursement letter dated 29.10.2013 for an



amount of Rs.65,00,000/- (Sixty-Five Lakh Rupees), both for a period of 120 days. Both the credit facilities were merged and the interest was charged on the whole sum of Rs.1,00,00,000 (One Crore Rupees) @ 12% p.a. The credit facilities were renewed from time to time and the same was accepted by the Corporate Debtor. Interest on loan amount was changed from 12% p.a. to 16% p.a. *vide* letter dated 19.12.2016 and the Corporate Debtor acknowledged the same.

- 1.3 The facility was last renewed on 01.01.2021 and the Corporate Debtor issued post-dated cheques (PDCs) in favour of the Financial Creditor with the understanding that the loan would be repaid on the due date. However, the Corporate Debtor failed to repay the debt. The cheque bearing No. 001523 dated 01.01.2021 drawn on Bank of Baroda, Mumbai for an amount of Rs.1,00,00,000/- was presented to Kotak Mahindra Bank, Sarat Bose Road, Kolkata Branch, Kolkata on 26.03.2021 for encashment. The said cheque was, however, returned dishonored by the Bank of Baroda with the endorsement 'Funds Insufficient'.
- 1.4 Since the Corporate Debtor failed to repay the outstanding debt, the Financial Creditor has preferred the present Application seeking initiation of CIRP in respect of the Corporate Debtor.

2. AVERMENTS OF FINANCIAL CREDITOR

- 2.1 As stated above, the Corporate Debtor was sanctioned two credit facilities by the Financial Creditor for an amount of Rs.35,00,000/- *vide* disbursement letter dated 04.04.2013 and Rs.65,00,000/- *vide* disbursement letter dated on 29.10.2013 for a period of 120 days at the interest rate of 12% p.a. As against the loan granted, the Corporate Debtor had drawn Demand Promissory Notes in favour of the



Financial Creditor along with PDCs for the principal and interest amount separately and Letter of Undertaking for PDCs.

- 2.2 The financial assistance was later clubbed w.e.f. 14.04.2014 *vide* renewal letter dated 13.04.2014 and the total amount of debt after renewal stood at Rs.1,00,00,000/- (One Crore Rupees) for 120 days with 12% p.a. rate of interest.
- 2.3 The credit facilities were thereafter renewed from time to time and the same was accepted by the Corporate Debtor by issuing PDCs and interest for the same was received by the Financial Creditor. The rate of interest was enhanced from 12% p.a. to 16% p.a. by renewal letter dated 19.12.2016 and the same was acknowledged by the Corporate Debtor.
- 2.4 Further, the credit facilities were again renewed from 20.12.2016 to 31.03.2020 and the interest on the same was also received. However, from 01.04.2020, the Corporate Debtor deliberately neglected in paying the interest amount. On the request and assurance of the Corporate Debtor, the Financial Creditor last renewed the credit facility on 01.01.2021 with the understanding that the outstanding loan amount would be repaid on the due date.
- 2.5 However, the Corporate Debtor failed to honour its payment obligation to the Financial Creditor. The conduct of the account was not satisfactory and pursuant to this, the Financial Creditor presented the Cheque bearing No.001523 dated 01.01.2021 drawn on Bank of Baroda in favour of the Financial Creditor for an amount of Rs.1,00,00,000/- to its banker, namely, Kotak Mahindra Bank, Sarat Bose Road, Kolkata Branch, Kolkata on 26.03.2021 for encashment. On 29.03.2021, the said cheque was dishonored with the endorsement "insufficient funds". That is why the date of dishonor of cheque, i.e., 29.03.2021 has been specified as the date of default in Part-IV of the Application. The total amount in



default is claimed at Rs.1,25,38,082/- including interest of Rs.25,38,082/- up to 31.10.2021.

- 2.6 Pursuant to bouncing of the cheque, the Financial Creditor issued a notice under Section 138(b) of the Negotiable Instruments Act, 1881 (N.I. Act) on 24.04.2021 and the same was acknowledged by the Corporate Debtor. The Financial Creditor then filed an application under Section 138 of the N.I. Act with the Court of Chief Judicial Magistrate at Alipore, Kolkata on 19.07.2021, being Complaint Case No. 1318/2021, which is still pending.
- 2.7 Therefore, in view of the above circumstances, the Financial Creditor has approached this Tribunal seeking initiation of CIRP under Section 7 of the Code against the Corporate Debtor.

3. CONTENTIONS OF CORPORATE DEBTOR

- 3.1 The Corporate Debtor in its Affidavit-in-Reply filed on 18.03.2023, submits that the date of default is taken by the Financial Creditor in Part-IV of the Application as 29.03.2021, the date on which when the cheque issued by the Corporate Debtor in relation to the purported debt was dishonored. It is settled law that the concept of date of default in respect of a financial debt is linked to the understanding of repayment between parties and not linked to the date on which a debt falls due and payable and is unpaid.
- 3.2 The purported loan was extended from time to time and had not become due and payable by the Corporate Debtor. In view of the same, the Corporate Debtor had not committed any default in respect of repayment of the purported loan. The last extension of the loan took place on 01.01.2021 and was available till 31.03.2021. The Financial Creditor called upon the Corporate Debtor to issue fresh post-dated cheque dated 01.04.2021. Therefore, the cheque dated



- 01.01.2021 stood exhausted. The Financial Creditor should not have deposited the said cheque in the bank.
- 3.3 It is clear from the letter dated 01.01.2021 that the purported loan was extended from 01.01.2021 to 31.03.2021. However, the Financial Creditor had stated that the post-dated cheque issued by the Corporate Debtor was deposited with the Financial Creditor's bank on 26.03.2021. Therefore, the Financial Creditor had deposited the post-dated cheque prematurely and had subsequently claimed that the default in respect of the loan occurred on the said date on which the bank dishonored the cheque.
- 3.4 The date of default is a very critical ingredient of the Application under Section 7 of the Code and in view of the above, the Financial Creditor was not able to clearly demonstrate the date of default in respect of the purported loan.
- 3.5 The Main Application is liable to be rejected as the Financial Creditor was guilty of suppressing the facts and had approached this Tribunal with false case and unclean hands. Further, the Main Application proceeded on factually false and legally incorrect basis that the cheque dated 01.01.2021 was given at the time of last renewal for encashment. Since the cheque was deposited prior to the extended date of the debt, no legally enforceable claim can arise therefrom as on 26.03.2021. Therefore, the Main Application ought to be dismissed on this ground alone.
- 3.6 The Corporate Debtor in its Written Submissions contends that it is well settled law that the date of default in respect of a financial debt is determined by the repayment agreement between the parties and not solely on the dishonoring of a cheque issued by the Corporate Debtor. The Corporate Debtor has relied on the order dated 06.10.2021 of this Tribunal in *CP (IB) No.1167 of 2020* in the



matter of *Magnate Industries LLP vs. Safal Developers Private Limited* wherein it observed that in order for a default to occur, the debt has to be due and payable on that given date. Merely because a cheque is dishonoured, it does not imply a default under the provisions of the Code.

- 3.7 The Financial Creditor proceeds on inaccurate facts and incorrect legal premises. It is submitted that the date of default is a very critical ingredient of any application filed under Section 7 of the Code. However, the Financial Creditor had failed to demonstrate the date of default in respect of the purported loan.

4. REJOINDER ON BEHALF OF FINANCIAL CREDITOR

- 4.1 The Financial Creditor *vide* email dated 22.03.2021 had informed the Corporate Debtor that the cheque bearing No.001523 dated 01.01.2021 for the repayment of loan was going to expire and since the Corporate Debtor had failed to submit the PDC dated 01.04.2021, the Financial Creditor had no other option but to deposit the said cheque with the bank. The Financial Debtor had requested the Corporate Debtor to ensure that there were sufficient funds in the account. However, the Corporate Debtor failed to respond to the email dated 22.03.2021.
- 4.2 The Main Application was not filed only on the basis of fact that there was a PDC which had bounced but also on the fact that there was a loan which was due and payable by 01.01.2021. The renewal of the same was granted on 01.01.2021 at the request of the Corporate Debtor. However, the procedure for the purpose of renewal was not complied with by the Corporate Debtor, by issuing a new PDC dated 01.04.2021 to renew the old PDC, so as to complete the process of renewal. Therefore, having failed to provide fresh security, the Corporate Debtor



cannot take advantage of the letter dated 01.01.2021 so as to contend that the repayment date was extended to 31.03.2021.

4.3 It is well-settled that a cheque being a negotiable instrument is only valid for 90 days. The Financial Creditor only had the cheque dated 01.01.2021 which would have expired on 31.03.2021. In these circumstances, the Financial Creditor was left with no other option but to enforce its right by depositing the cheque with the bank. Therefore, the default had occurred on dishonouring of the cheque on 29.03.2021. Had the Financial Creditor waited till 31.03.2021, the cheque dated 01.01.2021 would have become redundant. Therefore, the Corporate Debtor cannot claim that no default was there on the part of the Corporate Debtor on 29.03.2021. There is thus enough evidence on record to prove that the aforesaid date of default is not hypothetical.

4.4 The action of the Corporate Debtor in not providing the security cheques would tantamount to an event of default which would be a continuous one. There has been no dispute on the existence of the debt even assuming whilst denying that date of default was not right. The debt remains under continuous default and is still subsisting as on date. Section 10A suspension period was from 25.03.2020 till 25.03.2021 and the date of default in the main Application as mentioned by the Financial Creditor is 29.03.2021. Therefore, the question of date of default falling in the Section 10A period does not arise as contended by the Corporate Debtor and the Intervenor. The principal amount outstanding/default in the Main Application is Rs.1,00,00,000/- thereby meeting the threshold limit as mandated by the Code. The Main Application thus needs to be allowed.



5. CONTENTIONS OF APPLICANTS/INTERVENORS IN I.A. NO. 911 OF 2022

- 5.1 The Applicant No.1 is a Limited Liability Partnership registered under the provisions of the Limited Liability Partnership Act, 2008 having its office at the address mentioned in the cause title. Applicant No. 2 is a Director of the Corporate Debtor and also Designated Partner of Applicant No.1.
- 5.2 It is submitted that the locus of the Applicant/Intervenor No.1 arises by way of a Share Purchase Agreement (SPA) dated 05.06.2016. The Corporate Debtor is a wholly owned subsidiary of one Shajas Developers Private Limited ("SDPL"). The Applicant No.1 acquired 100% shareholding in SDPL, the parent company of the Corporate Debtor.
- 5.3 In pursuance of the above, Applicant No. 1 holds 40% of the shareholding in SDPL (i.e., 4,000 shares) as it is evident from the Board report of the SDPL and the Independent Auditor's Report. As per the SPA, the Applicant No.2 was to be Director of the Corporate Debtor and on 23.05.2016, the Applicant No.2 was inducted on the Board of Directors of the Corporate Debtor as a 'Promoter Director'.
- 5.4 The Applicants have brought about various proceedings of Oppression and Mismanagement which are pending against (i) Mr. Suketu Shah, ex-Director of the Corporate Debtor; ii) SDPL and iii) Corporate Debtor, who are referred to as "Colluding Parties". The Applicants have also filed criminal complaints whereby they have complained that the Colluding Parties have committed fraud, forgery and criminal conspiracy by trying to illegally remove shareholding of the Applicant No.1 from the SDPL and remove the Applicant No.2 from the Directorship of the



Corporate Debtor mala fide and with the intention to misappropriate the assets of the company by fraudulent means.

5.5 The Financial Creditor did not come to this Tribunal with clean hands and has hidden material information from this Tribunal including that the purported loan is actually a promoter loan in form of an adjustment entry and also that the Financial Creditor was made aware of the Oppression and Mismanagement proceedings by the lawyers of the Applicants. The collusive and fraudulent application brought by the Financial Creditor must be dismissed and, in fact, penalty for initiating a fraudulent and malicious proceeding must be levied. The circumstances that demonstrate that the Main Application is fraudulent and collusive are as follows:

- a. Corporate Debtor is in good financial health with assets over Rs.1000 crore.
- b. Hidden the fact that the Financial Creditor is related party to Suketu Shah and SDPL against whom the NCLT/NCLAT proceedings are ongoing.
- c. Financial Creditor was made aware of other proceedings by the Intervenor.
- d. The timing of filing of the petition is questionable.
- e. Non-appearance by the Corporate Debtor on the first hearing date itself is to be noted.

5.6 The Applicants/Intervenors filed **IA No.911/2022** on 05.04.2022 praying that the Main Application be dismissed in accordance with Section 60(5) of the Code for being malicious and fraudulent and impose suitable penalty upon the Financial Creditor; to pass an order permitting the Applicants to intervene in the Main



Application and accordingly file affidavit in-reply and/or any further pleadings that may be required from time to time and be heard before any orders are passed therein; the Tribunal be pleased to order that pending hearing and final disposal of the present Application, the Company Petition (I.B.) No.102/MB/2022 filed by the Financial Creditor should not be admitted; the Tribunal be pleased to order a forensic investigation into the transaction; the Tribunal be pleased to order that pending such investigation, the Company Petition (I.B.) No.102/MB/2022 should not be admitted; that pending the hearing and final disposal of this present Company Application filed by the Applicants, the proceedings in the Company Petition No. 102/MB/2022 be stayed. The Applicants/Intervenors have also placed on record Written Submissions in support of their case.

- 5.7 A perusal of the Additional Affidavit dated 05.12.2023 filed by the Applicants/Intervenors to bring on record subsequent facts regarding ongoing settlement talks between Financial Creditor and the Applicants/Intervenors reveals that the settlement talks between the Financial Creditor and the Applicants/ Intervenors failed because the latter made an offer of Rs.5 lakhs only against the dues of Rs.1.53 crore owed by the Corporate Debtor to the Financial Creditor.

6. REPLY BY CORPORATE DEBTOR TO I.A. No.911 OF 2022

- 6.1 The Corporate Debtor stated that the Code does not provide for any intervention by a third party even if the person seeking to intervene is a director or shareholder of the corporate debtor. It is contended that the person seeking intervention in present case is a person who is an ex-director of the Corporate Debtor or a person whose shareholding is disputed.



- 6.2 The Corporate Debtor was a 100% subsidiary of SDPL until shares of the Corporate Debtor were transferred in favour of one Academia Proserv Private Limited, who is now 100% shareholder of the Corporate Debtor since May, 2021. The Applicant claims to be 40% shareholder of SDPL and claims that he had acquired the said shares by way of a Securities Purchase Agreement dated 06.05.2016. The Applicant had initiated proceedings under Sections 241-242 of the Companies Act, 2013 alleging oppression and mismanagement in the affairs of SDPL and the Corporate Debtor and the same were pending adjudication before this Tribunal. The Applicant was neither a shareholder nor director of the Corporate Debtor as per the settled law of intervention and, therefore, there was no question of permitting the Applicant to intervene in the main proceedings.
- 6.3 It is also a basic legal principle that a company being a distinct and separate legal entity having its own separate existence independent of its directors and shareholders, the Corporate Debtor is represented by the advocates duly appointed by its authorised officers. The Applicant is not required to represent the company at these proceedings. The Applicant is an ex-director of the Corporate Debtor who was removed from the board of directors owing to several reasons including the fact the Applicant had siphoned off huge sums of money from the Corporate Debtor for which the Corporate Debtor had filed appropriate complaints with various law enforcement agencies.
- 6.4 The Corporate Debtor contends that the Applicant's allegation with respect to the Corporate Debtor colluding with the Financial Creditor in proceedings under the Main Application is wholly incorrect. The acceptance of renewal letters annexed to the Main Application reveals that all the said letters had been signed by the Applicant No.2 and none of the documents annexed to the Main Application had



been signed by the present management of the Corporate Debtor. The allegation with respect to collusion was, therefore, completely false, baseless and without basis.

7. REPLY OF FINANCIAL CREDITOR IN I.A. No.911 OF 2022

- 7.1. The Financial Creditor is a Non-Banking Finance Company registered with the Reserve Bank of India (RBI) since the year 2003 and is engaged in the business of providing financial services. The Financial Creditor in its ordinary course of business had provided financial assistance to the Corporate Debtor in the year 2013 which has been renewed from time to time. It is very clear that the Applicants have filed the present Application only with motive that their *inter se* dispute does not get affected by the application of the moratorium under Section 14 of the Code. The dispute is between the Applicants and the other Colluding Parties as stated in the Application and has no nexus with the Financial Creditor. The Applicants have filed this Application just to delay the admission of the Main Application filed by the Financial Creditor.
- 7.2. The Applicant has alleged that the Main Application is fraudulent and collusive on various grounds without any substantial proof evidencing the same. Just because the Financial Creditor's group company has business dealings with Mr. Suketu Shah, it does not mean that the Financial Creditor is related party to them. All the transactions between the parties were done on an arm's length basis and in the general course of business of the company. The Applicant No.2 has himself signed and acknowledged the renewal of the loan facilities provided by the Financial Creditor to the Corporate Debtor after his appointment as the director and has never objected to the genuineness of the loan being a promoter



contribution on behalf of Mr. Suketu Shah. Further, Applicant No.2 has himself signed and delivered a post-dated cheque dated 01.01.2021, which got dishonored and was returned. It is only after the filing of the Main Application that the Applicants are making baseless allegations of loan amount being promoter contribution.

7.3. It is denied that the Financial Creditor has hidden material information from the Tribunal including that the purported loan is a promoter loan in the form of an adjustment entry just because the Financial Creditor's group company in its ordinary course of business has past dealings with Mr. Suketu Shah. The mere requirement under Section 7 of the Code is debt and default and the same is present in this case.

7.4. The Applicants do not have any locus to file the present IA which needs to be dismissed by this Tribunal. Their intervention cannot be allowed in the Main Application. If the prayers of the Applicants are allowed, then it will defeat the purpose and objective of the Code.

8. ANALYSIS AND FINDINGS

8.1 We have perused the materials available on record and heard Ld. Counsel for the parties in both I.A and the Main Application which are being disposed of by this common order.

8.2 The only issues involved in the matter are (i) whether IA No.911 of 2022 filed by the Applicants/Intervenors is maintainable and (ii) whether there is existence of financial debt and default in repayment thereof by the Corporate Debtor so as to warrant admission of the Main Application.



- 8.3 In the first place, it has to be seen whether an Intervention Application can be maintained during the pendency of a Main Application under Section 7 of the Code at pre-admission stage, without going into merits of the case set up by the Applicants in the Intervention Application. It is observed from the record that IA No.911 of 2022 was filed for intervention of the Applicants and for representing the Corporate Debtor in the Main Application. It is noticed that the Applicants have filed a case of Oppression and Mismanagement in C.P. No.159 of 2021 against the Corporate Debtor which is pending before Court-IV, Mumbai Bench. It is a well-settled law that the intervention of directors or ex-directors/ shareholders is not allowed at the pre-admission stage. The Hon'ble NCLAT in **Vikas Kumar Garg Vs. DMI Finance Pvt. Ltd. and Anr.** [CA (AT)(Ins.) No.113 of 2021] has held that “*no lengthy hearing is warranted at the pre-admission stage nor can the dispute in regard to shareholding or inter se directorial issue be entertained.*” In this regard, a reference can also be made to the law laid by the Hon'ble NCLAT in **Deb Kumar Mujumdar Vs. State Bank of India** [CA (AT) (Ins.) No.44 of 2018] wherein it has been held that at the stage of application filed under Section 7 of the Code, no other person has a right to ask for hearing except the Corporate Debtor. Similarly, in **L&T Infrastructure Finance Company Ltd. Vs. Gwalior Bypass Project Ltd.** [CA (AT) (Ins.) No.676 of 2019], the Hon'ble NCLAT has held that a member/shareholder has no right to intervene to oppose admission of application under Section 7 of the Code.
- 8.4 In light of the law laid down in the afore-cited cases, we are of the considered view that no intervention by directors/ex-directors/shareholders of the corporate debtor is legally permissible at the pre-admission stage. Besides, the Applicants/ Intervenors have failed to substantiate with credible documentary evidence the



claim that the main Application is collusive or fraudulent in nature or that the debt in question was not a financial debt but only promoter contribution. Therefore, we hold that the Intervention Application bearing IA No.911 of 2022 preferred by the Applicants/Intervenors cannot be entertained at this stage and the same is accordingly **dismissed as being non-maintainable**.

- 8.5 It is now proposed to deal with the issue of existence of financial debt and default in repayment thereof. It is noticed that the Financial Creditor has placed on record adequate documentary evidence such as disbursement letters, renewal letters, acceptance letters/undertaking for PDC, statement of account, dishonoured cheque etc. to demonstrate that it had granted a loan amounting to Rs.1,00,00,000/- to the Corporate Debtor *vide* Disbursement Letters dated 04.04.2013 for Rs.35,00,000/- and 29.10.2013 for Rs.65,00,000/- bearing interest @12% per annum which was renewed from time to time upon the Corporate Debtor's request. Copy of Statement of Account of the Financial Creditor for the months of April and October, 2013 annexed to the Main Application shows the disbursement of above amount to the Corporate Debtor. The rate of interest was increased from 12% per annum to 16% per annum *vide* renewal letter dated 19.12.2016 which was acknowledged by the Corporate Debtor. There is no dispute that interest at agreed rate was paid by the Corporate Debtor to the Financial Creditor from time to time and the last payment of interest was made by it on 31.03.2020. All this clearly shows that credit facility of Rs.1,00,00,000/- extended by the Financial Creditor to the Corporate Debtor was in the nature of a 'financial debt' within the meaning of Section 5(8) of the Code which was disbursed against the consideration for the time value of money.



- 8.6 On perusal of the documents annexed to the main Application, it is observed that the Financial Creditor has placed on record its sanction/renewal letters as well as acknowledgement letters/undertaking for deposit of PDC by the Corporate Debtor since April, 2013. The loan amount of Rs.1,00,00,000/- was renewed by the Financial Creditor from time to time and there was acknowledgment by the Corporate Debtor on every occasion.
- 8.7 The last occasion when the loan was renewed was on 01.01.2021 for a period of 90 days from 01.01.2021 to 31.03.2021 for which the Corporate Debtor did not issue a post-dated cheque dated 01.04.2021. Thereafter, an email dated 22.03.2021 was sent to the Corporate Debtor reminding that Cheque No.001517 for Rs.1,00,00,000/- dated 01.01.2021 issued by the Corporate Debtor to the Financial Creditor towards repayment of loan was going to expire; that the cheque being valid for 90 days and the Corporate Debtor having failed to issue a post-dated cheque, the Financial Creditor was left with no option but to deposit the cheque in its bank account and that the Corporate Debtor ought to make sure that sufficient funds were available in its bank account on presentation of the said cheque. However, the Corporate Debtor did not reply to this email. Thereafter, the Financial Creditor deposited the Cheque No.001517 dated 01.01.2021 in its bank account on 26.03.2021 which was dishonored on 29.03.2021 with the endorsement "Funds Insufficient". In these circumstances, no fault can be found with the Operational Creditor treating the date of dishonouring of said cheque as the date of default in Part-IV of the Application.
- 8.8 Since the Corporate Debtor had not provided security cheque/PDC dated 01.04.2021 despite reminder e-mail dated 22.03.2021 sent on behalf of the Financial Creditor, it cannot take the plea that the cheque dated 01.01.2021



presented for encashment on 26.03.2021 was pre-mature or that it should have been presented after 31.03.2021 when the same would have become out of date. Assuming for the sake of argument that the last renewal of debt for a period of 90 days from 01.01.2021 to 31.03.2021 would have fallen due and payable on 01.04.2021 when the same remained unpaid, the default would have occurred on 01.04.2021 instead of 29.03.2021 when the cheque got dishonoured. In that case, the date of default would be determined at 01.04.2021. Hence, the contention raised by the Corporate Debtor with regard to date of default does not help to advance its case and is found to be devoid of merit. We thus find that default in repayment of financial debt owed to the Financial Creditor has been committed by the Corporate Debtor.

8.9 From the above discussion, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (One Crore Rupees) is due and payable by the Corporate Debtor to the Financial Creditor herein which remains unpaid and, hence, the Corporate Debtor has defaulted in payment of financial debt. The total amount claimed to be in default is declared at Rs.1,25,38,082/- by the Financial Creditor in Part-IV of the Main Application including interest of Rs. 25,38,082/-. The Financial Creditor has thus successfully demonstrated and proved the existence of debt and default in this case. This Application is complete in all respects. Therefore, we are of the considered view that the present Application satisfies all the necessary requirements for admission under Section 7 of the Code.

8.10 The Financial Creditor has proposed the name of Mr. Ashok Kumar, a registered Insolvency Professional having Registration Number IBBI/IPA-002/IP-N00626/2018-2019/11898 as the Interim Resolution Professional (IRP) to carry out the functions as mentioned under the Code and has provided his valid AFA



in Form B and also given his declaration in Form 2 dated 15.12.2021 *inter alia*, stating that no disciplinary proceedings are pending against him.

- 8.11 At the persistent request of the Applicants/Intervenors, this Bench vide order dated 27.09.2023 allowed the Applicants/Intervenors, the Financial Creditor and the Corporate Debtor an opportunity to explore the possibility of settlement without prejudice to their rights under the law. However, the settlement talks failed to yield any positive outcome as the Applicants/Intervenors made an offer of Rs.5 lakhs against outstanding dues of Financial Creditor of Rs.1.43 crore which was ridiculously low. This shows that the Applicants/Intervenors had no genuine intention to work out an amicable settlement and instead their real intention was only to delay and drag the current proceedings.

ORDER

In view of aforesaid findings, I.A. No.911 of 2022 is **dismissed** and the main Application bearing C.P. (IB) No.102/MB/2022 filed under Section 7 of the Code by Vijaypath Management Private Limited, the Financial Creditor, for initiating CIRP in respect of JLS Realty Private Limited, the Corporate Debtor, is **admitted**.

We further declare moratorium under Section 14 of the Code with consequential directions as mentioned below:-

1. We prohibit-
 - a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;



- b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
2. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the Code or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.
3. Notwithstanding the above, during the period of moratorium: -
- (a) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (b) That the provisions of sub-section (1) of section 14 of the Code shall not apply to -
 - i. such transactions as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - ii. A surety in a contract of guarantee to a corporate debtor.



4. That the public announcement of the CIRP shall be made in immediately as specified under Section 13 of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
5. That the public announcement of the CIRP shall be made in immediately as specified under Section 13 of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.
6. That this Bench hereby appoints Mr. Ashok Kumar Agarwal, a **registered Insolvency Professional** having Registration Number IBBI/IPA-002/IP-N00626/2018-2019/11898 and e-mail address ashok.agarwal@singhiipsolutions.com having valid Authorisation for Assignment up to 31.12.2025 as the IRP to carry out the functions under the Code.
7. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.
8. That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the Code. The officers and managers of the Corporate Debtor the Corporate Debtor is directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the Code. Coercive steps will follow against them under the provisions of the Code read with Rule 11 of the NCLT Rules for any violation of law.



9. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
10. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Financial Creditor is directed to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Financial Creditor on priority upon the funds available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.
11. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
12. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.
13. The Registry is directed to immediately communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.
14. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

**SANJIV DUTT
MEMBER (TECHNICAL)**

//LRA-Vani//

Sd/-

**K. R. SAJI KUMAR
MEMBER (JUDICIAL)**