



**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, COURT-I, CHANDIGARH**

**IA(IBC)696(CH)2024
IN
CP (IB) No. 248/Chd/Chd/2019
(Admitted)**

**Application under section 60(5) of the
Insolvency and Bankruptcy Code,
2016 read Rule 11 of the National
Company Law Tribunal Rules, 2016**

In the matter of I.A. No. 696 of 2024:

Pardeep Kumar Goel

263, Rani Di Kothi, PWD Rest House
Sangrur 148001

...Applicant

Vs.

Atul Kumar Kinra

Resolution Professional of Chandigarh Overseas Private Limited
#3159, Sector 38D, Chandigarh-160036
Email: irpcopl@gmail.com

...Respondent

In the main matter of:

Kone Elevator India Private Ltd

...Operational Creditor

Vs.

Chandigarh Overseas Private Limited

...Corporate Debtor

Order delivered on: 17.04.2026

**Coram: MR. KHETRABASI BISWAL, MEMBER (JUDICIAL)
MR. SHISHIR AGARWAL, MEMBER (TECHNICAL)**



Present:

For the Applicant: Mr. Aalok Jagga, Advocate
Mr. Sahil Lohan, Advocate
Mr. APS Madaan, Advocate
Mr. Aryaman Jagga, Advocate
Mr. Madhav Singal, Advocate

For the RP/Respondent: Mr. Atul V. Sood, Advocate

PER: SH. KHETRABASI BISWAL, MEMBER (JUDICIAL)
SH. SHISHIR AGARWAL, MEMBER (TECHNICAL)

ORDER

The present Application bearing I.A. No. 696 of 2024 has been filed by **Mr. Pardeep Kumar Goel** (hereinafter referred to as the **Applicant**) against the Resolution Professional of Corporate Debtor i.e Chandigarh Overseas Private Limited (hereinafter referred to as the RP/Respondent) under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **the Code**) read with Rule 11 of the National Company Law Tribunal Rules, 2016 (hereinafter referred to as the **NCLT Rules**) seeking to set aside communication dated 18.10.2023 whereby the Respondent has admitted the claim of the Applicant only to the extent of Rs, 2,00,00,000/- in the category of "Other Creditor (Related Party)" in spite of the fact that applicant submitted his claim Form C dated 14.07.2023 for being considered as financial creditor as the debt in question falls within the definition of financial debt in terms of section 5(8)



of the Code and consequently the applicant is a financial creditor under section 5(7) of the Code.

2. The brief facts of the case in I.A. No. 696 of 2024 is summarized as under:

(a) The Applicant submitted that upon initiating of CIRP against the Chandigarh Overseas Private Limited (hereinafter referred to as the CD), the Applicant submitted a claim of Rs 9,12,04,214/- inclusive of interest. The Breakup of the amount is as follows-

Principal amount of claim	Rs. 2,00,00,000/-
Interest at 18%	Rs. 7,12,04,214/-
Total claim	Rs. 9,12,04,214/-

(b) The Applicant submitted that a Term Sheet dated 05.09.2011 was executed between the Applicant and the CD for the development of the project “Fashion Technology Park” at Sector-90, Mohali which comprised of residential area, commercial area and industrial area. Under the said arrangement, the Applicant agreed to contribute 12% of the total construction cost of the said project, estimated to be Rs. 50 Cr to Rs. 60 Crore, and 12% of the same came to Rs. 6 Cr to Rs. 7.2 Crore. Initially the Applicant advanced ₹2 Crores to the CD (₹1 Crore at the time of execution of the Term Sheet and ₹1 Crore within 30 days thereafter). In consideration thereof, the CD agreed to assign 12% share in the project revenue, thereby demonstrating the time value of money



attached to the investment. Pursuant to the public announcement inviting claims, the Applicant submitted his claim on 14.07.2023 in Form-C for a total amount of ₹9,12,04,214/-, comprising the principal amount of ₹2 Crores along with interest at 18% which is Rs. 7,12,04,214/-. However, the Respondent, vide email dated 18.10.2023, rejected the claim of the Applicant as a Financial Creditor and admitted only ₹2,00,00,000/- under the category of “Other Creditor (Related Party)”, which according to the Applicant is a non-speaking and devoid of any reasons.

© The Applicant relied upon the definitions of “financial debt” and “financial creditor” under section 5(7) and section 5(8) of the Code respectively. The Applicant stated that the transaction between the parties clearly establishes the existence of a financial debt. The CD had approached the Applicant for funds as it lacked sufficient resources to complete the real estate project comprising residential and commercial properties. Under the agreement, the Applicant disbursed an amount equivalent to 12% of the total construction cost, with the understanding that 12% of the receivables from the sale of the constructed properties would be returned to the Applicant upon completion of the project within a stipulated period of 24 months. This arrangement demonstrates that the disbursed amount was intended to increase over time, thereby reflecting the time value of money. The transaction therefore had the commercial effect of borrowing, even though the return was structured as a share in sale proceeds rather than conventional interest. Accordingly, the amount disbursed qualifies as a financial debt, and the



applicant is to be treated as a financial creditor rather than any other category of creditor.

(d) It is submitted that financial debt is not restricted to amounts carrying interest but includes any amount whose value increases with the passage of time, including returns linked to development and sale of property. Therefore, the claim ought to be treated as a financial debt rather than under the category of “other creditor.” The Applicant further submitted that the Term Sheet dated 05.09.2011 continues to remain valid and binding despite the initiation of CIRP on 27.02.2023, and since Respondent has not exercised the powers under Section 20(2)(b) of the Code to modify or amend the contract, the CD remains bound by the terms of the said Term Sheet. Consequently, the Applicant cannot be denied the benefits arising therefrom.

(e) The Applicant further submitted that the Applicant does not fall within any of the conditions prescribed under Section 5(24) and 5(25) of the Code for treating a person as a related party. It is contended that the Respondent cannot go beyond the provisions of the Code to categorize the Applicant as a related party and has done so without assigning any reasons. The Applicant further submitted that the classification of its claim as that of a related party is arbitrary and non-transparent, and that the Respondent cannot reject or categorize claims without proper justification.



3. Reply of the Respondent is as follows:

(a) The Respondent submitted that the Applicant is a suspended director of Future Colonizers and Constructions Private Limited (FCCPL). The FCCPL is a related party of the CD and is also undergoing CIRP. Further, the FCCPL had entered into a Joint Venture Agreement dated 08.01.2013 with the CD for the development of the project. It is also observed that the claim submitted by FCCPL in the CIRP of the Corporate Debtor has already been admitted under the category of "Other Creditors-related party"

(b) The Respondent submitted that the Applicant entered into a Term Sheet ("Agreement") with the CD on 05.09.2011 and subsequently extended till 25.12.2013. The Term sheet signed between the parties dated 05.09.2011 is in the nature of Joint Venture Agreement.

The key features of the Term Sheet are as under:

- (i) The CD is the owner of 13.76 Acres of land situated at village Lakhnor and Sohana, now sector 90, S.A.S. Nagar, Mohali;
- (ii) The Term sheet was made between parties to accomplish the Project "Fashion Technology Park, Mohali;
- (iii) The timeline for construction was 24 months from the date of Term sheet i.e. 05.09.2011;
- (iv) The Applicant agreed to contribute 12% of the total Construction cost.
- (v) The CD & Applicant agreed to share the sale proceeds in the ratio of i.e. 88:12;
- (vi) The CD & Applicant mutually extended the Term Sheet/ Agreement till 25.12.2013.



(vii) Thus, the Applicant & the CD were Joint Venture Partners in the construction, development & sale of the Project Land.

(c) The Respondent relied upon the judgement of **Jagbasera Infratech Pvt. Ltd v. Rawal Variety Construction Ltd (2022) 324 NCLAT, Deccan Charters v. GSEC Monarch and Deccan Aviation Pvt. Ltd. (2024) NCLT Ahmedabad Bench**, and many other judgments wherein it is held that amount invested in joint venture agreement neither falls under the category of “financial debt” nor in the category of “operational debt”.

(d) The Respondent further relied upon the definition of “related party” under sections 5(24) of the Code, Section 2(6) and Section 2(27) of Companies Act, 2013 (hereinafter referred to as the Act). The Respondent further relied upon the judgement of **Revolution Infracom Private Limited Vs. Sandwoods Infratech projects (P) Limited (2022) NCLAT** wherein it is held that joint partners would fall within the category of related party. The Respondent further contended that the Term Sheet signed between Applicant and CD shows that the investment made by the applicant is in the nature of Joint Venture partnership/management for the construction of above mentioned project. In this regard, terms mentioned in Term Sheet would be relevant which are reproduced for ready reference as under:

Clause 4(2): *The Second party will contribute 12% of Rs. 50-60 Crores i.e. Rs. 06-7.2 Crore towards the specific construction.*

Clause 4(3): *- That the second party will pay Rs. 02 (two) crore as follows;*

a) Rs. 01 (one) crore at the time of signing the term sheet or at any time before this date.

b) Rs.01 (one) crore, within thirty days from the date of signing of this Term sheet.



Clause 4(5): - *Second party will be responsible for making concerted efforts to raise funds for the project from Banks/ Financial institutions.*

Clause 5(2): - *Revenue sharing between the two parties will be on 88% first and 12% second party basis.*

Clause 7 Role & Responsibilities of Second Party: - 1) *Second party will raise 07 (seven) crore funds from Banks/financial institutions within 45 days .*

2) *The Second Party will make payments and meet the responsibilities as given here strictly and if there is default of any payment at any stage, this Term Sheet will be treated to have been cancelled and the second party will have no right to approach any court of law or any arbitration process.*

(e) The Respondent further submitted that it is clear from the Term Sheet dated 05.09.2011 that the amount deposited by the Applicant was in the nature of an investment for a Joint Venture in the development of the subject property, with the intention of sharing profit and loss as mutually agreed. Therefore, the Applicant is treated as a related party of the CD. The amount paid was not a debt carrying interest nor a disbursement against consideration for the time value of money, and thus does not have the commercial effect of borrowing.

(f) The Respondent further also submitted that there is no clause in the Termsheet providing for time value of money for the payment made by the Applicant, and the interest @ 18% p.a. claimed by the Applicant is unilateral. The Respondent sought documents for verification of the claim vide email dated 22.07.2023, to which the Applicant replied on 27.07.2023. Thereafter, the Respondent informed the Applicant on 18.10.2023 that the claim of ₹2,00,00,000/- had been placed under “other category (Related Party)” based



on the available documents. The Applicant did not respond to the said communication and instead filed the present application after more than four months.

4. The Applicant has filed the Rejoinder to the reply filed by the Respondent and have also filed the short written submissions which is as follows;

(a) The Applicant challenges the RP's classification of the claim as a "related party" debt. It is contended that Section 5(24)(i) of the Code regarding associate companies is inapplicable because the Applicant is an individual, not a company. Furthermore, the Applicant argues that the RP has misinterpreted Section 5(24)(a); the term "partner" in that provision is used as a statutory alternative to "Director" to address Limited Liability Partnerships, rather than referring to a contractual business partner under a term sheet.

(b) The Applicant further stated that the revenue-sharing provision in the 2011 Term sheet does not disqualify the claim as a financial debt. It is contended that revenue sharing is merely a repayment method where the enhanced returns from project construction constitute the "time value of money". Furthermore, the Applicant asserts that the clause was never operationalized, as the RP has admitted the entire principal amount and has not disputed that the Corporate Debtor failed to repay any funds.

5. The Respondent have filed the Short Written Submissions which are summarized as under:

(a) The Respondent submitted that Pardeep Kumar Goel, the Applicant, is admittedly a suspended director of Future Colonizers & Construction Pvt. Ltd.



(hereinafter referred to as the FCCPL), which in turn is a related party of the CD by virtue of being a joint venture partner and an associated entity of the CD.

(b) The Respondent further submitted that the Applicant claims to have paid ₹2 Crores under a Term Sheet and ₹2.10 Crores under an Agreement to Sell executed with the CD. However, it is contended that subsequently a Joint Venture Agreement dated 08.01.2013 was executed between the CD and FCCPL, under which FCCPL was to bear the construction cost of the project. It is further submitted that as per a receipt dated 28.01.2014 issued and signed by the Applicant, all amounts advanced by FCCPL and its directors to the CD, aggregating to ₹19.17 Crores, were agreed to be treated as contribution towards the said Joint Venture Agreement. According to the Respondent, the amounts of ₹2 Crores and ₹2.10 Crores claimed by the Applicant were also included in the said contribution of ₹19.17 Crores, and therefore no separate debt survives in favour of the Applicant under the Term Sheet or the Agreement to Sell. It is further submitted that the entire amount of ₹19.17 Crores has already been admitted in the CIRP as a claim of FCCPL under the category of “other creditor (related party)”. Since the Applicant is a suspended director of FCCPL and the said amount has already been adjusted as part of FCCPL’s contribution, the Applicant does not have any independent claim against the CD. The Respondent therefore contends that the earlier admission of ₹2 Crores in the name of the Applicant as “other creditor (related party)” was inadvertent and, in fact, the Applicant’s claim stands reduced to **nil**.



Analysis and Findings

6. We have heard the Learned Counsel appearing on behalf of the Applicant as well as Respondent and have perused the relevant material available on record. The Following issue arise for consideration which is as follows:

7. **Whether the amount invested by the Applicant falls within the definition of “Financial Debt” under Section 5(8) of the IBC?**

Upon consideration of the pleadings, documents placed on record and the Term Sheet dated 05.09.2011, following facts emerge. The Term Sheet reflects that an Agreement was entered into by the Applicant and the CD for the development of a project namely “Fashion Technology Park, Mohali”, wherein the CD was the owner of the land and the Applicant agreed to contribute towards the construction cost of the said project. It is observed that the Applicant agreed to contribute 12% of the total construction cost estimated at ₹50–60 Crores and had initially paid a sum of ₹2 Crores, with further obligation to contribute additional funds. The Term Sheet further stipulates that the parties agreed to share the revenue in the ratio of 88% to the CD and 12% to the Applicant. Such stipulation clearly indicates that the returns of the Applicant were dependent upon the success of the project and realization of revenue therefrom, and not on a fixed or assured repayment. It could even result in a loss to the applicant.

The essential requirement for a transaction to qualify as a “financial debt” under Section 5(8) of the IBC is that the amount must be disbursed against the consideration for time value of money. At this juncture, it is appropriate to



reproduce the definition of “Financial Debt” as defined under section 5(8) of the Code which reads as follows;

"financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—

- (a) money borrowed against the payment of interest;*
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d)*
- (e)*
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*

[Explanation.

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h)

(i)

In the present case, there is no clause in the Term Sheet providing for repayment of the principal amount along with interest/profit/gain within a stipulated time. The alleged agreement does not reflect any borrowing arrangement, nor does it create a liability on the Corporate Debtor to repay the amount independent of the project outcome. Further, the claim of interest @18% per annum as raised by the Applicant is not supported by any contractual provision and appears to be unilateral in nature. The structure of the transaction, as evident from the record, is that of an investment in a joint



venture with shared risks and rewards, rather than a disbursal of money for consideration of time value.

It is also seen that the Applicant was obligated to raise further funds for the project and was actively involved in the financial structuring of the project, which is inconsistent with the role of a financial creditor and is more aligned with that of a co-venturer. The arrangement thus reflects a commercial understanding for development and profit sharing, and not a financing transaction. **Reliance is placed on the Judgement of Realpro Realty Solutions Pvt. Ltd. Vs. Shankar Projects & Housing Ltd (2023) 763 NCLAT wherein the Hon'ble NCLAT has held that:**

"16. Undisputedly both parties being partners in developing the subject property together, hence any sum provided by the Appellant tantamount to financing the operations of the joint venture and not a disbursal of loan for the purposes of exclusive utilization by the Respondent for his own requirement. When shared liability for profit is so clearly manifested by the Agreement, it stares in our eyes that both parties are development partners and co-sharers in the development of the subject property. The terms of the Agreement laid the foundations of a legal and binding relationship with mutual financial obligations towards each other. We have no hesitation in coming to the conclusion that the revenue sharing concept is deeply embedded in the Agreement and plays a determinant role in the transactions entered into by both the parties in respect of both the division of costs incurred in the development of the subject property and sharing of profit/loss generated therefrom.

18. Clearly therefore, the present transaction is in the nature of investment for profit and not disbursement for time value of money and hence does not fall within the canvas of financial debt as defined under Section 5(8) of the IBC. The essential elements



of financial debt in the context of IBC consists of disbursal accompanied by consideration for time value of money. The terms and conditions of the Agreement between the Appellant and the Respondent makes it clear that the Appellant was a collaborator and not a financial creditor. There was no disbursement for time value of money by the Appellant within the meaning of Section 5 (8) of IBC. The Adjudicating Authority has correctly adverted to the real nature of the transaction between the parties to hold that the same cannot become the basis of filing a Section 7 application.

20. We concur in the findings of the Adjudicating Authority that the Appellant is not a Financial Creditor in terms of Section 5 (7) of IBC and that there was no financial debt in terms of Section 5 (8) of IBC and hence the application under Section 7 of the IBC could not be entertained

In view of the above, this Tribunal is of the considered opinion that the amount advanced by the Applicant does not satisfy the essential ingredients of Section 5(8) of the Code. Accordingly, the amount invested by the Applicant cannot be construed as “financial debt”, and the Applicant does not qualify as a Financial Creditor under Section 5(7) of the Code.

8. Further, the action of the Resolution Professional classifying the Applicant as a 'related party' is not untenable under the facts of the case. Regarding the initial stand of the RP that the Applicant is an 'associate company' under Section 5(24)(i) of the Code, it is observed that the Applicant is an individual and not a corporate entity and therefore cannot fall within the definition of related Party under section 5(24)(i) of the Code. Furthermore, the RP's reliance on Section 5(24)(a), suggesting that the execution of the term sheet dated 05.09.2011 elevates the Applicant to the status of a 'partner' of the Corporate Debtor is conceptually incorrect. A co-joint reading of Section



5(24)(a) with the definitions of 'corporate person' and 'corporate debtor' under Sections 3(7) and 3(8) of the Code clarifies that the term 'partner' used in Section 5(24)(a) is specifically for Limited Liability Partnerships (LLPs) to which also the Code applies apart from the corporate persons. Where the entity concerned is a Company, the relevant word under Section 5(24)(a) is 'Director,' and where the entity is an LLP, the relevant word is 'partner'. Consequently, an individual's contractual involvement via a term sheet cannot be conflated with the definition of a 'partner' as envisaged under Section 5(24)(a). In view of the above, this Tribunal finds that the Applicant does not satisfy the criteria of a 'related party', and the RP's categorization of the Applicant as related party cannot be sustained.

9. In view of above discussion:

- a) The prayer of the Applicant to classify him as a "Financial Creditor" is not allowed and is hereby dismissed, and
- b) In view of para 8, the Applicant cannot be treated as a 'related party' of the CD.

10. In terms of above directions, **I.A.(IBC) No. 696 of 2024** is **disposed of** .

Sd/-

(SHISHIR AGARWAL)
MEMBER (Technical)

Sd/-

(KHETRABASI BISWAL)
MEMBER (Judicial)
Sudesh