NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI SPECIAL BENCH (COURT-II)
IN
Company Petition No. (IB)-477/ND/2025

IN THE MATTER OF:

(Under Section 7 of IBC, 2016)

M/s Wild Flower Farms and Estate Pvt. Ltd.
Through its director,
G-12a, 1st Floor, Hauz Khas,
New Delhi-110016 **... Applicant/ Financial Creditor**

Versus

Vipul Limited
Through its AR,
Unit No. 201, Malviya Nagar,
New Delhi-110017 **... Respondent/ Corporate Debtor**

Order Delivered on: 17.11.2025

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. RAVINDRA CHATURVEDI, HON'BLE MEMBER (T)

PRESENT:

For the Applicant	:	Adv. Pooja Saigal, Adv. Akshay Srivastava, Adv. Vivek Kumar, Adv. Raveena Pariker for FC
For the Respondent	:	Adv. Sumesh Dhawan, Adv. Vatsala kak, Adv. Shaurya Shyam, Adv. Khyati Khemka

ORDER

PER: SHRI ASHOK KUMAR BHARDWAJ, MEMBER (J)

The captioned petition has been preferred by M/s Wild Flower Farms And Estate Private Limited (hereinafter referred to as FC), under Section 7 of IBC, 2016, espousing therein:-

i. In the year 2007 a company, namely, M/s URR Housing Private Limited (a wholly owned subsidiary of the CD) entered into an Agreement dated 14.01.2007 with Mr. Rohan Gupta, SCJS Infrastructure Limited and Ms. Keshbala Sharma (owners of identified agriculture land measuring 57 Kanal 6 Marla District Gurgaon) through mutual consent and agreement.

ii. In terms of the agreement, it was obligation of URR Housing Private Limited to develop and construct a residential colony/group housing project and/or any other planned project on the said land within 60 months from the date of sanctioning of layout plans by the DTCP, Haryana Chandigarh.

iii. Additionally, the owners undertook to provide all the requisite funds for the acquisition of the said land as URR Housing Private Limited already owned Agricultural Land admeasuring 49 Kanal, 18 Marla situated in the revenue estate of the village Fazilpur Jhasra Tehsil and District Gurgaon.

iv. In the year 2013 i.e. on 07.03.2013, the owners of the land with mutual consent assigned all their rights and obligations arising from Agreement No.1 to the Financial Creditor. It was mutually understood

that all the rights, obligations, benefits, liabilities, entitlements and compliances incumbent upon the owners under the Agreement No.1 with respect to the said land shall stand assigned to the Financial Creditor. The Corporate Debtor acted as a confirming party to the Agreement.

v. As per 2nd Agreement, the Financial Creditor held 4.09% stake in the total land or any other development rights and/or any benefits that may accrue to the total land. However, it came to the knowledge of the Financial Creditor that URR Housing Private Limited entered into negotiations and creation of third-party rights for the major portions of the Said Land without informing or obtaining consent from the Financial Creditor.

vi. Arbitration proceedings with respect to the said land were pursued before the Hon'ble Justice A.K. Sikri, Hon'ble Justice RC Chopra and Hon'ble Justice Reva Khetrapal and the same were determined in terms of the award dated 12.05.2023. In the arbitral proceedings it transpired that material facts like the stakes and the interest of the Financial Creditor in the construction and development of the project were concealed. Keeping in mind the litigation and the order dated 12.05.2023, the Financial Creditor resolved the issue, but over the period of time, URR Housing Private Limited failed to develop a project on the entire land. In pursuit of the same, the Financial Creditor, URR Housing Private Limited and the Corporate Debtor mutually agreed to terminate Agreement No.2 and settle all their accounts including

disputes, the respective rights and obligation as set out in the Agreement No.1 and Agreement No.2.

vii. In furtherance of the mutual understanding between the parties, a Relinquishment Agreement dated 28.02.2024 was executed among the FC, the CD and URR Housing Private Limited. By virtue of the Relinquishment Agreement, the FC irrevocably agreed to relinquish, waive, and surrender all its rights, claims, benefits, and entitlements arising out of or in connection with Agreement No.1 and Agreement No.2 viz. Agreements dated 14.01.2007 and 07.03.2013 in favour of the CD.

viii. In consideration of the aforesaid relinquishment, it was agreed that the Corporate Debtor shall pay to the Financial Creditor a total sum of Rs. 57,44,00,000/- (Rupees Fifty-Seven Crores Forty-Four Lakhs Only), along with an additional amount of Rs. 3,50,00,000/- (Rupees Three Crores Fifty Lakhs Only), together with applicable Tax Deducted at Source. The additional amount pertains to compensation related to the acquisition of land by the Govt. of India and the corresponding land acquisition benefits in respect of the land-owning entities.

ix. The payment in terms of relinquishment agreement was to be made as per the following schedule: -

a. A sum of Rs.5,00,00,000/- (Rupees Five Crores Only) at the time of signing of this Agreement.

b. A sum of Rs. 15,00,00,000/- (Rupees Fifteen Crores Only) within ten days of signing of this Agreement.

c. A sum of Rs. 15,00,00,000/-(Rupees Fifteen Crores Only) by 30.04.2024

d. Balance payment of Rs.18,94,00,000/- (Rupees Eighteen Crore Ninety-Four Lakhs Only) not later than 30.05.2024.

x. It was mutually agreed between the FC and CD that the balance payment of the consideration was to be made on or before 31.05.2024. However, the CD only made a payment of Rs. 19,80,00,000/- as on 31.03.2024 and issue cheques for Rs. 4,95,00,000/- (Three Cheques), 5,94,00,000/- (Two Cheques) and 6,83,56,000/-(Initial Cheque).

xi. On being represented for payment all the cheques were dishonoured. Thus, the FC approached the CD through various modes to seek clarification regarding the payment to be made by the CD. It also issued a legal notice dated 02.08.2024 seeking explanation with respect to the payment. Nevertheless, the CD did not give any response.

xii. As the cheques were dishonoured, the FC initiated legal proceedings against the CD under Section 138 of the Negotiable Instruments Act, 1881, before the Ld. Judicial Magistrate First Class, Panipat, District Court, Haryana. Subsequent thereto, the CD approached the FC with a view to amicably resolve the dispute and misunderstandings between the parties. Accordingly, a settlement was entered into by way of First Addendum to the Relinquishment Agreement, dated 09.01.2025 between the FC, URR Housing Private Limited and CD.

xiii. As a result of Addendum the CD made following payments to the FC:-

a. Rs. 1,00,00,000/- (Rupees One Crore Only) on 24.09.2024,

b. Rs. 1,00,00,000/- (Rupees One Crore Only) on 03.10.2024,

c. Rs. 1,00,00,000/- (Rupees One Crore Only) on 09.10.2024, and

d. Rs. 8,00,00,000/- (Rupees Eight Crores Only) on 09.01.2025

xiv. The CD further agreed to discharge the remaining outstanding liability of Rs. 22,60,06,000/- (Rupees Twenty-Two Crore Sixty Lakhs Six Thousand Only) on or before 31.03.2025. Resultantly, following cheques were issued in favour of the FC:-

Cheque No.	Drawn On	Date	Amount
002644	RBL Bank Limited	31.03.2025	Rs. 5,00,00,000/-
002645	RBL Bank Limited	31.03.2025	Rs. 5,00,00,000/-
002646	RBL Bank Limited	31.03.2025	Rs. 5,00,00,000/-
002647	RBL Bank Limited	31.03.2025	Rs. 2,60,06,000/-
002648	RBL Bank Limited	31.03.2025	Rs. 5,00,00,000/-

xv. The CD also undertook to deposit an amount of Rs. 53,94,000/- on behalf of the FC as TDS and to provide proof of such deposit on or before 15.06.2025. However, as on date, the amount is not reflected on TDS portal.

xvi. Furthermore, in terms of Clause 2.1 and 2.2(f) of the Agreement, it was agreed that in the event of any default or delay in making the payments therein, an interest at the rate of 12% per annum, compounded quarterly, shall be applicable on the delayed amount for the period of delay.

xvii. On presentation of cheques subsequently on 31.03.2025 in the bank for encashment, the same were dishonoured and were returned in

terms of Return Memo dated 31.03.2025, for want of sufficient funds. The CD sought additional period of sixty days to make the payment. However, on being presented for payment, the cheques were dishonoured again on 04.06.2025.

2. In the wake of the aforementioned, the CD has initiated the present proceedings.

3. In the reply filed on its behalf, the CD has espoused thus:-

a. In terms of Registration Act, 1908, the registration of certain documents is mandatory and in the absence of registration, the documents do not have any binding effect. In terms of the provisions of Section 17 of Registration Act, 1908, the documents defined in clauses (a) to (e) thereof require compulsory registration, thus sale of immovable property of the value of Rs. 100/- or more required mandatory registration. Reliance is placed on the judgment of Hon'ble Supreme Court in the matter of **Mahnoor Fatima lmran & Others v. State of Telangana & Others** [SLP (Civil) No. 1866 of 2024], wherein it could be viewed that no document required by Section 17 of Registration Act to be registered shall affect any immovable property comprised therein or received as evidence of any transaction affecting such property, unless it has been registered.

b. The Agreement in question being not registered is not valid, thus does not bind any of the parties. In the absence of registration of agreement, no ownership could be claimed by the Petitioner.

c. In terms of the judgment of Hon'ble Supreme Court in **Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana** (2012) 1 sec 656, transactions such as General Power of Attorney sales, unregistered agreements, or other informal documents do not convey title nor amount to valid transfers. The Court has repeatedly cautioned against recognizing such documents, as doing so would defeat the very purpose of the registration regime and invite fraudulent claims over valuable immovable assets.

d. No right can be claimed by the Petitioner on the basis of unregistered Agreement dated 07.03.2013 to claim rights on disputed land parcel.

e. No disbursement of any amount of money was made by the Petitioner to Respondent, thus requirement of Section 5(8) of IBC, 2016 is not satisfied.

f. The Hon'ble Supreme Court in the matter of "**Pioneer Urban Land-and Infrastructure Ltd. & Anr. vs. Union of India & Ors.**" (2019) B sec 416, viewed that the essential features of financial debt are that the same is disbursed for a time value of money.

g. **In Anuj Jain, Interim Resolution Professional for Jaypee lnfratech Ltd. v. Axis Bank Ltd. & Ors.** (2020) B sec 401, the Hon'ble Supreme Court clarified the contours of financial debt under Section 5(8) of the Insolvency and Bankruptcy Code, 2016. The Court held that two essential requirements must be satisfied: first, there must be a disbursal of money against consideration for the time value of money; and second, the debt must arise from one of the categories specifically

enumerated in Section 5(8), which include transactions having the commercial effect of borrowing.

h. In **Namdeo Ramchandra Patil v. Vishal Ghisulal Jain, CA (AT) (Ins) No. 821 of 2021 and Arenja Enterprise Pvt. Ltd. v. Edward Keveter (Successors) Pvt. Ltd.,** CA (AT) (Ins) No. 528 of 2020, Hon'ble Appellate Tribunal held that for a claim to qualify as financial debt under Section 5(8) of the Insolvency and Bankruptcy Code, there must be a clear disbursal of funds against consideration for time value of money, and mere investment, advance, or security arrangement without this essential element cannot confer the status of a financial creditor.

i. In the matter of **M/s Propertree Real Estate Solutions Private Limited vs. Mr. A. Viswanadha Sarma, Resolution Professional M/s Unibera Developers Private Limited** Company Appeal (AT) (Insolvency) No. 1659 of 2024, the Hon'ble NCLAT ruled thus:-

> "....
>
> *39. Thus, even if only the facts admitted to the parties are taken into cognizance it will emerge that the two flats have been allotted to the appellant under MoU dated 25.11.2021 and 03.02.2022 only on account of adjustment of the brokerage money of the appellant which was allegedly due on .the CD and therefore there was no money parted or disbursed by the appellant to the CD and in our considered opinion, the debt of the appellant which was due on the CD was only for the commission/ brokerage services allegedly rendered by the appellant and no money was disbursed by the appellants to the CD for time value of the money and the appellants are also estopped to change the nature of debt*

pertaining to which they have earlier filed a petition under Section 9 of the /BC, admitting themselves as operational creditor.

40. Thus, keeping in view all the facts and circumstances of this case and in the background of the law discussed herein before, no illegality appears to have been committed either by the /RP or by the Adjudicating Authority in rejecting the claim of the appellant to treat himself as financial creditor."

j. M/s URR Housing Private Limited (hereinafter referred to as "**Developer**") entered into an Agreement dated 14.01.2007 with (i) Mr. Rahan Gupta; (ii) SCJS Infrastructure Limited; and (iii) Ms. Keshbala Sharma ("**Owners**") for the sale of land admeasuring 57 Canal 6 Marla, i.e., 7.1625 Acres in Fazilpur Jharsa Tehsil, and District Gurugram (hereinafter referred to as "**Land**"). Further, vide the said agreement, M/s URR Housing undertook to develop and construct a residential project/group housing within 60 months from the date of sanctioning of layout plans by the DTCP, Haryana, Chandigarh, on the sale land, while the owners undertook to provide all the requisite funds for the acquisition of the said land. The Respondent was not a party to the said agreement whatsoever.

k. The said transaction of land development rights acquisition of development rights formed a part and parcel of 140 acres {"**Total Land**") of the contiguous land that the Respondent and its Associate Companies had acquired for the development of the Proposed Project, of which the said Land forms part.

l. Allegedly on 07.03.2013, a subsequent agreement was entered into between the abovementioned owners, M/s URR Housing Pvt. Ltd., and the Petitioners herein, while the Corporate Debtor in the present matter was a Confirming Party to the said agreement (hereinafter referred to as "**Agreement**"). As per the terms of the alleged said Agreement, wherein the owners of the land agreed to assign all rights, obligations, benefits, liabilities, and compliances arising out of the Agreement dated 14.01.2007 in favour of the Petitioner.

m. The subsequent Agreement ought to be read along with the prior agreement dated 14.01.2007, and upon the conjoint reading of both the Agreements, it is evident that the Petitioner herein being the landowner/collaborator for the project with the Corporate Debtor does not come under the ambit of a 'Financial Creditor' as defined under the Code, by virtue of the fact that the amount due and payable does not fall within the definition of the 'Financial Debt'.

n. Due to certain subsequent developments, out of the control of either the Petitioner or the Respondent herein, in order to resolve the matter amicably, the parties had numerous discussions and executed the relinquishment deed dated 28.02.2024, as well as the first addendum to the said deed dated 09.01.2025. However, despite the same, it is vehemently submitted that the Petitioner herein cannot claim to be a 'Financial Creditor' of the Corporate Debtor and the amount due and payable by the Corporate Debtor towards the Petitioner does not come

under the ambit of 'Financial debt' as envisaged under Section 5(8)(f) of the Code.

o. The Hon'ble Appellate Authority in the case of **Vipul Limited vs. Solitare Buildmart Private Limited,** Company Appeal (AT) (Ins) No. 550 of 2020 has already settled the law that in case two parties have entered into Joint Development for the development of a township and for any breach of such a contract, an application under Section 7 is not maintainable as the amount cannot be construed as a 'Financial Debt' as defined under Section 5(8) of the Code. The relevant extract of the aforesaid Judgement has been reproduced below:

> *"26. To reiterate, the Applicant had issued notice to the Respondent under Section 8, terming it as an 'Operational debt'. Be that as it may, this Application seeking initiation of CIRP by one partner of JOA against the other only jeopardizes the interests of the allottees. Apart from the fact that the Joint Development Agreement entered into, is a contract of reciprocal rights and obligations, both parties are admittedly 'Joint Development Partners', who entered into a consortium of sorts for developing an Integrated Township and for any breach of terms of contract, Section 7 Application is not maintainable as the amount cannot be construed as 'Financial Debt' as defined under Section 5(8) of the Code. Therefore, we are of the considered view that the Appellant cannot be termed to be a 'Financial Creditor' as envisaged under Section 5(7) of the IBC, 2016."*

p. Furthermore, the Hon'ble Appellate Authority in similar facts and circumstances of another case titled as **Mukesh N. Desai Vs. Piyush Patel**, Company Appeal (AT)(lns) 780 of 2020 has held that, wherein

two parties have entered into an Memorandum of Understanding (MoU) for the Development of a subject land, the party who is transferring the land for development cannot be construed as a Financial Creditor in case of terms of the Contract by the other party since the amount invested in the land cannot be said to be a 'Financial Debt' as defined under Section 5(8) of the Code. The relevant extract of the Judgement has been reproduced below:

> *"14. In the instant case, on mutual Agreement, the 'Corporate Debtor' and other parties decided to transfer 25% of the land to the Appellant herein on a price decided jointly. As per Clause 4 of the MoU, the Appellant shall fund the cost of construction to the 'Corporate Debtor'/ developer, till the sample flat is ready. It was correlatively decided that 'both parties have rights to book flats with mutual consent'. Clause 6 stipulates that 'whatever income is earned from the sale of flats; the Appellant is entitled to 25% of the Net Profit'.*
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> *15. The MoU entered into is an Agreement of reciprocal rights and obligations. We are of the earnest view that both parties being 'Joint Development Partners' who entered into a consortium of sorts for developing the subject land and for any breach of terms of the contract, Section 7 Application filed under the Code would not be maintainable as the amount cannot be construed as 'Financial Debt' as there is no sum(s) i.e., owed, assigned or transferred to in compliance of the provisions of Section 5(8) of the Code. To reiterate, being a profit share owner, who in the event of the success of the Project would receive the residual gain, the amount invested in the land cannot be said to be a 'Financial Debt' as defined under Section 5(8) of the Code.*

Hence, the ratio of the Judgements relied upon by the Learned Counsel for the Appellant are not applicable to the facts of this case."

q. Additionally, the Hon'ble Appellate Tribunal has, after taking into due consideration the applicable law and facts, in its judgement dated 09.09.2022 in the matter of **Budhpur Buildcon Pvt. Ltd. v. Mr. Abhay Narayan Manudhane RP of Housing Development and Infrastructure Ltd.,** in Company Appeal (AT) (Ins) No. 589 of 2021 has also held the above proposition.

> *"m. All the above citations reflect one thing categorically and clearly that there must be a disbursal of fund by the Creditor to the Debtor purely in the form of release of fund as a "borrowing" and must have a "time value of money". The method may be different but the nature must be borrowing and in extended terminology even the liability in respect of guarantee is also covered. There must be a "Financial Debt" which is owed by the other side i.e. the Debtor. It should be amply clear that the CD owe the "Financial Debt" to the Creditor. There is a difference between the levy of liquidated damages or penal interest for default and the financial debt per se. Hence, we cannot borrow unrelated concept from unrelated judgments to prove that wherever a word "interest" is there it means corresponding to a "Financial Debt" and we accordingly confirm that "Financial Debt" will always carry an interest towards time value of money. However, interest per se in any business contract cannot be termed to make the "debt" as a "Financial Debt", if it is in the nature of liquidated damages or in the nature of penal interest, which is a result of compensation for breach of contract which is stipulated*

for penalty. Hence, while examining the case, whether the Appellant is a Financial Creditor or not we are now arriving at a conclusion based on above said discussions both on law & on facts and the citations produced by the parties, some of which have been explicitly cited as above reveals that the Appellant is not a "Financial Creditor" and hence, we are upholding the order of the Adjudicating Authority."

r. The stand wherein a collaborator admittedly bearing a share in the proceeds being generated from the subsequent developments cannot be treated as 'financial creditor' and the amount pertaining to the said transaction to not be deemed as a 'financial debt' has been pervasively reaffirmed by the Hon'ble Appellate Tribunal, as evident from its judgement dated 18.01.2023 in the matter of **M/s Ashoka Hitech Builders Pvt.Ltd. Vs. Sanjay Kundra & Anr.,** Company Appeal (AT) (Ins) 46 of 2023. The relevant extract of the Judgement has been reproduced below:

> *" .... 5. Looking into the terms and conditions of the development agreement, the Adjudicating Authority has come to the conclusion that the Appellant was not a financial creditor since no amount was disbursed for the time value of money on the basis of which the Appellant can be held to be financial creditor. 6. The Adjudicating Authority has relied on the Judgement of this Tribunal in **"Namdeo Ramchandra Patil and Ors. Vs. Vishal Ghisulal Jain"** Company **Appeal (AT) Ins. No. 821 and 930 of 2021** decided on **19.09.2022**. This tribunal in the aforesaid case had occasion to consider the similar development agreement and in paragraph 13, 14 and 15, following has been laid down:*

"13. When we look into the provision of Section S(B)(f) Explanation (i) and (ii), it is clear that pre-condition for a debt being a Financial Debt is disbursement against the time value of money and when any amount is raised from an allotment under real estate such transaction is also covered under Section 5(8)(f). The precondition for application of Explanation (i) of Section 5(8)(f) is raising of an amount from allottee. The present is not a case where an amount has been raised from the Appellants - the Landowners. The submission of the Appellant that they are allottees within the meaning of Section 2(d) of RERA Act does not make their transaction as a Financial Debt within the meaning of Section 5(8)(f). It is relevant to notice that RERA Act itself has noticed the definition of 'Promoter' under Section 2(zk). When we look in the real nature of the transaction entered between the Corporate Debtor and the Appellants - Landowners, the landowners were entitled to share the constructed area in the ratio of 45:55 and allotment of flats and commercial units in lieu of their entitlement under the Development Agreement does not make the transaction of allotment a Financial Debt within the meaning of Section 5(8)(f). The Adjudicating Authority in the impugned order has rightly relied on the judgment of Hon'ble Supreme Court in "Pioneer Urban Land and Infrastructure Ltd. vs. Union of India, (2019) 8 SCC 416", where the term 'disbursal' was explained in Para 70 of judgment and following has been observed:-

> *"70. The definition of "financial debt" in Section 5(8) then goes on to state that a "debt" must be "disbursed" against the consideration· for time value of money. "Disbursement" is defined in Black's Law Dictionary (10th ed.) to mean: "1. The act of paying out money, commonly from a fund or in settlement of a debt or account payable. 2. The money so paid; an amount of money given for a particular purpose.""*

14. We may also notice judgment of the Hon 'ble Supreme Court in "Anuj Jain, Interim Resolution Professional for Jaypee lnfratech Limited vs. Axis Bank Ltd. & Ors., (2020) B sec 401 ", where Hon 1 ble Supreme Court while examining the definition under Section 5(8) of the l&B Code noticed the essentials for Financial Debt. In Para 46, the Hon 'ble Supreme Court has again emphasised that essential element is disbursement against time value of the money. Para 46 of the judgment is as follows:-

> *"46. Applying the aforementioned fundamental principles to the definition occurring in Section 5(8) of the Code, we have not an iota of doubt that for a debt to become 'financial debt' for the purpose of Part II of the Code, the basic elements are that it ought to be a disbursal against the consideration for time value of money. It may include any of the methods for raising money or incurring liability by the modes prescribed in sub-clauses (a) to (f) of Section 5(8); it may also include any derivative transaction or counter-indemnity obligation as per sub-clauses (g) and (h) of Section 5(8); and it may also be the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h). The requirement of existence of a debt, which is disbursed against the consideration for the time value of money, in our view, remains an essential part even in respect of any of the transactions/dealings stated in subclauses (a) to (i) of Section 5(8), even if it is not necessarily stated therein. In any case, the definition, by its very frame, cannot be read so expansive, rather infinitely wide, that the root requirements of 'disbursement' against 'the consideration for the time value of money' could be forsaken in the manner that any transaction could stand alone to become a financial debt. In other*

words, any of the transactions stated in the said subclauses (a) to (i) of Section 5(8) would be falling within the ambit of 'financial debt' only if it _carries the essential elements stated in the principal clause or at least has the features -which could be traced to such essential elements in the principal clause. In yet other words, the essential element of disbursal, and that too against the consideration for time va_lue of money, needs to be found in the genesis of any debt before it may be treated as 'financial debt' within the meaning of Section 5(8) of the Code. This debt may be of any nature but a part of it is always required to be carrying, or corresponding to, or at least having some traces of disbursal against consideration for the time value of money."

15. When we look into the facts of the present case and transaction entered by the Appellants Landowners with the Corporate Debtor, we do not find any error in the decision of the Adjudicating Authority holding the Appel/ ants-Landowners as not Financial Creditors. The Company Appeal (AT) (Ins.) No. 821 of 2021, thus, deserved to be dismissed. "

7. We are of the view that Judgement of this Tribunal in Namdeo Ramchandra Patil & Ors. (supra) fully covers the issues and Adjudicating Authority has rightly referred to the Judgement holding that Appellant is not a financial creditor. The terms and conditions of development agreement entered between the appellant and the corporate debtor, Annexure 6 makes it clear that the appellant was a collaborator in the development agreement and not a financial creditor. There was no disbursement for time value of money by the appellant within meaning of Section 5(8) of the / IBC....”

. The Hon'ble Adjudicatory Authority, Mumbai Bench, in the case of ***Bank of India Vs. Wadhwa Buildcon LLP***, C.P. (IB) 2946/MB/2019 in case with similar facts and circumstances, has held that claim filed on the basis of arrangement whereby the Applicant was to receive a specified built-up area and not on facts of any amount raised or non-payment of any money, would not hold good vis-a-vis a Financial Creditor and such an Application under Section 7 would not be maintainable.

> *" ... 10. The Respondent submits that he received a claim from 6 Landowners on the basis of a Development Agreement entered in the year 2012, a Flat Allotment Confirmation dated 20.07.2014 through which a total of 117 units/ flats and 20 commercial shops had been allotted to these 6 Landowners in the real estate project viz. Wadhwa Rhodesia_ being constructed by the Corporate Debtor and a Demand Promissory Note dated 09.01.2012. Then, the Respondent finally admitted claim of f1,27,25,09,613/- crores and thereafter, the Respondent admitted them into the CoC of the Corporate Debtor.*
>
> *22. The real estate Project undertaken by the Corporate Debtor are in the nature of joint venture wherein the land is provided by Landowners through different Development Agreements on the basis of area sharing model. One such joint venture project viz. Wadhwa Rhodesia has been undertaken • by the Corporate Debtor on a parcel of land belonging to the 6 land owners viz. Mr. Namdeo Patil, Mr. Parshuram Patil, Mr. Ashok Patil, M r. Vinayak Patil, Mr. Nana Patil and Ravikant Patil. As a consideration for the development rights, the Corporate Debtor had agreed to pay, as per the Development Agreement dated 23.01.2006, 45% of the constructed area out of the total construction.*

Thereby, the Corporate Debtor had an area sharing arrangement in the ratio of 45:55 . ...

In this regard, we would also like to refer to the decision of the Coordinated Bench of NCL T, Delhi in the case of Global Credit Capital Ltd vs Venta Rea/tech Pvt. Ltd. dated 26.02.2020 wherein the NCL T Bench while dealing with a similar matter had held that land owners having area sharing arrangement, who are Promoter as per RERA, cannot claim as Financial Creditor on the basis of Development Agreement and allotment letters unless money was raised from them under the Real Estate Project. Further, NCLT, Delhi in another matter of ***Arenja Enterprises Private Limited Vs. Edward Ke venter (Successors) Private Limited (IB/775/ND2019)*** *dealt with the similar issue whether claim filed by the Applicants having area sharing _arrangement under real estate project fall within purview of definition of Financial Debt as defined under Section 5(8)(f) of the /BC, 2016. In this matter, the NCL T, Delhi held that the* ***Financial Debt refers to nonpayment of money, which is due and payable and default has occurred in paying the same. In connection with financial creditors falling in the category of home buyers, any amount raised from an allottee under real estate project shall be deemed to be an amount having commercial effect of borrowing.*** *Therefore, it held that when claim was not filed basis any amount raised or for non-payment of any money but merely on basis of arrangement whereby the Applicant was to receive specified built up area hence the contention that such application is financial creditor is misconceived and accordingly held that Section 7 Petition by the Applicant was not maintainable. The aforesaid Judgment of NCLT,*

Delhi in Arenja Enterprises was upheld by Hon'ble NCLAT in (Company Appeal (AT) (Insolvency) No. 528 of 2020… "

4. We have heard the counsels for the parties and perused the record. It is seen from the Agreement dated 14.01.2007 that the CD was not party thereto and the same was a Development Agreement between Rajan Gupta, M/s SCJS Infrastructure Limited and Smt. Keshbala Sharma on the one part and M/s URR Housing Private Limited on other part.

5. The Petitioner is only a confirming party to Agreement dated 07.03.2013. The Agreement is again a Development Agreement. As can be seen from clause 3 of the Agreement that the second party and the first party had settled their inter se accounts qua Agreement dated 14.01.2007. In terms of clause 6 of the Agreement, the first and second party had agreed to indemnify the third party jointly and severally. From clause 10 of the Agreement, it is apparent that the parties thereto had agreed to develop the parcels of land referred to in the Agreement.

6. In terms of the Relinquishment Agreement dated 28.02.2024, the first party could relinquish / surrender all rights, benefits and entitlement accrued to it in terms of the Principal Agreement, in favour of the CD. Such Agreement cannot be pursued as financial debt which is disbursed against the consideration for the time value of money. The transaction is just a contract in respect of rights accrued to the Petitioner in terms of the Development Agreement. The relinquishment of rights, benefits or entitlements accruing to the First Party cannot be treated as transaction under Section 5(8)(f) of the IBC, 2016. As can be seen from clause f of sub-

section 8 of Section 5, only an amount raised under a transaction can be treated as financial debt. In the present case, the Respondent did not raise any amount in terms of the Relinquishment Agreement rather the Agreement was a contract between the parties, which was to be regulated as per the terms of the Agreement. If there was any deviation from the contract, the parties had their own remedies. The argument put forth on behalf of the Respondent that as the Principal Agreement was not registered, the same could not be binding and no rights could be treated to have approved in favour of either of the parties. Thus, apparently, the parties to the present proceedings have a civil dispute regarding their Joint Development Agreement and subsequent relinquishment / surrender of rights in respect thereof.

7. As far as decision of Hon'ble NCLAT in **Mr. Kolla Koteswara Rao Vs. Dr. S.K. Srihari Raju & Ors.** having Company AP (AT) (Insolvency) No. 717 of 2020 is concerned, in terms thereof the financial debt under the Code includes also transactions that involves commercial effect of borrowing. In the present case, the relinquishment of rights in respect of an Agreement in favour of Respondent would not constitute any commercial effect of borrowing. It could be different issue that the Petitioner could give some advance to the Respondent and then the Respondent could not fulfil the obligation in terms of the Agreement as per which he could receive the advance. Such is not the situation here. Thus, the judgment is not applicable to the present case. In **Mr. Kolla Koteswara Rao Vs. Dr. S.K. Srihari Raju & Ors.** having Company AP (AT) (Insolvency) No. 717 of 2020, the issue

involved was regarding failure to return the amount paid on its behalf by the Petitioner with interest as agreed upon between the parties, indicating the time value of money. Thus, the same has been given in distinct facts.

8. In **Dr. B.V.S Lakshmi** relied upon by the Petitioner / Applicant, again it could be viewed that if the claimant claims to be FC, he will have to show that the debt is due which he has disbursed against the consideration for the time value of money and the borrower has raised the amount directly through other modes. Thus, the decision taken by Hon'ble NCLAT in said case is also not applicable to the present case.

9. In **J.C.Budhraia Vs. Chairman Orisha Mining Corporation Ltd.** (2008) 2 SCC 444, the Hon'ble Supreme Court viewed that the admission of jural relationship should be expressed. Again, the judgment does not support the case of the Applicant.

10. In **Ranveer Raniit Vs. M/s Vijav R. Vakharia and Ors.** Company Appeal (AT) (Ins) No. 646 of 2018, it could be viewed that if debt and default are satisfied, an order under Section 7 (5)(a) need to be passed. In the present case, there is no debt covered under Section 5 (8) of IBC, 2016 by the CD, thus the question of default does not arise. We find the stand taken by the Respondent in its reply as plausive. The application / petition is found devoid of merits and is accordingly rejected.

Sd/- **(RAVINDRA CHATURVEDI)** **MEMBER (T)**	**Sd/-** **(ASHOK KUMAR BHARDWAJ)** **MEMBER (J)**