NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT)(Insolvency) No. 542 of 2023

[Arising out of order dated 28.02.2023 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench in CP(IB) No.1043(PB)/2018]

IN THE MATTER OF:

Ansal Housing Limited
(Erstwhile Ansal Housing &
Construction Limited)
606, 6th Floor, Indraprakash,
Barakhamba Road, New Delhi – 110 001 **...Appellant**

Versus

Samyak Projects Private Limited
111, 1st Floor,
Antriksh Bhawan,
22, K.G. Marg,
New Delhi – 110 001 **...Respondent**

Present:

Appellant: **Mr. Abhijeet Sinha, Mr. Vikas Tiwari, Mr. Kumar Deepraj, Mr. Aamir Jamal, Mr. Achint Gupta Advocates.**

For Respondent: **Mr. Vivek Kohli, Sr Advocate with Mr. Sandeep Bhuraria, Mr. Monish Surendran, Mr. Juvas Rawal, Ms. Nishtha Grover, Ms. Bhavya Bhatia, Advocates.**

J U D G M E N T

[Per: Barun Mitra, Member (Technical)]

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code, 2016 ("**IBC**" in short) by the Appellant arises out of the Order dated 28.02.2023 (hereinafter referred to as "**Impugned Order**") passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi) in CP (IB) No.1043(PB)/2018. By the impugned order, the Adjudicating Authority has dismissed the Section 7 application filed by Ansal Housing Limited-Financial Creditor/present Appellant seeking initiation of Corporate Insolvency Resolution Process ("**CIRP**" in short) against the Corporate Debtor-M/s Samyak Projects Private Limited-the present Respondent. Aggrieved by the impugned order, the present appeal has been filed by Ansal Housing Limited, the Financial Creditor.

2. The Learned Counsel for the Appellant making his submissions stated that the Appellant and the Respondent were jointly developing four real estate projects for which separate Joint Venture Agreements ("**JVA**" in short) were executed between them for each such project. In terms of the collaboration envisaged under the JVA, the Appellant was to be the Developer of the real estate project while the Respondent was to provide the land for the project and they were to enjoy a sharing ratio of 67.5% and 32.5% respectively from the sales receivable.

3. Towards purchase of land for one of these real estate projects- Ansal Hub 83-II, the Respondent had sought financial assistance of Rs.25 crore from the Appellant. The Appellant extended an inter-corporate loan of Rs.25

crore which transaction has been documented in an Inter-Corporate Deposit Agreement ("**ICD**" in short) dated 27.03.2014. In terms of the ICD, the loan facility carried an interest of 24% p.a, compounded monthly and returnable within 24 months. The ICD also provided that the Appellant would have the right to recover the liability of Rs.25 crore from the sales receivable of the Respondent in case the latter failed to liquidate the debt.

4. It was submitted that as on 31.07.2018 an amount of Rs. 35,64,03,784/- had become due and payable, the default having occurred on 15.05.2015. The Respondent having failed to make the payments towards its liability qua the ICD, the Appellant filed a Section 7 application against the Respondent. The Adjudicating Authority however dismissed the application on the ground that the Appellant was not a Financial Creditor and that the liability of the Respondent qua the ICD was not a financial debt. Aggrieved by the dismissal of their Section 7 application, the present appeal has been preferred.

5. Advancing their arguments further it was pointed out that the loan disbursed by the Appellant was for the usage by the Respondent to discharge the obligation on their part to procure land for the real estate project. Further it was submitted that the said disbursement was accompanied by imposition of 24% interest compounded monthly and thus money was disbursed against the consideration for time value of money. Given the present facts of the case, the borrowing of Rs.25 crore by the Respondent was clearly in the nature of financial debt but the Adjudicating Authority erroneously held it to be a business arrangement. In support of their contention, reliance has been placed on the judgments of the Hon'ble Supreme Court in ***Swiss Ribbons Pvt.***

Ltd. v. Union of India (2019) 4 SCC 17 and ***Pioneer Urban Land & Infrastructure Ltd. v. Union of India (2019) 8 SCC 416.***

6. It is also the case of the Appellant that the Adjudicating Authority did not examine the fact that the Respondent had defaulted in the repayment of the loan. It was also added that the Respondent had handed over 15 post-dated cheques to the Appellant of which 7 were realized. Besides this, some RTGS transfers were also made. The Learned Counsel for the Appellant submitted that it is not in dispute that the Respondent had paid Rs.14.5 crore to the Appellant in discharge of its liability qua the ICD but they did not liquidate the entire debt. The defence raised by the Respondent that it had repaid the entire loan partially in the form of payments and partially in the form of adjustments was not correct. However, this aspect was not examined properly by the Adjudicating Authority. The contention of the Respondent that payments made by them to third parties were in the nature of repayment of the ICD loan was also contested by the Appellant by stating that these repayment transactions were not reflected in the ledger statement signed by the Respondent. Hence, the defence of such illusionary payments does not stand to reason. Furthermore, the Respondent had acknowledged the debt in its balance sheet under the head "Interest on borrowings". It was submitted that the accounting entries of receipts and payments in respect of the ICD; copies of TDS certificates issued by the Respondent for the FY 2014-15 and 2015-16, certified copies of Bank statement, audited Accounts of Corporate Debtor for the FY 2016-17 proves the existence of debt.

7. It has been strongly argued that the Adjudicating Authority failed to appreciate that it was the sole and exclusive obligation of the Respondent to

procure the land for which it was the sole responsibility of the Respondent to mobilize resources for this purpose. It was wrong on the part of the Adjudicating Authority to look at the ICD and the JVA as being integral to each other rather than view the two being independent of each other. This presumption on the part of the Adjudicating Authority had led to the erroneous conclusion that the Rs.25 crore advance made by the Appellant was a commercial business transaction and not a financial debt. Further, it was submitted that adjustment against the future receivables of the Respondent under the JVA was just a security under the ICD with an optional right with the lender to adjust the same against the ICD agreement. The Adjudicating Authority ought not to have substituted its own views and assumptions with the actual intention of the parties. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***Anuj Jain v. Axis Bank Ltd. (2020) 8 SCC 401*** to contend that the Adjudicating Authority was barred from gauging the intention of the parties beyond the intent of the ICD governing the transaction.

8. The Learned Senior Counsel for the Respondent making counter submissions contended that the ICD and JVA were not independent agreements but inter-dependent agreements. It was highlighted that JVAs dated 18.04.2011, 24.05.2013, 12.04.2013 and 24.06.2013 were collaborative agreements for the development of four residential/commercial projects between the Appellant and the Respondent. It was further submitted that while the JVAs were already in existence, the ICD was signed subsequently on 27.04.2014 between them by virtue of which the Appellant had provided Rs.25 crore to the Respondent to make payments towards purchase of land for one of these projects. Further, the financial assistance of

Rs.25 crore by the Respondent to the Appellant for which the ICD had been entered into was in the nature of making an investment for profit and therefore not a financial debt. Pointing out that the ICD stipulated the repayment of the Rs.25 crore to be secured from the receivables of the four projects for which the two parties had entered into JVA shows the inter-dependence between the JVAs and the ICD.

9. Submission was also made that against the loan amount of Rs.25 crores, the Respondent had already made a payment of Rs.25,41,08,000/-. Thus not only was the debt discharged before the expiry of 24 months but it was paid in excess. It was emphatically asserted that there was no liability against the Respondent. Further adding that 15 post dated cheques had been issued by the Respondent to the Appellant of which 8 cheques remained un-encashed, it was contended that it is incomprehensible as to why the Appellant did not encash these cheques if there was actually a debt in existence. In any case, the Respondent had unconditionally assigned its share of receivables from the four projects in favour of the Appellant and hence it remains unexplained as to why this right went unexercised by the Appellant.

10. It was vehemently contended that the amount that was jointly invested in land cannot be termed as financial debt. In support of their contention, the Learned Senior Counsel for the Respondent placed reliance on the judgment of this Tribunal in the matter of ***Mukesh N Desai v. Piyush Patel & Ors.*** in ***CA (AT) (Ins.) No.789 of 2020*** wherein it has been held that any amount invested in the purchase of land cannot be said to be a financial debt under Section 5(8) of the IBC. Further, reference was also made to the decision of

this Tribunal in ***Samyak Projects Pvt. Ltd. v. Ansal Housing Ltd.*** in ***CA(AT) (Ins.) No.384 of 2022*** where it has been clearly held that the Joint Development Agreement between the two parties shows that it was a case of sharing revenue profit by both the parties and hence initiation of CIRP proceedings under Section 9 by a JV partner was not maintainable. Reliance has also been placed on the decision of this Tribunal in ***Jagbasera Infratech Pvt. Ltd. v. Rawal Variety Construction Ltd.*** in ***2022 SCC OnLine NCLAT*** wherein it has been held that an amount invested in the joint venture project by any party in their capacity as a promoter/investor does not fall within the ambit of definition of Section 5(8) of the Code. It was further added that this Tribunal in ***Vipul Ltd. v. Solitaire Buildmart Pvt. Ltd.*** in ***2020 SCC OnLine NCLAT 620*** has held that a Joint Development Agreement is a contract of reciprocal rights and obligations and for any breach of terms of contract, Section 7 is not maintainable as the amount cannot be construed as financial debt.

11. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

12. The brief point that falls for our consideration is whether in the facts of the present case, the financial assistance of Rs.25 crore given by the Appellant to the Respondent by way of an ICD for the purpose of buying land for a real estate project which was being jointly developed under a JVA can be construed as a financial debt in terms of IBC.

13. Before we proceed to answer the question as delineated above, a glance at the definition clauses in the context of 'Financial Debt' and 'Financial

Creditor' which finds place in Section 5 under Part II Chapter I Preliminary of the IBC would be constructive:

> ***5(7) "financial creditor"*** *means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;*
>
> ***5(8) "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) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
>
> *(e) receivables sold or discounted other than any receivables sold on nonrecourse basis;*
>
> *(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
>
> *[Explanation. -For the purposes of this sub-clause,-*
>
> *(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and*
>
> *(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]*
>
> *(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) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
(i) 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) of this clause;

14. Given the above statutory definitions of 'financial creditor' and 'financial debt', it may now be useful to peruse the salient terms of the JVA entered into between the parties to have a better understanding of the relationship between the Appellant and the Respondent as it would be relevant in deciding the matter. The relevant excerpts are as reproduced below wherein the present Respondent is described as 'first party' and the 'second party' is the present Appellant while JSG and NCC are owners of the land:

"Whereas the said JSG and NCC (Owners) have under an arrangement granted, permitted and authorized the First Party to construct, develop and market the built up area and to implement the entire scheme of development of a multistoried Group Housing colony on the Said Land by utilizing the permissible FS] of 8,05,000 sq.ft. approximately. sanctioned/to be sanctioned on the said land in terms of License No. 76 of. 2010 alongwith other rights appurtenants thereto directly and/or through its agent, nominee or collaborators.

And whereas the First Party has already made substantial investments by way of payment to the Owners for acquiring such rights for development of the proposed Group Housing Scheme on the Said Land and is therefore fully entitled to engage any other party for development or marketing of the project under the terms of the said License.

…….Whereas, based on the aforesaid representations by the First Party and after verifying the relevant documents, the Developers has agreed to collaborate with the First Party to develop a Group Housing Scheme on the said land in terms of the license obtained by the Owners from Director Town and Country Planning, Haryana on the terms. & conditions as briefly mentioned hereunder.

4. Constructions/Completion:

4.1 That the entire scheme for development of a Group Housing on the aforesaid land shall be carried out/developed by the Developer at its own cost and expense. The development would include development of the Internal development services as well as construction of the Group Housing Towers and other related developments in all respect, in accordance with Licence No.76 0f 2010 and the Building Plans to be sanctioned in due course.

13 Sharing of areas/Receivables

13.1 That in consideration of the contribution/obligation of the First Party and the Developers under this Agreement, it has been mutually agreed that the entire sales realizations from sale of saleable/super built up areas to be developed/constructed in terms of this Agreement by the Developers shall be shared by the parties in the ratio as given hereunder:-

First Party = 32.50%

Developer = 67.50%....."

(Emphasis supplied)

15. We next embark upon the exercise of outlining the salient terms entered into between the two parties in the ICD wherein the present Appellant is described as the 'Lender' and the present Respondent as the 'Borrower'. The relevant portions are as extracted below: -

"WHEREAS the Borrower had approached the Lender for grant of an Inter Corporate Deposit (ICD) of Rs. 25 crores (Rupees Twenty Five Crores only) for making the payment to the land owners pertaining to the land purchased by the Borrower in Sector 83, Gurgaon for development of the Project Ansal's Hub 83-11 by the Lender in collaboration with the Borrower.

AND WHEREAS the Lender had considered the request of the borrower and has placed an ICD of Rs. 25 crores (Rupees Twenty Five Crores only) on the terms and conditions as agreed between the Lender and Borrower.

The parties hereto are now desirous of formally recording the said terms and conditions in writing which are recorded hereinafter.

NOW IT IS HEREBY MUTUALLY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. The Lender has extended to the Borrower an Inter Corporate Deposit of Rs. 25 Crores (Rupees Twenty Five Crores only) and the Borrower acknowledge receipt of the same.

2. The ICD is for a maximum period of 24 months and shall be repaid by the Borrower as per agreed payment schedule as contained hereinafter.

3. The Borrower shall pay interest on the principal amount of the ICD at the rate of 24% p.a. payable/to be compounded on monthly rest. Interest would be calculated on the basis of the year of 365 days and shall be payable on monthly basis. Interest payment would be subject to deduction of tax at source.

4. The above mentioned ICD shall be secured against the receivable falling to the share of the Borrower ("Borrowers Receivable") on account of following projects being developed by the Lender in collaboration with the Borrower:

(i) Ansal Heights' 92, Gurgaon
(ii) Ansal Heights' 86, Gurgaon
(iii) Ansal's Hub'83, Gurgaon
(iv) Ansal's Bub'83-II, Gurgaon

5…….

6. However, if one or more of the events specified below hereinafter called "Events of Default" shall, have happened, then Lender by a notice in writing to the Borrower may declare the principal, and all accrued interest on the ICD to be due and payable forthwith whereupon the same shall forthwith become due and payable without further demand, protest or other notice whatsoever and without the consent, decree and authorization of any court all of which are hereby expressly waived by the Borrower and it shall also be open to the Lender to effect recovery of the entire principal ICD amount and all accrued interest thereon from the Borrower, in any manner as the Lender may think fit including by appropriating the receivables of Borrowers share towards such due amounts……..

10. The borrower shall furnish the following:

a) Demand Promissory Note in favour of the Lender duly endorsed by Shri Satender Kumar Jain, Director of the Company.

b) Post dated cheques towards payment of Principal as per Schedule given above……"

(Emphasis supplied)

16. We have already noted the submissions and counter-submissions of both the parties in copious details in the preceding paragraphs. Concisely put, it is the case of the Appellant that the loan of Rs 25 crore was disbursed to the Respondent exclusively for utilization by the Respondent and the disbursement of the said loan was made with 24% compound interest which sufficiently establishes that money was disbursed against the consideration for time value of money. It was also added that the promissory note and post-dated cheques issued by the Respondent in favour of the Appellant also establishes the ingredients of a financial debt. Further, it is their contention that adjustment against the future receivables of the Respondent under the JVA was just a security under the ICD which has been wrongly construed by the Adjudicating Authority to come to the conclusion that the JVA and the ICD were interdependent. The Adjudicating Authority erred in holding that the advancement of money is not a financial debt simply because the real estate projects were being jointly developed. Moreover, the fact that the Respondent was depositing TDS qua its liability under the ICD also shows the two agreements being independent of each other. It is also pointed out that the ledger statement of the Respondent shows that an interest amount of Rs.6.29 lakhs was outstanding qua the Appellant as on 31.03.2015 and that this figure is also reflected in the balance sheet of 2015-16. Since, the Section 7 application was filed in 2018, the default being more than Rs. 1 lakh, the threshold limit was met.

17. Summarizing the rival submissions made by the Learned Senior Counsel for the Respondent, it is noted that a counter-claim has been made to the effect that payments to the tune of Rs.3.28 crore had been made between 2015 to 2017 by the Appellant to the Respondent even after the alleged date of default by the Respondent which shows that no debt was in existence. Further the very fact that the post-dated cheques were not encashed and the security against the receivables were not invoked by the Appellant, it is sufficient reason to show that there was no outstanding debt to be recovered from the Respondent. Thus, as there was no outstanding debt qua the Respondent, the present claim made by the Appellant in the Section 7 application is fictitious. It was also submitted that Clause 6 of the ICD stipulated that in case an event of default got triggered on account of non-payment of the ICD amount or interest thereof, the Appellant was mandated to send a notice in writing to the Respondent. That no such notice had been sent by the Appellant till date shows that there was no debt occasioning the issue of notice. It was further asserted that Clause 4 of the ICD stipulated that the repayment of the Rs.25 crore was to be secured from the receivables of the four projects which had been drawn up in the JVA and that the Appellant enjoyed the unilateral, unfettered and absolute rights to adjust the unpaid amount from these receivables. Given this factual matrix, it was contended that the ICD and JVAs were very much inter-dependent and when seen together they demonstrate the collective intent of both the parties of developing the real estate projects together and making investments for profit.

18. Before we analyse the findings of the impugned order, at the very outset we would like to make it clear that it is settled law as laid down by the Hon'ble Apex Court in ***Pioneer Urban Land and Infrastructure Ltd. v. Union of***

India (2019) 8 SCC 416 that any debt to be treated as financial debt, there must happen disbursal of money to the borrower for utilization by the borrower and that the disbursal must be against consideration for time value of money. In the matter of ***Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited & Ors. (2020) 8 SCC 401***, the Hon'ble Supreme Court has also held that the essential condition of financial debt is disbursement against the consideration for time value of money. Further in the most recent judgment of Hon'ble Supreme Court in ***Orator Marketing (P) Ltd. v. Samtex Desinz (P) Ltd. (2023) 3 SCC 753***, it has been clearly held that financial debt also includes an interest free loan.

19. Given this backdrop of settled law, it may now be relevant to refer to the impugned order to see how the Adjudicating Authority has approached the JVA and the ICD in deciding whether the Appellant falls within the purview of the definition of "Financial Creditor" and whether the loan extended by the Appellant falls within the ambit of "Financial Debt" as defined respectively under Sections 5(7) and 5(8) of the IBC.

20. We notice that while proceeding to examine whether the mutual arrangement entered between the Appellant and the Respondent on mutually agreeable conditions is covered under the definition of financial debt under the IBC, the Adjudicating Authority at paragraphs 22 to 25 of the impugned order have made reference to the salient recitals of the JVA and the ICD and dwelled upon them at length. These recitals have already been reproduced by us in the preceding paragraphs.

21. Now coming to the impugned order, we find that the Adjudicating Authority has returned the findings that the ICD read with JVAs entered upon

were in the nature of commercial business transactions and that the loan advanced to the present Respondent was towards payment of money to the owners of land being mutually developed by them. The relevant findings are as extracted below:

> "*25. On perusal of the ICD together with Joint Venture Agreement entered into between the parties, we do not find any force in the contention of the Applicant that the said joint Venture agreement(s) are completely independent commercial understanding and has no direct and/or indirect relation with the ICD agreement. In fact, we note that JVAs are executed prior to ICD i.e. in the year 2011 itself wherein first party (Respondent/CD) collaborated with Developer (Applicant/FC) to develop the project. On perusing the recitals of 'JVA', it is found that it is the CD who made an offer to Applicant (Developer) to develop the project and also to market and sell the same as the Applicant (Developer) has an excellent track record of development of various real estate development projects of large sizes. Further, it is the CD who had made substantial investment by way of payment to the owners for acquiring rights for development of the proposed group housing scheme……*
>
> *27. Considering all these facts, we may infer without doubt that it is the mutual business understanding of both the parties and the payment of the price for land by Applicant to Respondent preceded by the offer given by the Respondent to Applicant for development owing to their expertise are linked events in a collaboration and (Applicant) Developer vide "ICD" further lent money to Respondent for paying to the land owners only. It is difficult to hold that both the agreements have nothing in common or that these are independent. In our considered opinion, both JVAs and ICD are linked together for the development of projects.*
>
> *30. For the aforementioned reasons, we are of the opinion that the said contract is in nature of joint development of projects, rather than a loan agreement simpliciter. Both parties are more particularly involved in the development/construction of said project whereas as per the definition of Sec 5(8) "financial debt" means "a debt alongwith interest (if any) which is disbursed against the consideration for the time value of money." In our opinion, the ICD agreement cannot be read alone and is not covered in the*

definition of Financial Debt rather the parties appear to have entered into an agreement with a different motive i.e. development of the project and sharing the proceeds therefrom. There is no case to hold that it is a case of admitted debt and default. No case is made out under the code. Parties may pursue the matter to seek appropriate remedy as per law."

22. The above findings of the Adjudicating Authority has been premised on the fact that both the JVAs and ICD are linked together for the development of real estate projects. In both these agreements which has been entered into between the two parties for the four projects, there are similar clauses of receivables of a particular percentage of sale realisations from sale of areas to be developed/constructed which both parties have mutually agreed to. Hence it has been held that both parties being involved in the joint development of projects for which purpose they have entered into collaborative agreements, the financial arrangements outlined in the ICD cannot be a loan agreement simpliciter and hence cannot be treated as a financial debt.

23. A careful perusal of the JVA and the ICD between the two parties show that there are unmistakable signs of reciprocal rights and obligations contained in both the agreements besides evidence of common participation as well as sharing of profits and losses in the real estate projects. This spirit of being collaborators and profit-sharing partners is writ large in both the JVA and the ICD and therefore the Adjudicating Authority has committed no error in holding that the JVA and the ICD are interdependent and inter-related and not independent of each other.

24. Undisputedly both parties being partners in developing the project together, the purchase and availability of land for the project was an essential ingredient thereof and hence any assistance by the Appellant to the

Respondent tantamount to financing the operations of the joint venture. When shared liability for profit is so clearly manifested in the JVA and the ICD and responsibilities well demarcated in the execution of the real estate projects, it cannot be overlooked that both parties are development partners and co-sharers in the real estate projects. The JVA and ICD laid the foundations of a legal and binding relationship with mutual financial obligations towards each other. Given this backdrop, clearly 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. It may also not be out of place to mention here that the primary intent and object of the IBC is the resolution of the Corporate Debtor and not recovery of a debt of the creditor. It needs no emphasis that the Hon'ble Apex Court in a catena of judgments have observed that the provisions of IBC cannot be utilised by a creditor for recovery of its debt. This Tribunal has also observed time and again that the primary focus of IBC, as a beneficial legislation, is to ensure revival and continuation of the Corporate Debtor and that the provisions of IBC cannot be misused for staging recovery of debt and for treating the Adjudicating Authority as a debt recovery forum.

25. In so far as the findings of the Adjudicating Authority are concerned that both the parties being joint venture partners, 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, we see no error in the impugned order. We hold that the Appellant is not a Financial Creditor in terms of Section 5(7) of IBC and the application under Section 7 at the instance of the Appellant was not maintainable and hence the same has been rightly rejected by the

Adjudicating Authority. Hence the appeal fails and is dismissed accordingly. We, however, are of the view that the Appellant will have the liberty to exhaust other remedies available in law before any other appropriate forum and raise all pleas as permissible in law to protect their interests. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 06.12.2023

PKM