



IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT IV

COMPANY PETITION (IB) 197 (ND) 2025

Order 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:

KOTAK MAHINDRA BANK LIMITED

...Applicant/ Financial Creditor

Versus

ASHIANA FINCAP PRIVATE LIMITED

...Respondent/ Corporate Debtor

Order Pronounced On: 09.09.2025

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,

HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI,

HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Aman Vasisth, Advocate.

For the Respondent : Mr. Rishi Kapoor, Mr. Sumeet Kapoor, Mr. Ashish Gupta, Mr. Pranjal Srivastava, Advocates.



ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. This is an Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("the Code") by Kotak Mahindra Bank Limited ("the Financial Creditor/Applicant") seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Ashiana Fincap Private Limited ("the Corporate Debtor/ Respondent") on the ground that the Corporate Debtor had committed a default in payment of Rs. 9,44,95,594.97/- (Rupees Nine Crore Forty Four Lakh Ninety Five Thousand Five Hundred Ninety Four and Ninety Seven Paise Only), calculated as on 20.02.2025. The default occurred on the date of 10.12.2024.
2. The Corporate Debtor i.e., Ashiana Fincap Private Limited having CIN: U65921DL2004PTC130819 was incorporated on 29.11.2024 under the provisions of the Companies Act, 2013 and is having its registered office situated at 908-910, Pearl Best Heights-II, Netaji Subhash Place, Pitampura, North-West, New Delhi-110034. Since the registered office of the Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of Corporate Debtor under sub-section (1) of Section 60 of the Code.
3. **SUBMISSIONS OF THE APPLICANT/FINANCIAL CREDITOR:**
 - i. The Applicant/ Financial Creditor is a bank within the provisions of Bank Regulations Act, 1949 having its registered office at 27 BKC, C-27, G-Blaock, Bandra Kurla Complex, Bandra East, Mumbai 400051 and branch office at EPICAH MALL, 2nd Floor, 68,68/1, Near Moti Nagar Metro Station, Najafgarh Road Industrial Area, Moti Nagar, New Delhi-110015.
 - ii. The present Application under Section 7 of IBC has been signed, verified and instituted by Mr. Raman Kumar, Associate Vice President who is the Authorized Representative of the Applicant duly authorized by Mr. Ravindra More, Deputy Vice President and as such he is in position to sign, verify and institute the present application on behalf of the Applicant Bank.



- iii.** The Corporate Debtor, as Borrower, along with Mr. Naresh Chand, Puneet Jain, Swati Jain, Uma Jain, Ashiana Ispat Limited, MAG T EXIM Limited, Kamdhenu Steels And Alloys Limited and Naresh Chand HUF, approached the Financial Creditor for Loan Facility and based on request of the Corporate Debtor along with Mr. Naresh Chand, Puneet Jain, Swati Jain, Uma Jain, Ashiana Ispat Limited, MAG T. EXIM Limited, Kamdhenu Steels And Alloys Limited and Naresh Chand HUF, the Financial Creditor issued the Sanction Letter dated 17.05.2024 sanctioning the grant of financial facility Loan Against Property (LAP) for an amount of Rs.11,02,00,000/- to all the borrowers.
- iv.** Pursuant to the issuance of the Sanction Letter dated 17.05.2024, the parties entered into Home Equity Loan Agreement 17.05.2024 and Addendum Agreement dated 17.05.2024, wherein the Corporate Debtor along with Mr. Naresh Chand, Puneet Jain, Swati Jain, Uma Jain, Ashiana Ispat Limited, MAG T EXIM Limited, Kamdhenu Steels And Alloys Limited and Naresh Chand HUF became obliged to abide by the terms and conditions mentioned in Sanction Letter dated 17.05.2024, Home Equity Loan Agreement dated 17.05.2024 and Addendum Agreement dated 17.05.2024.
- v.** Various other instruments were executed between the parties including Undertaking Cum Indemnity for Laminated Documents, Deed of Indemnity executed by Kamdhenu Steels And Alloys Limited and Ashiana Ispat Limited, Board/Resolution in support of the Financial Facilities being availed by the Borrower(s).
- vi.** As per the terms and conditions of Sanction Letter dated 17.05.2024, the financial facility so sanctioned was to be utilized for the purpose of closure of liabilities of Yes Bank with the condition that the property on which security interest is created by Kamdhenu Steel and Alloys Ltd. (Mortgagor) i.e Industrial Property located at A-1117, RIICO Industrial Area, Bhiwadi, Phase III, Rajasthan shall continue to be charged/mortgaged with the Applicant herein.
- vii.** The above loan facility as per Sanction Letter dated 17.05.2024 was Balance Transfer/Takeover from Yes Bank and an amount of Rs. 11,00,00,000/-



(Eleven Crore Only) was paid to the Yes Bank vide cheque no. 337375 dated 18.05.2024 for the closure of existing liabilities of Corporate Debtor along with other Borrowers with respect to Yes Bank bearing loan account no. 034081300000300.

- viii.** As per the mutually agreed terms and conditions after the Balance transfer by the Applicant/Financial Creditor to Yes Bank, the original title deed of the Industrial Property located at A-1117, RIICO Industrial Area, Bhiwadi, Phase Rajasthan which was mortgaged with Yes Bank were to be handed over to the Applicant herein, and there was to be a continuity of charge over Industrial Property located at A-1117, RIICO Industrial Bhiwadi, Phase Area, Rajasthan in favour of the Applicant herein.
- ix.** After making the entire payment of Rs.11,00,00,000/- (Eleven Crore Only) to Yes Bank, the Applicant herein made various follow ups with Borrowers to handover the original title deeds of the mortgaged property, which was earlier mortgaged to Yes Bank. However, neither the Corporate Debtor nor any of the other borrowers came to handover the original title deeds of the mortgaged property to the Applicant herein despite of the fact that there was continuity of charge over the mortgaged property.
- x.** It was a matter of utter shock and dismay that even though there had been continuity of charge over mortgaged property but Kamdhenu Steels and Alloys Limited through Mr. Puneet Jain sold the mortgaged property to M/s JD Infra Estates Pvt. Ltd. for consideration a of Rs.6,35,00,000/- (Rupees Six Crore Thirty Five Lakh Only) vide sale deed registered on 16.07.2024. Moreover, JD Infra Estate Pvt. Ltd. further sold the property to M/s Gracure Pharmaceuticals Pvt. Ltd. vide sale deed registered on 15.10.2024 for a consideration Rs.29,00,00,000/- of (Rupees Twenty Nine Crores Only).
- xi.** Being aggrieved by the above said conduct of the Corporate Debtor along with Mr. Naresh Chand, Puneet Jain, Swati Jain, Uma Jain, Ashiana Ispat Limited, MAG. T EXIM Limited, Kamdhenu Steels And Alloys Limited and Naresh Chand HUF, the Applicant herein was constrained to issue Show Cause notice dated 20.12.2024 to the Corporate Debtor along with Mr. Naresh Chand, Puneet Jain, Swati Jain, Uma Jain, Ashiana Ispat Limited, MAGT



EXIM Limited, Kamdhenu Steels And Alloys Limited and Naresh Chand HUF. However as on date none of them gave any reply to Show Cause notice dated 20.12.2024.

- xii.** A complaint regarding the above mentioned criminal offence being committed by the Borrowers in collusion with the officials of Yes Bank Limited was filed before Commissioner of Police, Commissionerate of Gurugram, Haryana bearing complaint no. 1109/CP/2025 filed on 20.01.2025.
- xiii.** As per the statement of accounts maintained with the Applicant herein, the Corporate Debtor along with Mr. Naresh Chand, Puneet Jain, Swati Jain, Uma Jain, Ashiana Ispat Limited, MAG T EXIM Limited, Kamdhenu Steels And Alloys Limited and Naresh Chand HUF have stopped paying the Equated Monthly Installments i.e. EMI and the same is still unpaid and payable by the Corporate Debtor along with other borrowers.
- xiv.** Since the Corporate Debtor along with Mr. Naresh Chand, Puneet Jain, Swati Jain, Uma Jain, Ashiana Ispat Limited, MAGT EXIM Limited, Kamdhenu Steels And Alloys Limited and Naresh Chand HUF have illegally sold off the property which was supposed to be mortgaged with the Applicant herein and further stopped paying the installments, therefore, the willful default is being committed by the Corporate Debtor along with Mr. Naresh Chand, Puneet Jain, Swati Jain, Uma Jain, Ispat Limited, MAG. T EXIM Limited, Kamdhenu Steels And Alloys Limited and Naresh Chand HUF, just to create a hurdle for the Applicant/Financial Creditor for securing the loan facilities sanctioned by the Applicant.
- xv.** In view of the fraud regarding selling off the mortgaged property and subsequent defaults committed in repayment of monthly instalments by the Corporate Debtor along with Mr. Naresh Chand, Puneet Jain, Swati Jain, Uma Jain, Ashiana Ispat Limited, MAG T EXIM Limited, Kamdhenu Steels And Alloys Limited and Naresh Chand HUF, the Applicant herein was constrained to issue a Loan Recall Notice dated 14.01.2025 to pay the entire outstanding of Rs.9,36,47,638.82/- (Rupees Nine Crore Thirty Six Lakh Forty Seven Thousand Six Hundred Thirty Eight and Eighty Paise Only) as on 14.01.2025.



However, no reply has been made by the Corporate Debtor or any the Borrowers to the Loan Recall Notice dated 14.01.2025.

- xvi.** The Corporate Debtor with intention to wriggle out of its assurances and with a view to cause unlawful gain to itself and unlawful loss to Financial Creditor and moreover to play fraud in order to cheat the Financial Creditor are delaying the payment of the said admitted amount on one pretext or the other.
- xvii.** The default occurred in the present case is also recorded with National E-Governance Services Limited.
- xviii.** In view of the abovementioned facts of fraud, cheating and defaults being committed by Corporate Debtor, the Financial Creditor has sufficient reasons to believe that Corporate Debtor Company has committed a default and is not willing to make the payment of Rs. 9,44,95,594.97/-. Therefore, there is clear default of more than Rs. 1,00,00,000/-giving jurisdiction to this Adjudicating Authority to entertain a Petition under Section 7 of the I&B Code.
- xix.** Non-payment of monthly EMI's makes it amply clear that the Corporate Debtor is commercially insolvent and is unwilling to clear the admitted Financial Debts.
- xx.** To buttress its arguments, the Applicant has relied on the following cases:
- a. State Bank of India Versus Abhijeet Ferrotech Ltd. CA(AT) (Insolvency) No. 690/2023-NCLAT.**
 - b. Innoventive Industries Limited Versus ICICI Bank and Anr. (2018) 1 CC 407.**
 - c. Swiss Ribbons Pvt. Ltd. and Anr. Versus Union of India and Ors. (2019) 4 SCC 17.**
- xxi.** The Applicant has attached the following documents in order to prove the existence of financial debt, the amount due and date of default:
- a. A Copy of the Sanction Letter dated 17.05.2024.
 - b. A Copy of the Loan Agreement dated 17.05.2024.
 - c. A Copy of Addendum Agreement dated 17.05.2024 entered into between the parties.
 - d. A Copy of the various documents executed between the parties in support of the financial facilities being availed by the borrower(s).



- e. Copy of show cause notice dated 20.12.2024 issued by Applicant.
- f. A Copy of Complaint No. 1109/CP/2025 filed before Commissioner of Police, Gurugram.
- g. Copy of Sale deeds with respect to the mortgaged properties along with translated copies.
- h. True copy of Loan Recall Notice dated 14.01.2025 issued by Applicant to the Corporate Debtor along with postal receipts and tracking report.
- i. A copy of the Statement of Accounts maintained by the Financial Creditor.
- j. A copy of the working for computation of default in a tabular form.
- k. A copy of default occurred in the present case has been recorded with National E-governance Services Limited.

xxii. The Applicant has also submitted that the present Application is not a means of recovery and has been systematically filed after the Applicant has been deprived of its legitimate dues (debt) due to Respondent's illicit actions of not making payment of agreed equated monthly installments since December, 2024 and siphoning off of the secured assets.

xxiii. During the course of arguments, the Applicant submitted that the bank has filed recovery proceedings before the Debts Recovery Tribunal, Chandigarh Bench by filing an Original Application No.433 of 2025 for the same debt and the proceeding is pending for recovery of this debt.

4. SUBMISSIONS OF THE RESPONDENT/CORPORATE DEBTOR:

- i.** It is the case of the Respondent that the present Application at the behest of the petitioner/Financial Creditor is a complete misuse of the law as laid down in IBC, 2016 and is an overambitious and overstretched attempt by the petitioner to arm twist the Corporate Debtor to make payment of money which is neither due nor payable by them.
- ii.** The present proceedings have been filed with the sole purpose of recovery of money. The Financial Creditor is misusing the process of this Tribunal to pressurize the CD into making payment for an agreement whose very substratum has been destroyed due to the actions of the FC and Yes Bank, acting in collusion. Therefore, given the delianation of the security asset and



gross misconduct by the FC, the Loan Agreement itself stands vitiated, and cannot be used to initiate CIRP against the CD when the FC's only aim is to recover money.

- iii. Reliance was placed on ***Paramjeet Singh Patheja v ICDS Ltd, (2006) 13 SCC 322, GLAS Trust Company LLC vs. BYJU Raveendran & Ors.; 2024 INSC 811, Swiss Ribbons (P) Ltd. v. Union of India; (2019) 4 SCC 17, "Rita Malhotra vs. Orris Infrastructure Pvt. Ltd. CP(IB)- 234(PB)/2019, Yash Nachrani Director Of Suspended Board Of Directors Coppertun Brewing Private Limited Versus Pardesi Construction Pvt Ltd; Company Appeal (AT)(Insolvency) No. 625 of 2022, (M/s India Design Worx Infrastructure Private Limited V/s M/s Premier Restaurant Private limited), Vidharbha Industries Power Ltd. Vs. Axis Bank Ltd. 2022 SCC OnLine SC 841.***
- iv. The underlying nature of the Financial Facility was destroyed without the consent of Respondent, through fraud and collusion of Yes Bank with 3rd party. The original financial facility was granted to the Ashiana Ispat Limited, with CD as a co-borrower, as a Loan Against Property (LAP) by the Yes Bank Ltd. and the nature and structure of the said loan was such that disbursement of the said loan was made only against creation of collateral security of property asset. Thus, the intrinsic nature of the loan was that of a secured facility, wherein the collateral asset (i.e. the industrial property at Bhiwadi) served as the primary security. However, Yes Bank in collusion with the FC has taken away rights of the CD by handing over the security interest to 3rd party and changing the very nature of Loan agreement without the consent of the CD.
- v. It was submitted that for the borrower, the very purpose of availing the loan as a LAP was to repay the loan and get its property released. The entire structure of the facility in form of Loan against property (LAP) was based on the assurance that upon takeover of the loan, the charge would continue in favour of the new FC, and the title deeds would be secured accordingly. However, in blatant abuse of the understanding and against the interest of the CD, Yes Bank and the Applicant/FC illegally permitted the unauthorized transfer of the collateral property to 3rd party.



- vi.** No effective steps were taken by the FC or Yes Bank to secure the continuity of mortgage in favour of the FC and to the utter shock of the CD, the mortgaged property was sold to third parties by the FC and Yes Bank without any involvement of the CD.
- vii.** It was further submitted that the fundamental nature of the LAP facility has been significantly undermined, rendering the loan agreement ineffective and devoid of any value. Moreover, the CD is now left in a position where the property has been alienated, but its financial liability remains, and no security interest exists with respect to those liabilities due to collusion and willful misconduct of the FC and Yes Bank. Resultantly, the present CIRP application has been preferred by the FC only to create undue pressure on CD and for recovery of the money which is impermissible under the scheme of IBC.
- viii.** Therefore, the very purpose and security interest with respect to the LAP facility no longer exist, and therefore, today, the FC herein cannot claim "default" when the very basis of repayment obligation has been unilaterally and wrongfully frustrated by the FC itself.
- ix.** The present proceedings have been fraudulently initiated by the FC and with malicious intent for purposes of recovering money and not for the resolution of insolvency of the CD herein, therefore the application is liable to be dismissed at its threshold.
- x.** It was also submitted that the Principal Borrower of the debt in question namely 'M/s. Ashiana Ispat Ltd.' is the parent company of Respondent company and have duly repaid an amount of Rs.1,14,58,417/- (Rupees One Crore Fourteen Lakhs Fifty Eight Thousand Four Hundred and Seventeen Only) towards the outstanding installments pursuant to the One-time settlement with the Applicant Bank in the month of May and June 2025. However, the Applicant Bank has failed to honor the said settlement.

5. ANALYSIS AND FINDINGS:

- i.** We have heard the submissions made by the parties and perused the material on record.
- ii.** The present Application has been filed by Kotak Mahindra Bank Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 seeking



initiation of the Corporate Insolvency Resolution Process (CIRP) against Ashiana Fincap Private Limited. The case of the Applicant is that the Corporate Debtor has committed default in repayment of its financial debt amounting to ₹9,44,95,594.97 as on 20.02.2025.

- iii.** The Applicant submits that pursuant to the Sanction Letter dated 17.05.2024, Loan Agreement dated 17.05.2024, and related documents, the Corporate Debtor, along with other co-borrowers, availed financial facilities from the Bank. The Financial Creditor has placed reliance on the Loan Recall Notice dated 14.01.2025 which entitled the Bank to recall the loan. By the said notice, the Financial Creditor demanded payment of the outstanding sum of ₹9,36,47,638.82, but the Corporate Debtor neither replied to the same nor discharged its liability.
- iv.** The Corporate Debtor, on the other hand, disputes the maintainability of the Application by contending that the substratum of the loan transaction was vitiated due to the alleged collusion of the Financial Creditor with Yes Bank in permitting the transfer of the mortgaged property to third parties. It is submitted that the very nature of the Loan Against Property facility has been undermined, as the collateral security no longer subsists, leaving the Corporate Debtor saddled with liability without the protection of the underlying asset.
- v.** It is further submitted that the M/s. Ashiana Ispat Ltd. has already made part-payments of about ₹1.14 crore in May and June 2025, which should be taken as evidence that no default persists. The Corporate Debtor argues that the proceedings are being misused only as a recovery tool.
- vi.** This Adjudicating Authority also observes that the allegations and counter-allegations regarding the sale of the mortgaged property, alleged collusion with Yes Bank, and the validity of the underlying Loan Against Property facility involve disputed questions of fact and allegations of fraud. Such issues cannot be adjudicated in a summary proceeding under Section 7 of the Code. The jurisdiction of this Adjudicating Authority is confined to examining whether there exists a financial debt and a default as on the date of admission.



Any deeper inquiry into the legality of transfer of property or allegations of fraud must necessarily be pursued before the competent forum.

- vii.** The Respondent has also placed on record that pursuant to a one-time settlement with the Applicant Bank, the principal borrower, Ashiana Ispat Limited, deposited a sum of ₹1,14,58,417/- during May and June 2025 towards the outstanding installments. The statement of account corroborates such payments. Therefore, as on the date of admission of the present petition, no subsisting default was established.
- viii.** It is well settled that at the stage of admission under Section 7, this Adjudicating Authority is only to ascertain whether there exists a financial debt and whether default has occurred as laid down in ***Innovative Industries Ltd. v. ICICI Bank (2018) 1 SCC 407.***
- ix.** The judgments relied upon by the Applicant are clearly distinguishable and not applicable in the facts of the present case, where a default is not established.
- x.** This bench has taken on record vide order dated 28.05.2025 that the Applicant bank has filed recovery proceedings before the Debts Recovery Tribunal, Chandigarh Bench by filing an Original Application No.433 of 2025 for the same debt and the proceeding is pending for recovery of this debt. The pendency of parallel proceedings for the same cause of action demonstrates that the Applicant is engaged in forum shopping. The Code does not permit simultaneous pursuit of multiple remedies for recovery of the same dues. Such conduct militates against the scheme and object of the IBC, which is not intended to be invoked as a parallel recovery tool in addition to proceedings already pending before the DRT.
- xi.** It is well settled that the Insolvency and Bankruptcy Code, 2016 is not intended to be a substitute for a recovery forum. The object of the Code is resolution of insolvency of a Corporate Debtor and maximization of the value of its assets, and not to arm-twist a debtor for recovery of dues. It is a settled law that the proceedings under the Code cannot be invoked as a recovery mechanism. In the present case, where the substratum of the contract is



disputed and no default exists, the attempt of the Applicant is nothing but a recovery action, which is impermissible under the scheme of the Code.

xii. In view of the foregoing analysis, this Adjudicating Authority is of the considered view that the present Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 is not maintainable.

xiii. Accordingly, the present Application bearing **CP (IB) 197 ND 2025** is **dismissed**. However, the Applicant is granted liberty to approach the appropriate forum for recovery proceedings in accordance with law.

No order as to costs.

-SD/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

-SD/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (JUDICIAL)