

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, BENCH (COURT-II)

COMPANY PETITION NO. (IB)-675(ND)/2024

IN THE MATTER OF CP(IB)-675/(ND)/2024

(Under Section 7 of IBC, 2016)

Catalyst Trusteeship Limited

GDA House, First Floor,
Plot No. 85 S. No. 94 & 95,
Bhusari Colony (Right), Kothurd,
Pune 411038

**... Applicant/
Financial Creditor**

Versus

ASF Buildtech Private Limited

11, Babar Lane, Bengali Market,
New Delhi – 110001

**... Respondent/
Corporate Debtor**

AND IN THE MATTER OF I.A. NO. 1194 OF 2025:

(Under Rule 11 of NCLT Rules, 2016)

OMKARA ASSETS RECONSTRUCTION PRIVATE LIMITED,

No. 9, M. P. Nagar, First Street,
Kongu Nagar Extension, Coimbatore,
Tirupur, Tamil Nadu - 641607

... Applicant

Order Delivered on: 03.04.2025

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

MS. REENA SINHA PURI, HON'BLE MEMBER (T)

PRESENT:

For the Applicant

: Adv. Sumesh Dhawan, Adv. Ritesh Singh, Adv.
Adith Nair, Adv. Shaurya Shyam

For the Respondent

: Sr. Adv. Sunil Fernandes, Adv. Vaijayant Paliwal,
Adv. Nikhil Mathur, Adv. Tanya Chib, Adv. Diksha
Dadu

PER: SH. ASHOK KUMAR BHARDWAJ, MEMBER(J)

ORDER

Stating succinctly, the captioned company petition could be preferred 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 by Catalyst Trusteeship Limited (hereinafter, referred to as the “**Financial Creditor/ FC**”) with prayer to initiate the corporate insolvency resolution process qua ASF Buildtech Private Limited (hereinafter, referred to as the “**Corporate Debtor/ CD**”).

2. The brief facts as stated in the captioned petition reads thus: -

- i. The CD had approached Indiabulls Housing Finance Limited (presently known/ renamed as ‘Sammaan Capital Limited’) for sanction of loan facilities for the purpose of construction/ development of residential projects. A total of five loan agreements were signed between Indiabulls Housing Finance Limited (IHFL) and the CD, the details of which read thus: -

S.N O.	Loan Account Number	Date of Sanction	Sanctioned Amount (in rupees)	Date of Disbursal	Loan Disbursal Amount (In Rs.)
1.	S0002414 94	August 3,2020	190,00,00,0 00	August 11, 2020	174,00,00, 000
2.	S0002414 95	August 3, 2020	155,00,00,0 00	August 11, 2020	155,00,00, 000
3.	S0002414 96	August 3,2020	185,00,00,0 00	August 11, 2020	185,00,00, 000
4.	S0002414 97	August 3, 2020	150,00,00,0 00	August 11, 2020	150,00,00, 000
5.	S0002414 98	August 3, 2020	10,00,00,00 0	August 11, 2020	10,00,00,0 00

		Total Amount	Rs.690,00,0 0,00 (Rupees Six Hundred and Ninety Crore)		Rs.674,00, 00,000 (Rupees Si Hundred and Seventy Four Crores Only)
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- ii. On 29.03.2022, an Assignment Agreement was entered into between IHFL and the Applicant i.e. Catalyst Trusteeship Limited (acting in its capacity as the settler of 'India Wholesale Loan Opportunities Trust I, 'Wholesale Loan Opportunities Trust II', 'Wholesale Loan Opportunities Trust III', 'India Wholesale Loan Opportunities Trust IV') in terms of which IHFL assigned the receivable, together with all rights, titles and interest in relation to the receivable under the aforesaid loan agreements to the Applicant.
- iii. The CD committed default in payment of instalments under said loan agreements, pursuant to which the Applicant issued notices dated 08.12.2023 to the CD as well as its mortgagors and guarantors to repay the amount mentioned therein. However, the CD failed to repay the amount and in terms of letter dated 19.12.2023 requested the Applicant to restructure the loan accounts.
- iv. On 12.01.2024, the Applicant filed an application, CP(IB) No. 124 of 2024, under Section 7 of the Code seeking initiating of CIRP qua the Corporate Debtor. Thereafter, this Adjudicating Authority in terms of order dated 18.03.2024 issued notice to the Corporate Debtor.

v. During March-April, 2024, the parties entered into talks for restructuring of loans and settlement of dues. On 30.04.2024, this Adjudicating Authority was informed of the same and the parties submitted that they were in the process of arriving at a settlement qua the defaulted amount. Thus, in terms of order dated 30.04.2024, this Adjudicating Authority disposed of CP(IB) No. 124 of 2024 in lieu of the settlement talks and further directed that in case the settlement was not finalized and implemented, the Applicant would be at liberty to mention the matter for revival. Relevant excerpt of the order dated 30.04.2024 reads thus: -

“We issued notice qua the captioned application filed under Section 7 of IBC, 2016 on 18.03.2024. On next date of hearing i.e. 01.04.2024 the matter could not reach for hearing due to paucity of time. On 04.04.2024 the Ld. Counsel for the corporate debtor sought an opportunity to file reply to the petition. Subsequently on 16.04.2024 the reply reported as filed on behalf of the corporate debtor was not reflected on the case information system, thus the corporate debtor was given an opportunity to ensure the uploading of the same. The Financial Creditor was also given an opportunity to file its rejoinder, if any. The order dated 16.04.2024 reads thus:-

“The reply stated to have been filed on behalf of the CD but it is not available on DMS/e-portal of this Tribunal. Nevertheless, the Ld. Counsels for the Creditor has admitted that a copy of reply has been made available to him. He seeks an opportunity to file the rejoinder. At the request made by the Ld. Counsel for the Creditor, the hearing is deferred to 30.04.2024. In the meantime, the CD shall also

ensure that the reply is uploaded on DMS/eportal of this Tribunal. List the matter on 30.04.2024.”

Today, the counsels for the parties are ad idem that the corporate debtor has sent a restructuring proposal to the Financial Creditor and the proposal is under examination of the FC. The counsel for the Petitioner also submitted that in order to examine the proposal effectively the Financial Creditor has asked for certain more documents from the corporate debtor. In any case the parties are in process of arriving at some settlement qua the defaulted amount.

Ld. Counsel appearing for the Petitioner submitted that though the corporate debtor has some plausible defence, but to avoid any controversy, it has offered settlement to the Petitioner.

In the wake of the stand taken by Ld. Counsel for the parties, the present petition is disposed of.”

However, it is made clear that if the settlement is not finalized and implemented within 2 weeks from today i.e. by 14.05.2024, the Ld. Counsel for the Financial Creditor would mention for revival of present petition before this Bench on 14.05.2024. The present petition stands disposed of.”

- vi. Nevertheless, the settlement talks between the parties failed. Owing to continuing default, the Applicant again issued a loan recall notice on 09.09.2024 to the CD. However, the CD again failed to repay the defaulted amount.
- vii. As on 12.09.2024, a sum of Rs. 768,51,48,906/- is outstanding against the CD which comprises of principal, interest, TDS etc payable by the

CD. Thus, the present petition has been filed under Section 7 of the Code.

3. On behalf of the Respondent/ Corporate Debtor, the following submissions were advanced: -

- i. The date of alleged default has been mentioned in the application as 27.08.2024 without there being any justification for the same.
- ii. In the affidavit dated 13.09.2024 enclosed with the application, it has been stated that the deponent i.e. Mr. Sameer Trikha has been authorized by FC to appear and represent the Applicant in terms of Board Resolution dated 19.04.2018. However, the Board Resolution enclosed as Annexure – A2 to the application is dated 27.06.2024, and thus, there is inconsistency in the manner of authorization of Mr. Sameer Trikha to file the present petition u/s 7 of the Code.
- iii. Due to slight delay on the part of CD in repayment of one instalment on 15.08.2023, notices seeking payment of overdue amounts for each loan account were issued by the Applicant on 13.10.2023 for a total sum of Rs. 86,72,58,275/-.
- iv. Although, the aforesaid notice was sent by the Applicant mentioning that it was acting on behalf of Sammaan Capital (previously known as Indiabulls Housing Finance Limited), the CD remained engaged with Sammaan Capital regarding restructuring of loan facility, in context of the sudden industry wide stress in IT-SEZ segment.

- v. A cheque dated 11.11.2023 bearing no. 000272 for an amount of Rs. 66,18,21,084/- was issued by the CD, which represented the entire amount payable to Sammaan Capital towards the delayed annual instalment. Despite the above, the Applicant issued a loan recall notice dated 08.12.2023.
- vi. On 12.01.2024, the Respondent/ CD was served with an advance copy of an application [CP(IB) No. 124 of 2024] u/s 7 of the Code. However, at the same time, talks with Sammaan Capital came to an end which was followed by Sammaan Capital encashing the abovementioned cheque dated 11.11.2023 on 30.01.2024. In view of the encashment of said cheque and considering the fact that the next instalment was due in August, 2024, the Respondent on 09.02.2024 issued emails to the Applicant stating that all payments had been made to Sammaan Capital and pending issues regarding the outstanding amounts as per the loan recall notices stood resolved.
- vii. After the CP(IB) No. 124 of 2024 was disposed in terms of order dated 30.04.2024, talks regarding restructuring of loan facilities with Sammaan Capital continued beyond the period of two weeks as provided by this Adjudicating Authority in said order. However, no attempt was made by the Applicant to revive the above petition.
- viii. While the Applicant has contended that settlement talks broke down in August, 2024, there was no communication to this effect from the Applicant. On the contrary, communications regarding restructuring/ settlement of the loan facilities were ongoing with

Applicant's sub-servicer i.e. Sammaan Capital even after August 2024, which can be seen from emails dated 03.09.2024, 17.09.2024, 25.09.2024, 26.09.2024, 01.10.2024, 03.10.2024 and 04.10.2024, enclosed as Annexure R-6 of the reply. In addition to the above emails, there were various physical meetings between the officials of Sammaan Capital and the Respondent/ CD.

- ix. In complete contradiction to above developments, the Applicant again issued a Loan Recall Notice dated 09.09.2024, seeking to recover the entire loan amount with interest.
- x. The expression 'may' in Section 7(5) of the Code leaves scope of discretion with this Adjudicating Authority to admit or reject an application filed under Section 7 of the Code. Reliance has been placed on the judgment of ***Indus Biotech (P) Ltd. vs. Kotak India Venture (Offshore) Fund*** [(2021) 6 SCC 436], ***Hytone Merchants Pvt. Ltd. v. Satabdi Investment Consultants Pvt. Ltd.*** [Company Appeal (AT) (Ins.) No.258 of 2021] and ***Vidarbha Industries Power Limited v. Axis Bank Limited*** [(2022) 8 SCC 352].
- xi. The liquidity problem faced by the Respondent/ CD is temporary on account of volatility in SEZ sector, which is in turn due to critical regulatory changes and amendments made in the Income Tax Act, 1961 w.e.f. FY 2020-21. This Adjudicating Authority on several occasions has dismissed proceedings u/s 7 of the Code on grounds that the CD was hit by temporary sectoral concerns. Reliance is

placed on **Sri M Visveswaraya Co-operatives Bank Ltd v. Mis Golden Gate Properties Limited** [CP(IB)No. 11/BB/2019].

xii. While the Respondent/ CD was under the Bonafide belief that settlement/ restructuring talks were ongoing with Sammaan Capital i.e. the sub- servicer of Applicant), the Applicant has intentionally and maliciously proceeded to threaten CIRP to ensure unfair and prejudicial recovery from the Respondent/ CD which goes against the intent of the Code. Thus, the present application filed u/s 7 of the Code should be rejected and proceedings under Section 65 r/w Section 75 of the Code should be initiated against the Applicant.

4. In response to the aforementioned reply, the Applicant filed a rejoinder espousing thus: -

- i. The CD in its reply explicitly acknowledges the factum of execution of the loan agreements between it and IHFL.
- ii. The loan agreements outline the terms of repayment *inter alia* including interest payable, and default interest in case of default in repayment. Notably, the Corporate Debtor defaulted and failed in fulfilling its payment obligations under said agreement and committed a default in terms of clause 12 thereof.
- iii. Once this Adjudicating Authority is satisfied about the existence of debt and default, the application under Section 7 of the Code ought to be admitted disregarding any other frivolous or technical contentions. This Adjudicating Authority is not a civil court and is required to act as per

the mandate of the Code, for which reliance has been placed on the judgments of ***Innoventive Industries Limited v. ICICI Bank and Another*** [(2018) 1 SCC 407], ***M. Suresh Kumar Reddy vs. Canara Bank and Ors.*** [(2023) 8 SCC 387], ***E.S. Krishnamurthy and Other vs M/S Bharath Hi Tech Builders Pvt. Ltd.*** [(2022) 3 SCC 16]. Further, the reliance placed by the Respondent/ CD on ***Vidarbha Industries v. Axis Bank Limited*** [(2022) 8 SCC 352] is misplaced as the facts of said case are distinguishable from the facts of the present case.

- iv. In terms of Section 65 of the Code, if any party initiates CIRP fraudulently or with a malicious intent for the purpose other than the resolution or insolvency of the CD, the applicant shall be guilty in terms of said section. In this regard, it is pertinent to note that the CD has not placed on record any substantial documentary evidence to demonstrate that the present application is fraudulent and has only sought to place reliance on certain purported ongoing settlement talks between itself and IHFL.

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5. The captioned IA has been filed by Omkara Assets Reconstruction Private Limited under Rule 11 of NCLT Rules, 2016 with the prayer to substitute the name of Catalyst Trusteeship Private Limited with the Applicant's name in the captioned company petition and to take the amended memo of parties on record. The submissions made in the IA read thus: -

- i. During the pendency of the company petition, Sammaan Capital i.e. the original lender, and Omkara Assets Reconstruction Private Limited entered into an Assignment Agreement dated 28.12.2024, pursuant to Section 5(1)(b) of SARFAESI Act, 2002, under which all the loan agreements, which are in question in the present proceedings, were unconditionally and irrevocably assigned unto Omkara Assets Reconstruction Private Limited.
- ii. Thereafter, the Applicant took necessary steps to register the aforementioned Assignment Agreement in terms of Section 17 of the Registration Act, 1908.
- iii. As per clause 2.1.1 of the said agreement, the Applicant is absolute and legal owner of the loans extended by IHFL to the CD and is solely entitled to receive/ recover all dues, including the right to initiate proceedings in its own name. Since the debt owed to IHFL has been 'legally assigned' to the Applicant, it has become the 'Financial Creditor' as per Section 5(7) of the Code.

ANALYSIS & FINDINGS: -

6. We have perused the contentions made on behalf of both the parties. As can be seen from Section 7(1) of the Code r/w the explanation provided therein, a Financial Creditor may file an application for initiating CIRP against a Corporate Debtor when a default occurs in respect of a financial debt. The provision reads thus: -

“7. Initiation of corporate insolvency resolution process by financial creditor. —

(1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation. —For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.”

7. The definition of ‘financial debt’, as provided under Section 5(8) of the Code, means disbursement of any debt against the consideration for the time value of money and includes money borrowed against the payment of interest. The Section 5(8) of the Code reads thus: -

“5. Definitions. – *In this part, unless the context otherwise requires, -*

[...]

(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;

(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;”

8. In *Pioneer Urban Land & Infrastructure Ltd. vs. Union of India*

[(2019) 8 SCC 416], the Hon’ble Supreme Court held that for the purposes of Section 5(8) of the Code, the disbursement must be against consideration for “time value of money” from the lender to the borrower who then utilizes the money.

The relevant excerpt of the judgment reads thus: -

“61. 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.”

In the present context, it is clear that the expression “disburse” would refer to the payment of instalments by the allottee to the real estate developer for the particular purpose of funding the real estate project in which the allottee is to be allotted a flat/apartment. The expression “disbursed” refers to money which has been paid against consideration for the “time value of money”. In short, the “disbursal” must be money and must be against consideration for the “time value of money”, meaning thereby, the fact that such money is now no longer with the lender, but is with the borrower, who then utilises the money [...].”

9. In the facts of the present case, the Respondent/ Corporate Debtor has not disputed the existence of the loan agreements under which it was provided with the financial facility. Therefore, this Tribunal is of the view that the financial facility extended by the Financial Creditor to the Corporate Debtor, in terms of the aforesaid agreement dated 31.05.2022, was in the nature of a ‘financial debt’ for the purposes of the Code.

10. As can be seen from the provisions of Section 7(3) of IBC, 2016, while considering admission of the application filed under Section 7, we need to satisfy ourselves regarding there being any evidence of default including IU record or entries in the Banker’s Book. The Section 7(3) reads thus: -

“7. Initiation of corporate insolvency resolution process by financial creditor.—

[...]

(3) The financial creditor shall, along with the application furnish-

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional;

(c) any other information as may be specified by the Board.”

11. In the facts of the present case, the Applicant/ FC has enclosed the loan recall notices dated 09.09.2024 issued to the CD with respect to all five loan accounts as Annexure No. A/49 to A/53 to the application. Since the notices are *pari materia*, excerpts from notice issued qua loan account no. 8000241494 is mentioned here below: -

“Dear Madam/ Sir,

*This has reference to the Loan Agreement executed by the (a) Borrower(s) and (b) Lender (more particularly mentioned in Schedule I hereunder), for the loan facility, more particularly mentioned in Schedule I hereunder, and/ or any amendment(s)/ addendum(s) thereto, (“**Loan Agreement**”) and/ or other Loan Document(s).*

That at the time of availing the said loan facility, you had assured and promised not to commit any default in the payment of regular monthly installments, pursuant to the execution of the loan agreement.

Subsequently, Indiabulls Housing Finance Limited (now known as Sammaan Capital Ltd.) (“Assignor”) has assigned all their rights, titles, interests in relation to the Receivables under the Loan Documents to Catalyst Trusteeship Limited (“Trustee”) acting in its capacity as Trustee of the Settlor for “India Wholesale Loan Opportunities Trust -I” “India Wholesale Loan Opportunities Trust -II”, “India Wholesale Loan Opportunities Trust - III” and “India Wholesale Loan Opportunities Trust - IV” vide Assignment Agreement(s) Dated 29.03.2022.

Please note that Event of Default has/have already occurred under the Loan Documents as a result of failure by the Obligor(s) to comply with the provisions of the Loan Documents including payment default(s)/delay (viz. the interest) on the Due Date(s) under the Loan Documents.

*Kindly note that, as on **27 August 2024**, the total (aggregate) outstanding Loan amount(s) along with the interest thereon is **Rs.1,97,91,37,394/- (Rupees One Hundred Ninety Seven Crores Ninety One Lakh Thirty Seven Thousand Three Hundred Ninety Four Only) alongwith pending TDS for an amount or Rs. 0/- (Rupees Nil Only)**, which is payable to the Trustee under the Loan Documents.*

In view of the aforesaid and pursuant to the provisions of the Loan Documents, without prejudice to our other rights and remedies, we hereby recall the outstanding Loan(s) and call upon you to forthwith pay us all the amount(s) payable to the Trustee under the Loan Documents (including the amount(s) specified above) within 3 (three) days from the date of receipt of this notice.

In case of failure on your part to comply with the aforesaid, without prejudice to our other rights/remedies and without any further notice to any of you,

(a) please treat this notice (issued under the Loan Documents and/ or the applicable laws) as a notice of/for invocation, sale, disposing off, transfer, grant, conveyance and/ or assignment of any/ all of the Security/ Securities including the Mortgaged Properties, Pledged/ Charged Shares (more particularly mentioned in Schedule II hereunder) and/ or the Receivables provided in favor of the Trustee under the Loan Documents; and/ or

(b) please treat this notice (issued under the Loan Documents and/ or the applicable laws) as a notice for invocation of the guarantee(s) executed by the Guarantor(s) in favor of the Trustee, and pursuant to which the Guarantor(s) shall be liable to forthwith pay to the Trustee all amount(s) payable to the Trustee under the Loan Documents (including the amount(s) specified above)

(c) the Trustee shall be entitled to, inter alia, exercise other rights and/ or enforce remedies (at your costs and risk) available under the Loan Documents and/ or applicable

laws to, inter alia, recover all amount(s) payable by you to the Trustee under the Loan Documents (including the amount(s) specified above) which legal proceedings include but are not limited to proceedings under the Insolvency and Bankruptcy Code.

You may also note that, upon such Application under Section 7 of Code being admitted, inter alia the following consequences shall ensue:

a. The management of the affairs of the Borrower/ Co-borrower/ Guarantor company(s) would be taken over by the Resolution Professional;

b. The powers of the Board of Directors of the Borrower/ Co-borrower/ Guarantor company(s) shall stand suspended and be exercised by the Resolution Professional, appointed by the National Company Law Tribunal;

c. After the Resolution Professional takes over the management of the affairs of the Borrower/ Co-borrower/ Guarantor company(s), the Committee of Creditors will take decisions on the resolution process, recommendation for liquidation, etc.;

d. The Resolution Professional will be entitled to get forensic audit done for the accounts of the Borrower/ Co-borrower/ Guarantor company(s) to identify the instances of frauds;

e. The Committee of Creditors can recommend the Resolution Professional to take recourse to prosecute directors of the Borrower/ Co-borrower/ Guarantor company(s) for fraud, embezzlement or other financial claims;

f. The Borrower/ Co-borrower/ Guarantor company(s) will be at risk of undergoing liquidation proceedings and as a result of which, their assets would be sold under liquidation;

g. In the event, an earlier transaction is found to be preferential, undervalued, defrauding, etc., then such transactions can be challenged in the corporate insolvency resolution process.

Further, insolvency proceedings against the Guarantors (who have executed Personal Guarantees) are also liable to be initiated under Chapter-III of the Code. Please note that on an application under Section 95 of the Code being admitted inter alia the following consequences shall follow:

- a) Pursuant to order for bankruptcy being passed the guarantor shall be declared bankrupt;*
- b) A list of the personal assets of the guarantor shall be liable to be prepared and attached subject to exceptions given in the Code;*
- c) Such a person cannot remain/become a member of a professional body;*
- d) Such a person cannot act as a director/ promoter of any Company and also comes under restrictions under Limited Liability Partnership Rules, 2009;*
- e) Such a person cannot be appointed as a trustee or representative in respect of any trust, estate, or settlement;*
- f) Such a person cannot be appointed as a public servant and cannot be elected to any public office either by appointment or election as also cannot be elected or be a sitting or a voting member of any local authority;*
- g) Such a person cannot retain even a sole residential house of value exceeding Rs.20 Lakh in urban area and Rs.10 lakh in rural area;*
- h) Such a person cannot retain ornaments of value exceeding Rs.1 Lakh.*

Notwithstanding anything to the contrary, this notice shall prevail over and/ or shall not be affected by any other correspondence, payments, actions, etc., in present or future, by or between you and the Trustee, unless this notice is specifically withdrawn/ annulled by the Trustee in writing.

Any capitalized terms used and not defined herein shall have the same meaning as ascribed to such terms under the Loan Documents.

We expect prompt action on your part.

SCHEDULE I
Loan Agreement(s)

Date of Loan Agreement	Name of Lender/ Assignor	Name of Borrower(s)	Name of Trustee	Name of Guarantor(s)	Name of Pledgor(s)	Name of Hypothecator(s)	Loan Amount (Rs.)
06.08.2020	Sammaan Capital Ltd. (Formerly known as Indiabulls Housing Finance Limited)	ASF Buildtech Private Limited	Catalyst Trusteeship Limited	Anil Saraf	K.H.Steel Casting Private Limited Anil Saraf ASF Infrastructure Pvt. Ltd.	ASF Buildwell Private Limited ASF Insignia SEZ Private Limited ASF Buildtech Private Limited Idol Infotech Private Limited	Amount Sanctioned: Rs.190,00,00,000/- (Rupees One Hundred Ninety Crore Only) Amount Disbursed:- Rs.174,00,00,000/- (Rupees One Hundred Seventy Four Crore Only)

[...]"

12. In response to the aforesaid loan recall notices, the CD sent a reply dated 13.10.2024, enclosed as Annexure R-7 to the counter reply filed by the CD, wherein neither the loan facility nor the default was disputed by the CD. Rather, it was primarily contended that even post assignment agreement dated 29.03.2022 entered into between IHFL and the Applicant, all interactions with respect to the loan facility were being continued with IHFL. It was further stated that said notice was premature and misconceived as settlement discussions with the original lender viz. IHFL were ongoing. Relevant excerpt of the reply dated 13.10.2024 reads thus: -

To,
M/s. Catalyst Trusteeship Limited
having its Registered office at
GDA House, Plot No. 85,
Bhusari Colony (Right),
Paud Road, Pune – 411 038.

SUBJECT: REPLY TO THE DEMAND NOTICE DATED 09 SEPTEMBER 2024

REFERENCE: (I) DEMAND NOTICES BEARING REF NO. CTL/24-25/09911
(II) DEMAND NOTICES BEARING REF NO. CTL/24-25/09914
(III) DEMAND NOTICES BEARING REF NO. CTL/24-25/09915
(IV) DEMAND NOTICES BEARING REF NO. CTL/24-25/09917
(V) DEMAND NOTICES BEARING REF NO. CTL/24-25/09918

Dear Sir,

1. We write to you, M/s Catalyst Trusteeship Limited (acting in its capacity as Trustee of the Settlor for "India Wholesale Loan Opportunities Trust –I", "India Wholesale Loan Opportunities Trust –II", "India Wholesale Loan Opportunities – III" and "India Wholesale Loan Opportunities Trust – IV" vide Assignment Agreement(s) dated 29 March 2022) ("hereinafter referred to as "Trustee") on behalf of ASF Buildtech Private Limited ("Borrower") in response to your loan recall notice dated 09 September 2024 ("Demand Notice") seeking for recovery of the entire outstanding principal amount alongwith interest.
2. At the outset, the Borrower specifically denies each and every allegation, contention averment including the total amount sought by the Trustee in the captioned notices, unless specifically admitted hereunder on account of the same being improper, illegal, misconceived, and premature in view of the facts and circumstances, which are already within your knowledge.
3. The Borrower is the holding company of several subsidiary companies namely, Black Canyon SEZ Private Limited, Grand Canyon SEZ Private Limited & Kings Canyon SEZ Private Limited collectively referred to as ("ASF Group"), holding its assets and investments in Information Technology or Information Technology Enabled Services Special Economic Zones ("IT/ITES SEZ") through the said subsidiary companies. The Borrower therefore is an asset rich holding company with Special Economic Zones ("SEZ") assets being held in several of its subsidiary companies. Keeping this structure in mind, M/s. Indiabulls Housing Finance Limited ("India Bulls") had extended certain loan facilities on such terms and conditions so that the Borrower pays off its dues only once in a year after recouping value of its assets and investments downstream.
4. Notably, due to certain critical regulatory changes there has been an overhaul in the SEZ sector which has led to an industry wide stress and volatility in IT-SEZ segment. Accordingly, the ASF approached India Bulls to positively evaluate the possibility of restructuring of loans of ASF Group. With an intention to pay of its dues, the Borrower has, in parallel, is also actively taking adequate measures to overcome the challenges posed by the volatility in IT-SEZ sector and has kept Indiabulls constantly informed about its initiatives and developments.
5. You may please take note that several positive and detailed meetings with officials of India Bulls have been taking place as recently as on 19 April 2024, 21 June 2024, 15 July 2024, 31 July 2024, 13 August 2024, 11 September 2024, 01 October 2024, 03 October 2024 wherein detailed discussions pertaining to restructuring of loans of the ASF Group have been ongoing. In addition, there have been several emails exchanged between India Bulls and the Borrower pertaining to restructuring of the loans including but not limited to emails dated 29 May 2024, 31 May 2024, 26 July 2024, 01 October 2024, 03 October 2024, 10 October 2024, 11 October 2024, 12 October 2024 amongst several other email exchanges.
6. In fact it is relevant to state on record that:
 1. Even post the assignment agreement dated 29 March 2022 entered into by India Bulls as highlighted in your demand notice, all interactions with respect to the loans taken by the ASF Group have been continued with India Bulls acting as the Sub Servicer on your behalf to manage, collect and receive the receivables as per the Sub-Servicer Agreement dated 29 March 2022.
 2. The application filed by you under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code") bearing IB Application No. 124/2024 was also withdrawn by you on 30 April 2024, on account of the settlement talks/discussions undertaken between the ASF Group and India Bulls- i.e., the original lender and current Sub-Servicer.
7. In view of the ongoing engagement regarding the restructuring of loans, the present Demand Notice issued by you seeking for recovery of the entire loan alongwith interest is not only shocking and misconceived but also appears to be a mere attempt to arm twist the Borrower in a bid to gain an unfair recovery.

8. It is surprising that you, on one hand proceed to issue Demand Notices while on the other hand, India Bulls, the original lender and the Sub-Servicer acting on your behalf continues to undertake settlement discussions with the Borrower for the same set of loans. The conduct of the Trustee in issuing the present Demand Notice and threaten the Borrower with initiation of insolvency proceedings when in fact India Bulls has sought to continue with restructuring and settlement talks with the Borrower group is evidently malicious, intended towards merely ensuring an unfair recovery from the Borrower and against the intent of the Code which specifically bars such malicious proceedings. In light of the above, the present Demand Notice issued by you is premature and misconceived and ought to be withdrawn with immediate effect.
9. The present communication is without prejudice to any of our rights and remedies available under applicable law and/or contract each of which are reserved specifically and any omission to raise any of such rights or contentions, may not be treated as a waiver of the same.
10. The undersigned reserves its rights to respond to the captioned Demand Notice on merits and to respond to any coercive action if taken by the Trustee/ Original Lender in furtherance thereof.

Thanking you,
Yours faithfully,

For ASF Buildtech Private Limited

13. The Applicant/ FC has also enclosed NeSL report as record of default with information utility as Annexure- A/55 to the application.

14. In the wake of the aforesaid facts, it is clear that there was a financial debt owed by the Corporate Debtor to the Financial Creditor, the debt had become due and there was default in repayment of defaulted amount.

15. In *Innoventive Industries Limited vs ICICI Bank Ltd* [(2018) 1 SCC 407], the Hon'ble Supreme Court had analysed the scope and extent of the powers conferred with the Adjudicating Authority under Section 7 of the Code and held that in case of a Corporate Debtor who commits default, the Adjudicating Authority merely has to see from the records or evidence produced by the FC to satisfy itself that a default has occurred. Relevant excerpt of the judgment reads thus: -

“29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence

of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing - i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

(Emphasis Supplied)

16. Furthermore, the Hon'ble Supreme Court in the matter of **M. Suresh Kumar Reddy V. Canara Bank**, [(2023) 8 SCC 387] held that once the Adjudicating Authority is satisfied that the default has occurred, there is hardly a discretion left with it to refuse the admission of the application under Section 7 of the Code. The relevant extract of the aforesaid judgement reads thus: -

"11. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application

under Section 7. "Default" is defined under sub-section (12) of Section 3 IBC which reads thus:

"3. Definitions. In this Code, unless the context otherwise requires-

.....

(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;"

Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission under Section 7 IBC must follow. If NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application."

17. The particulars of debt and default have been mentioned in Part-IV of the captioned petition, which reads thus: -

PART-IV

PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE	a) By virtue of Board Resolution dated April 19, 2018, the Applicant has appointed Mr. Sameer Trikha to file the present application on their behalf. True copy of the Board Resolution is dated April 19, 2018 is annexed herewith and marked as Annexure -A/2.
		[...]
		r) The Corporate Debtor has defaulted and failed in fulfilling its payment obligations under the Loan Agreements and has committed default in terms of

Clause 12 thereof. Accordingly, the Applicant issued notices of even dates to the Corporate Debtor for Loan 1 to 5 inter alia recalling the entire loans extended and called upon the Corporate Debtor to repay the amounts mentioned therein within 3 (Three) days from the date of receipt of the said notices. Despite being in receipt of the said notice, the Corporate Debtor failed to repay the amounts mentioned therein. True Copies of notices dated December 08, 2023, are annexed herewith and marked as **Annexure A/37 to Annexure A/41.**

- s) The Corporate Debtor vide its replies dated December 19, 2023, to the Notices dated December 8, 2023, has acknowledged its liability towards the Applicant and has requested restructuring of its Loan accounts. Copies of replies dated December 19, 2023, issued by the Corporate Debtor are annexed herewith and marked as **Annexure A/42 to Annexure A/46.**
- t) Thereafter on 12.01.2024, the applicant herein filed an application under section 7 of the Insolvency and Bankruptcy Code, 2016 against the corporate debtor before this Hon'ble Tribunal, being Company Petition (IB) No.124 of 2024.
- u) This Hon'ble Tribunal was pleased to issue notice to the corporate debtor in the aforementioned section 7 petition vide order dated 18.3.2024 . Copy of the order dated 18.3.2024 passed by this Hon'ble Court in Company Petition (IB) No. 124 of 2024 is annexed herewith and marked as **Annexure A/47.**
- v) Between March-April 2024, the corporate debtor sent a restructuring proposal to the applicant herein for settling its dues with the applicant herein.

- w) Thereafter on 30.4.2024, the parties apprised this Hon'ble Tribunal about the restructuring proposal sent by the corporate debtor to the applicant herein and that the same was under examination by the applicant herein and that the parties were in the process of arriving at some settlement qua the default amount.
- x) This Hon'ble Tribunal, vide order dated 30.4.2024, disposed off the petition filed by the applicant herein, being Company Petition (IB) No.124 of 2024, in lieu of the restructuring proposal of the corporate debtor and the settlement talks which were then ongoing between the parties, with the observation that in case the settlement was not finalized and implemented, the applicant would be at liberty to mention for revival of the said petition on 14.5.2024. Copy of the order dated 30th April, 2024 passed by this Hon'ble Tribunal in Company Petition (IB) No.124 of 2024 is annexed hereto and marked as **Annexure A/48**.
- y) Between April-August, 2024 the settlement talks between the parties failed and the applicant continued to be in default with respect to the 5 Loan Agreements which are subject matter of the present petition.
- z) On 9.9.2024, owing to the continuing default on part of the applicant in paying the Applicant/Financial Creditor as per the repayment schedule in the loan agreements, Catalyst Trusteeship Limited again issued loan recall notices to the Corporate Debtor, mortgagors and guarantors to repay the amounts mentioned therein. However, the Corporate Debtor failed to repay the amounts due to the Applicant and the dues of the applicant are still subsisting.

		<p>a) True Copies of notices dated September 09, 2024, are annexed herewith and marked as Annexure A/49 to Annexure A/53.</p> <p>Accordingly, the Applicant is entitled to the outstanding principal along with applicable interest and other amounts.</p> <p>In light of the above, the Corporate Debtor as of 9th September, 2024, is liable to pay to the Applicant a total outstanding sum of (please provide) A break-up of the outstanding amount is as follows:</p> <table border="1" data-bbox="794 680 1225 1220"> <thead> <tr> <th>Particulars</th> <th>Amount (in Rs.)</th> </tr> </thead> <tbody> <tr> <td>Future Principal Outstanding</td> <td>674,00,00,000</td> </tr> <tr> <td>Interest outstanding</td> <td>85,46,31,996</td> </tr> <tr> <td>Accrued Interest</td> <td>21,365,796</td> </tr> <tr> <td>Default interest</td> <td>48,987,026</td> </tr> <tr> <td>Other Charges</td> <td>-</td> </tr> <tr> <td>TDS</td> <td>20,164,088</td> </tr> <tr> <td>Total</td> <td>768,51,48,906</td> </tr> </tbody> </table>	Particulars	Amount (in Rs.)	Future Principal Outstanding	674,00,00,000	Interest outstanding	85,46,31,996	Accrued Interest	21,365,796	Default interest	48,987,026	Other Charges	-	TDS	20,164,088	Total	768,51,48,906
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Default interest	48,987,026																	
Other Charges	-																	
TDS	20,164,088																	
Total	768,51,48,906																	
2.	<p>DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</p>	<p>Date of Default: August 27, 2024</p>																
		<p>A tabulated computation of the amounts due and payable is annexed herewith and marked as Annexure-A/ 54.</p> <p>Date of Default: August 27, 2024</p> <p>The defaults committed by the Corporate Debtor are of a continuing nature. Owing to the default on part of the Corporate Debtor, notices dated December 8 ,2023, notices dated 9th September 2024, were issued to the Corporate Debtor, whereby the entire loan amount was recalled and the corporate debtor was called upon to repay the amounts mentioned therein within 3 days from the date of receipt of the notices. Despite being in receipt of the said notices, the Corporate Debtor failed to pay the amounts due.</p> <p>Accordingly, there is default in repayment of a financial debt, which continues to remain outstanding as on date.</p>																

18. In Part- III of the application, the Applicant has proposed the name of Mr. Manoj Kumar Anand [Reg. No.: IBBI/IPA-001/IP-P00084/2017-18/10180] to act as the Interim Resolution Professional. Relevant excerpt of the same reads thus: -

PART – III

PARTICULARS OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL		
1.	NAME, ADDRESS, EMAIL ADDRESS AND THE REGISTRATION NUMBER OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL	Name: Manoj Kumar Anand Address: 2, Community Centre, 3 rd Floor, Near PVR/ Mc Donald Naraina, New Delhi, NCT of Delhi-110028 Email: anandmanoj@gmail.com Registration No.: IBBI/IPA-001/IP-P00084/2017-18/10180

19. It is also pertinent to mention that the aforementioned insolvency professional has submitted a declaration under Rule 9 of the I&B (Application to Adjudicating Authority) Rules, 2016 by way of Form 2 to indicate that no disciplinary proceedings are pending against him and he is eligible to be appointed as the RP qua the Corporate Debtor. The relevant excerpt of the same, enclosed at page 963 to the application, reads thus: -

FORM-2
 [See sub-rule (1) of rule 9]
 [Under rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]
WRITTEN COMMUNICATION BY PROPOSED INTERIM RESOLUTION PROFESSIONAL

Date: 13.09.2024

To,

The National Company Law Tribunal
 Block No. 3, Ground, 6th, 7th & 8th Floor
 CGO Complex, Lodhi Road,
 New Delhi-110003

From,
Manoj Kumar Anand
Insolvency Professional
Address: 2, Community Centre, 3rd Floor, Near Pvr/ Mc Donald Naraina,
New Delhi, NCT Of Delhi-110028

In the matter of M/s. ASF BUILDTECH PRIVATE LIMITED.

Subject: Written Communication in connection with an application to initiate u/s 7 of IBC, 2016, Corporate Insolvency Resolution Process in respect of M/s. ASF BUILDTECH PRIVATE LIMITED (U45400DL2007PTC168901)(CD).

Madam/Sir,

I, Manoj Kumar Anand, an Insolvency professional registered with Indian Institute of Insolvency Professional of ICAI having registration number IBBI/PA-001/IP-P00084/2017-18/10180 have been proposed as the Interim Resolution Professional by CATALYST TRUSTEESHIP LIMITED (IN THE CAPACITY OF TRUSTEE OF INDIA WHOLESAL LOAN OPPORTUNITIES TRUST I) IN THE CAPACITY OF TRUSTEE OF INDIA WHOLESAL OPPORTUNITIES TRUST II, IN THE CAPACITY OF TRUSTEE OF INDIA WHOLESAL LOAN OPPORTUNITIES TRUST III & IN THE CAPACITY OF TRUSTEE OF INDIA WHOLESAL LOAN OPPORTUNITIES TRUST IV) (Financial Creditor) having registered office at GDA House, First Floor, Plot No: 85 S. No. 94 & 95, Bhusari Colony (Right), Kothrud, Pune-411038 in connection with the proposed corporate insolvency resolution process of M/s. ASF BUILDTECH PRIVATE LIMITED (U45400DL2007PTC168901).

In accordance with rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, I hereby:

- i. Agree to accept appointment as the resolution professional if an order admitting the present application is passed;
- ii. State that the registration number allotted to me by the Board is IBBI/PA-001/IP-P00084/2017-18/10180 and that I am currently qualified to practice as an Insolvency professional;
- iii. Disclose that I am currently having the assignments in hand: Details enclosed herewith as Annexure-A
- iv. Certify that there are no disciplinary proceedings pending against me with the Board or Indian Institute of Insolvency Professional of ICAI.

v. Affirm that I am eligible to be appointed as a resolution professional in respect of the corporate debtor in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

vi. Make the following disclosures in accordance with the code of conduct for insolvency professionals as set out in the insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016;

Affirm that;

a. That I do not acquire, directly or indirectly, any of the assets of the debtor, nor knowingly permit any relative to do so;

b. I shall maintain complete independent professional relationships and should conduct the insolvency resolution process independent of external influences;



c. I ensure that no asset is or will be acquired by me or my relatives, whether directly or indirectly unless it is shown that there was no impairment of objectivity, independence or impartiality in the liquidation or Bankruptcy process and the approval of the Board has been obtained in the matter.

d. I shall not take up an assignment under the code if I, any of my relatives, any of the partners or directors of the Insolvency professional entity of which I am a partner or director, or the Insolvency professional entity of which I am a partner or director is

e. not independent, in terms of the regulations related to the process under the code, in relation to the corporate person/debtor and its related parties;

f. I do not have any pecuniary or personal relationship with any of the stakeholders entitled to distribution under section 53 or 178 of the Code, and the concerned corporate person/debtor.

g. I will adhere to the code of conduct as provided in the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.



20. With respect to I.A. No. 1194/2025 whereby the Applicant therein viz. Omkara Assets Reconstruction Private Limited has sought the prayer to substitute its name in place of Catalyst Trusteeship Private Limited in the captioned company petition, it is relevant to refer to the Assignment

Agreement dated 28.12.2024, enclosed as Annexure- A/2 of the I.A. Relevant excerpt of the same reads thus: -

“2. ASSIGNMENT OF LOANS

2.1. Assignment

*i) The Parties hereto acknowledge that in accordance with the applicable provisions of SARFAESI Act, 2002 and the conditions precedent set forth in Section 3 of this Agreement (Conditions Precedent) having been fulfilled or waived by the Assignee, as the case may be, and in consideration of the Assignee, paying the Purchase Price to the Assignor on or before December 30, 2024 (such date of payment of Purchase Price is hereinafter referred to as "**Effective Date**"), and upon the terms and conditions set forth herein and in the relevant Transaction Documents, and relying on the representations, warranties and covenants of the Assignor, the Assignor as the true, legal and beneficial owner of the Loans, in the ordinary course of its business, hereby, on and from the Effective Date, absolutely, unconditionally and irrevocably sells, assigns, transfers and releases to and unto the Assignee all the Financial Assistance forever, pursuant to pursuant to Section 5(1) (b) of the SARFAESI Act, 2002 TO HOLD the same absolutely IN TRUST for the benefit of the holders of the Security Receipts constituted by the Trust Deed and issued by Omkara PS 09/2024-25 Trust TO THE END AND INTENT THAT the Assignee shall hereafter be deemed to be the full and absolute legal and beneficial owner, and the only person legally entitled to the Loans or any part thereof, free from any or all encumbrances, and to recover and receive all Amounts Due on and from the Cut-Off Date, including the right to file a suit or institute such other recovery*

proceedings and take such other action as may be required for the purpose of recovery of the Loans, in its own name and right and as an assignee, and not as a representative or agent of the Assignor and to exercise all other rights of the Assignor in relation thereto.

*Provided, however, that in connection with any payments made by the Obligor in relation to the Loans prior to the Cut-off Date, if the Obligor has deducted tax at source but has not deposited the same with the relevant income tax authorities. the Assignor shall retain the right to claim such amounts due in relation to the tax at source from the Obligor ("**TDS Claim**").*

2.1.2 The Assignor hereby on and from the Effective Date further assigns in favour of the Assignee, on 'as is where is', 'as is what is' and 'without recourse basis', all its absolute legal and beneficial rights, title and interest in the Financing Documents, all agreements, deeds and documents related thereto and all collateral and underlying Security Interests and / or pledges created to secure, and/or guarantees issued in respect of, the repayment of the Loans, which the Assignor is entitled to. The Assignee shall have the right to enforce such Security Interests, pledges and / or guarantees and appropriate the amounts realized therefrom towards the repayment of the Loans and to exercise all other rights of the Assignor in relation to such Security Interests, pledges and / or guarantees. All original documents, correspondence, legal proceedings in relation to the Financing Documents are in the possession of the Assignor and the Assignor shall transfer/deliver or cause to be transferred/delivered all such original documents, deeds and/or writings. including but not limited to the Financing Documents, to the Assignee or any agent of the

Assignee on or about the Effective Date, and until such transfer/delivery, hold the same of behalf of the Assignee.

[...]

SCHEDULE 1

Section 1: List of Loans

Details of the Loans which are secured against immovable properties and where such immovable properties are yet to be foreclosed pursuant to enforcement action are attached separately to this Schedule and details of other Loans which are not secured by immovable properties or where immovable properties have been foreclosed/sold off pursuant to enforcement action have been separately provided by the Assignor to the Assignee.

Section 2: Financing Documents

Details of Financing Documents in respect of remaining Loans will be separately provided by the Assignor to the Assignee.

[...]

Annexure:

S No	Group Name	No. of Accounts	POS as on 19.12.2024	TOS as on 19.12.2024
1	ASF Group	7	749.78	882.40
2	Mantri Group	7	334.71	656.30
3	Omkar Group	10	825.73	1,204.57
4	Shree Naman Group	8	853.60	2,644.42
5	Vatika Group	43	1,249.38	2,071.63
6	Unsecured (Personal Loan & Business Loan)	6,422	43.73	71.69
	Grand Total	6,497	4,056.94	7,531.00

[...]

Further, the details of all the five loan facilities extended to the CD by Sammaan Capital and the pendency of the present company petition has also been mentioned in the aforementioned assignment agreement. For ease of reference, the excerpt from the assignment agreement mentioning the details of loan account no. S000241494 may be referred to, which reads thus: -

Schedule 1 ASF Buildtech Private Limited (S000241494)

Being the details of the Financing Documents (Amount in Rs. 1900000000)

S. No.	Particulars	Details										
1.	Name & Details of the Borrower	ASF Buildtech Private Limited Registered Office: 11, Babar Lane, Bengali Market, New Delhi - 110001, Delhi PAN: AAFCM3231R Legal Constitution: Private Limited Company Date of Incorporation: 03-10-2007. CRN: 168901 CIN: U45400DL2007PTC168901										
2.	Relationship Segment	Name: Mr. Anil Saraf (Promoter) Address: E-505, Greater Kailash-II, New Delhi - 110048 PAN: AAXPS2304Q Contact Number: 9810011952 Date of Birth: 12/12/1962 DIN: 00373265										
3.	Name & Details of the Guarantor	Anil Saraf Address: E-505, Greater Kailash-II, New Delhi - 110048 PAN: AAXPS2304Q Aadhar: 890129295596 Date of Birth: 12/12/1962 Legal Constitution: Individual										
4.	Name & Details of the Co-borrower	Not applicable										
5.	Loan Account Details As per Assignor's Records.	<table border="1"> <thead> <tr> <th>Sr. No.</th> <th>Loan Account No.</th> <th>Sanction Date</th> <th>Sanction Amount</th> <th>Type of Loan</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>S000241494</td> <td>03-08-2020</td> <td>1900000000</td> <td>Corporate Loan- LAP</td> </tr> </tbody> </table>	Sr. No.	Loan Account No.	Sanction Date	Sanction Amount	Type of Loan	1	S000241494	03-08-2020	1900000000	Corporate Loan- LAP
Sr. No.	Loan Account No.	Sanction Date	Sanction Amount	Type of Loan								
1	S000241494	03-08-2020	1900000000	Corporate Loan- LAP								
6.	Principal Outstanding Amount as on 19.12.2024 is Rs. 1740000000											
7.	Total Outstanding Amount (Principal outstanding+ Interest+ Other Charges) as on 19.12.2024 is Rs. 2066972252											
8.	Date of NPA	Non NPA										
9.	DPD as on COD	126										
10.	Asset Classification	Sub Standard										
11.	Nature of Credit facility (ies)	As per Annexure 1										
12.	Details of loan Documents	As per Annexure 2										
13.	Details of pending litigations	C.P(IB) No. 675 of 2024 has been filed under Section 7 of the IBC against ASF Buildtech Private Limited by Catalyst Trusteeship Limited, and the same is to be listed on 28.01.2025. Form B was issued on 12.09.2024 to Mr. Anil Saraf. Catalyst Trusteeship Limited has filed a petition under Section 95 against the Personal Guarantee.										

[...]"

21. Thus, as can be seen from the aforesaid agreement, the loan facility extended by Sammaan Capital was assigned to Omkara Assets Reconstruction Private Limited. It is pertinent to note that as per sub-section (7) of Section 5 of the Code, the definition of ‘financial creditor’ includes a person to whom such debt has been legally assigned or transferred to. The aforementioned provision reads thus: -

“5. Definitions. —*In this Part, unless the context otherwise requires, —*

(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;”

22. In the wake, it is clear that a lender can legally assign/ transfer the financial debt owed to it to another person/ entity. Further, in the facts of the present case, the assignment agreement mentioned above also shows that the lender i.e. Sammaan Capital had legally assigned the financial debt owed to it to Omkara Assets Reconstruction Private Limited.

23. Further, it is also a settled position that for filing an application under Section 7 of the Code, it is not necessary that the default is in respect of the financial debt owed to the financial creditor filing the application, but what is essential is that the Corporate Debtor has defaulted in repayment of debt. This legal position was emphasized in ***Innoventive Industries Limited vs ICICI Bank Ltd*** (supra) wherein the Hon’ble Supreme Court held as follows:

“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is

to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.”

24. Similarly, in **R. B. Synthetics & Anr. vs. Bee Ceelene Textile Mills Pvt. Ltd.** [Company Appeal (AT) (Ins) No. 106 of 2018], the Hon'ble NCLAT in terms of order dated 02.07.2018 held that: -

“From the aforesaid provision it is clear that if the application is filed under Section 7, default in respect of a 'financial debt' owed to any of the 'Financial Creditors' of the corporate debtor, it need not be a default of debt owed to the particular Financial Creditor and may be a Co-Financial Creditor under Section 7(2). Application made under Sub-section (1) in the form prescribed required to accompany the documents and records therein. If the authorization letter was not accompanied or other record relating to debt or a default was not enclosed, as pleaded by learned counsel appearing on behalf of Corporate Debtor, which requires to be mentioned in Part-IV and Part-V of Form 1, it was duty on part of the Adjudicating Authority to allow time to the 'Financial Creditor(s)' to remove the defects and should not have rejected the application on the ground that the loan amount of certain 'Financial Creditor' is not clear from the record.”

(Emphasis Supplied)

25. In context of a person/ entity to whom the financial debt has been legally assigned in terms of Section 5(7) of the Code, it is again a settled legal position that such assignees may continue the proceedings instituted under the Code. To substantiate this position, reference may be made to the order dated 13.12.2022 passed by Hon'ble NCLAT in **Siti Networks Ltd. Vs Assets Care and Reconstruction Enterprises Ltd. & Anr.** [Comp. App. (AT) (Ins.) No. 1449/2022] whereby it was held that: -

“As has been observed rightly by the Adjudicating Authority, there is no prohibition in the IBC or any of the Regulations from continuing the proceeding by an assignee. Section 5(7) of the IBC

which defines 'Financial Creditor' also includes a person to whom such debt has been legally assigned or transferred to. By virtue of assignment, Respondent No.1 become the Financial Creditor and having stepped in the shoes of 'Housing Development Finance Corporation Limited', it has every right to continue the proceeding which was initiated by Respondent No.2".

26. During the course of hearing, it was contended on behalf of the Respondent/ CD that the second assignment agreement i.e. between Sammaan Capital Private Limited and Omkara Assets Reconstruction Private Limited, was brought on record at a belated stage and questioned the validity of the company petition itself filed u/s 7 of the Code.

27. In this respect, it is pertinent to note that the objective of the Code is to resolve insolvency of the Corporate Debtor. Once this Adjudicating Authority is satisfied that the CD owed a financial debt and there was default in repayment, then the CD is to be admitted into CIRP. This Tribunal cannot get bogged down in adjudicating issues which ought to be raised by the parties in civil suit.

28. Our view is fortified by the judgment of Hon'ble NCLAT in **Lalan Kumar Singh v. Phoenix ARC (P) Ltd.** [2018 SCC OnLine NCLAT 835], wherein it was held that the adjudicating the validity of an assignment agreement in proceedings under IBC, 2016 would turn it into civil proceedings which would be contrary to the legislative intent. Relevant excerpt of the judgment reads thus: -

"19. In the present case we find that the appellant has sought declaration that the assignment made by HSBC to 'Phoenix' as illegal, which can be raised only in a civil suit. The appellant is

trying to convert the proceedings under the 'I&B Code' as civil proceedings akin to a trial which is not the legislative intent."

It is apposite to note that the Applicant in I.A. No. 1194/2025 has been 'legally assigned' the financial debt in question in terms of the assignment agreement dated 28.12.2024. Further, the Applicant of the company petition viz. Catalyst Trusteeship Private Limited has not opposed the substitution of its name with that of Applicant of aforementioned I.A. viz. Omkara Assets Reconstruction Private Limited. Rather, during the course of hearing, Mr. Dhawan, Ld. Counsel for the Applicant i.e. Catalyst Trusteeship Private Limited submitted that he had instruction from the assignee to represent it and the application for substitution which had already been filed on the date on which the order was reserved and was awaiting listing before the Bench, had been filed through him only. Even otherwise also, as can be seen from the provisions of Section 7(4) of the Code, this Adjudicating Authority should within 14 days of the receipt of application under sub-section (2) of Section 7 ascertain the existence of default from the records of the Information Utility or on the basis of other evidence furnished by the financial creditor under sub-section (3) of Section 7 of the Code. The provision does not expect us to go into the issues of assignor and assignee of debt at the stage of admission. Whether the application for substitution comes or not, the assignee steps into the shoes of the financial creditor and the debt and default subsist. Such is the requirement of clause (a) of sub-section (5) of Section 7 of the Code also. At the stage of admission of an application, we are not expected to delve into the controversy of assignor and assignee, unless the issue is raised by either assignor or assignee. In the present case, there is no dispute between the

assignor or assignee and it is not for the CD to raise any issue that what transaction transpired between the creditor and the assignees of debt. It has already been discussed hereinabove that as per explanation given below sub-section (1) of Section 7, a default includes a default in respect of a financial debt owed not only to the Applicant but also to any other financial creditor of the CD. Hence, this Adjudicating Authority finds no infirmity in the maintainability of the present company petition in context of the application filed for substitution of Financial Creditor's name in the captioned company petition. Here it would not be out of context to take note of para 182 of the judgment of Hon'ble Supreme Court in **State Bank of India vs. The Consortium of Mr. Murari Lal Jalan** and Mr. Florian Fritsch & Ors. [Civil Appeal No. 5023-5024/2024] in terms of which the Hon'ble Supreme Court expect this Tribunal to adhere to the timelines. The para reads thus: -

“182. Moving on to certain efficiency issues within the NCLTs and NCLAT, it has been noticed over a period of time that there is a serious lack of timely admission and disposal of the applications filed as regards the initiation of CIRP, approval of the resolution plan and liquidation. This only adds to the uncertainty of the process and prolongs the dispute thereby jeopardizing the interest of all the stakeholders involved. Adjudication in a time-bound manner would help prevent any further deterioration of the value of the corporate entity. The integrity of the original timelines laid down by the Code and the Resolution Plan must not be allowed to be violated since it would dilute the objective of the Code in its entirety, erode investor confidence and hinder all corporate restructuring efforts.”

29. As has been provided in sub-section (5) of Section 7 of IBC, 2016, where this Adjudicating Authority is satisfied that a default has occurred and the

application filed under Section 7(2) is complete and there are no disciplinary proceedings pending against the proposed Resolution Professional, it may admit the application. Section 7(5) of the Code reads thus: -

“7. Initiation of corporate insolvency resolution process by financial creditor.—

[...]

(5) Where the Adjudicating Authority is satisfied that—

- (a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or*
- (b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:*

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.”

30. In the facts and circumstances of the case, as noted above we are left with no option but to admit the present application. Ordered accordingly.

31. In the wake, moratorium as provided under Section 14 of IBC, 2016 is declared qua the CD and as a necessary consequence thereof the following prohibitions are imposed, which must be followed by all and sundry:

- (a) The institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any

judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;

(c) Any action to foreclose, recover or enforce any security interest created by the Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Respondent.

32. As proposed by the Petitioner, Mr. Manoj Kumar Anand [Reg. No.: IBBI/IPA-001/IP-P00084/2017-18/10180], is hereby appointed as IRP. It is further ordered that Mr. Manoj Kumar Anand, shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC, 2016 specifically under Section 15, 17, 18, 20 and 21 of the Code read with extant provisions of CIRP Regulations, 2016.

33. The Petitioner is directed to deposit Rs. 2,00,000/- with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

34. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

35. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their record.

36. In the wake of the present order, **I.A. No. 1194 of 2025 stands allowed** and the amended memo of parties is taken on record.

37. Before we pronounced the order, Mr. Sudhir Makkar, Ld. Sr. Counsel appearing for the Corporate Debtor, submitted that the parties i.e. the Creditor and the Corporate Debtor are interested in a settlement and most probably the settlement would be arrived at soon. The submission made by Mr. Sudhir Makkar, Ld. Sr. Counsel for the Corporate Debtor, is conceded by Ld. Counsel present for the Financial Creditor. Mr. Makkar further emphasised that when the parties are entering into a settlement, the pronouncement of the order may be deferred for a while. In our view, once the order is ready and is listed for pronouncement only, it would not be appropriate for us to not pronounce it. However, we may also be not ignorant of the object of IBC i.e. to put the Corporate Debtor back on its feet and rescue it. Mr. Sudhir Makkar, Ld. Sr. Counsel for the Corporate Debtor, has made a statement at the bar that the Financial Creditor and the Corporate Debtor are in the process of resolving the issue raised in the application and there may not be the need to order CIRP qua the Corporate Debtor.

38. Here it would not be out of context to note that for a justifiable reason, a court can always keep its order in abeyance. In ***Sudarshan Chits (I) Ltd. v. O. Sukumaran Pillai*** [(1984) 4 SCC 657], the Hon'ble Supreme Court, in context of a winding up proceeding, held that when an order is kept in

abeyance, neither the pending proceeding is quashed nor revoked, but only kept in a suspended animation. Relevant excerpt of the order reads thus: -

“14. However, the narrow question which is required to be considered in this appeal is : whether the winding-up proceedings were pending or had come to an end when the Appellate Bench froze the winding-up order by keeping it in abeyance? Let it be made at once clear that the winding-up order made by the learned Company Judge in respect of the appellant Company has neither been quashed, set aside, cancelled, revoked nor recalled. On the contrary after directing that the winding-up order shall be held in abeyance, the Appellate Bench directed that Official Liquidator shall continue to act as Provisional Liquidator as provided by Section 450 and that itself is a stage in the winding-up proceedings. When winding-up order is kept in abeyance it is in a state of suspended animation. The fact that the Appellate Bench directed that pending the implementation of the scheme as sanctioned by the High Court, the winding-up order will be kept in abeyance itself without anything more shows that the order was neither cancelled nor recalled nor revoked nor set aside. It continued to exist but was inoperative. Any default on the part of the Company in carrying out its obligation under the scheme by itself without anything more would revive the winding-up order. Therefore, the winding-up order was effectively subsisting but inoperative for the time being. Having all the potentiality of being rejuvenated or being brought back to life.

15. Now if the winding-up order was merely held in abeyance i.e. it was not operative for the time being, but it had not ceased to exist, the winding-up proceedings are in fact pending and the court which made the winding-up order would be the court which is winding up the Company. It is now well-settled that a winding-up order once made can be revoked or recalled but till it is revoked or recalled it continues to subsist. That is the situation in this case.

If the winding-up order is subsisting the court which made that order or the court which kept it in abeyance will have jurisdiction to give necessary directions to the Provisional Liquidator to take recourse to Section 446(2).”

(Emphasis Supplied)

39. In context of the insolvency proceedings, Rule 11 of the NCLT Rules, 2016 provides this Tribunal with the power to make such orders that will enable it to dispense justice. Such inherent powers include the power to keep in abeyance an order passed by the Tribunal. It is relevant to refer to the **SREI Equipment Finance Ltd. vs. Madhucon Projects Ltd** [CP IB/12/2021] wherein the Hyderabad Bench of this Tribunal, in terms of order dated 29.03.2023, held that the admission of the CD in CIRP be kept in abeyance for three months in view of certain arbitral awards that were given in CD’s favour. Relevant excerpt of the order reads thus: -

“27. According to the Ld. Sr. Counsel for the Corporate Debtor, even if it is assumed without accepting that the corporate debtor has defaulted an amount of Rs. 100,05,77,347/-, there is a Decree dt. 09.08.2019 issued in favor of corporate debtor by District Judge – XIV, Cum Presiding Officer, Commercial Court, Dhanbad for an amount of Rs. 163,55,52,895/- and an Arbitral Award dt. 17.01.2021 for a sum of Rs. 52,62,76,413/- and together the total amount of receivables vide the above said decree and award is much greater than the alleged defaulted debt claimed by financial creditor. Relying on the ruling of Hon’ble Supreme Court in the case of Vidarbha Industries Power Limited supra, Ld. Sr. Counsel for the Corporate Debtor contended that, the alleged debt in default by CD is much lesser than the amounts that it is entitled no justice would be served to admit the Section 7 application and to proceed with CIRP.

28. We have carefully considered the Decree dt. 09.08.2019 issued in favor of corporate debtor by District Judge – XIV, Cum Presiding Officer, Commercial Court, Dhanbad for an amount of Rs. 163,55,52,895/- and an Arbitral Award dt. 17.01.2021 for a sum of Rs. 52,62,76,413/- which together make the total amount of receivables much greater than the defaulted debt, besides the unrebutted plea that the corporate debtor is a running concern having more than 5000 employees, and are of the firm view that the facts and circumstances of this case warrant keeping the admission of the corporate debtor into Corporate Insolvency Resolution Process (CIRP) in abeyance for three months from the date of this order, however by giving liberty to the applicant/financial creditor to approach this Tribunal if its dues continue to remain unpaid within three months from the date of this order.”

(Emphasis Supplied)

40. It is apposite to refer to **Ashok Kumar Tyagi v. UCO Bank** [2023 SCC OnLine NCLAT 367] wherein the Hon’ble NCLAT harmonised the ratio laid down in *Innoventive Industries* (supra) and *Vidarbha Industries* (supra). In said case, the Hon’ble Appellate Tribunal stayed the order of admission of CD in CIRP for a period of 60 days in order to give the Financial Creditor an opportunity to take a final decision on the Corporate Debtor’s offer of OTS. The Appellate Tribunal further noted that if no settlement was reached between the parties during said period, the CIRP qua CD would commence and the stay granted by it would become inoperative. Relevant excerpt of the order reads thus: -

“20. Now, we come to the submission of learned Counsel for the parties regarding order dated 28.10.2022, by which Section 7 Application has been admitted. The learned Counsel for the

Appellant has relied on the judgment of the Hon'ble Supreme Court in Vidarbha Industries Power Limited v. Axis Bank Limited, (2022) 8 SCC 352 to contend that in the facts of the present case their OTS proposal which was under consideration and the fact that the Corporate Debtor is a running entity with 7000 workmen, the Adjudicating Authority ought to have exercised its discretion in rejecting Section 7 Application.

21. The learned Counsel for the Bank in reply to the said submission contends that judgment of the Hon'ble Supreme Court in Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 covers the issue. The judgment of the Hon'ble Supreme Court in E.S. Krishnamurthy v. Bharath Hi-Tecch Builders (P) Ltd., (2022) 3 SCC 161 also covers the case. A recent judgment of the Hon'ble Supreme Court in Civil Appeal No. 7121 of 2022 - M. Suresh Kumar Reddy v. Canara Bank has also been relied [...]

22. In the present case, the Adjudicating Authority has noticed in the impugned order that there was admission on behalf of the Corporate Debtor of the debt of Rs. 50 Crores, which was noticed in paragraphs 8.9 and 8.10 of the order. The present is a case where, there is no denial to the debt and default. On the date when Adjudicating Authority heard the matter and reserved the order, there was no OTS proposal under consideration before the UCO Bank, since according to the Appellant, the letter submitting OTS proposal of Rs. 41 Crores was given on 26.10.2022, after it received the Expression of Interest from Lemongrass. We, thus, are of the view that no error can be found in the order of the Adjudicating Authority, admitting Section 7 Application by its order dated 28.10.2022. We, however, cannot be oblivious to the facts and sequence of events, which took place during the pendency of the Appeal.

[...]

25. We have already found that the impugned order dated 28.10.2022, admitting Section 7 Application was an order, which

cannot be faulted in law. However, we are inclined to direct that for a period of 60 days, no further steps in pursuance of the order dated 28.10.2022 of the Adjudicating Authority shall be taken and interim directions issued by this Tribunal by order dated 21.11.2022 shall continue for a period of 60 days, during which period, the Bank may take a final decision in reference to the OTS proposal lastly increased by the Corporate Debtor by its letter dated 03.05.2023, accepting the offer of the Bank for Outstanding Ledger Balance. In event of a settlement accepted by the Bank, the Bank is permitted to file an application through IRP to close the CIRP.

26. In event, the parties are unable to arrive at any settlement, CIRP proceedings shall commence after 60 days and the interim directions issued by this Tribunal in this Appeal shall become inoperative.”

(Emphasis Supplied)

41. It is also pertinent to refer to the judgment passed by the Hon’ble Supreme Court in **Greater Noida Industrial Development Authority v. Prabhjit Singh Soni** [(2024) 6 SCC 767] wherein it was held that this Tribunal has inherent powers to recall an order passed by it. Relevant excerpt of the judgment reads thus: -

“50. In light of the discussion above, what emerges is, a court or a tribunal, in absence of any provision to the contrary, has inherent power to recall an order to secure the ends of justice and/or to prevent abuse of the process of the court. Neither the IBC nor the Regulations framed thereunder, in any way, prohibit, exercise of such inherent power. Rather, Section 60(5)(c) IBC, which opens with a non obstante clause, empowers NCLT (the adjudicating authority) to entertain or dispose of any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of

the corporate debtor or corporate person under the IBC. Further, Rule 11 of the NCLT Rules, 2016 preserves the inherent power of the Tribunal. Therefore, even in absence of a specific provision empowering the Tribunal to recall its order, the Tribunal has power to recall its order. However, such power is to be exercised sparingly, and not as a tool to rehear the matter. Ordinarily, an application for recall of an order is maintainable on limited grounds, inter alia, where:

- (a) the order is without jurisdiction;*
- (b) the party aggrieved with the order is not served with notice of the proceedings in which the order under recall has been passed; and*
- (c) the order has been obtained by misrepresentation of facts or by playing fraud upon the court/tribunal resulting in gross failure of justice.”*

42. The ratio emerging from the above judicial pronouncements is that this Tribunal has required inherent power qua the CIRP proceedings pending including the power to recall its order or to keep its order in abeyance. In the wake of the fact that the CD has offered an OTS and the same is being positively considered by the FC, this Tribunal deems it fit that the order of admission of CIRP qua CD can be kept in abeyance. Though we pronounced the order i.e. we admitted the petition, but we defer the operation of the order of admission/ commencement of CIRP till 15.04.2025. If the parties arrive at a settlement in the meantime, the Applicant may move an application or mention before this Bench orally for withdrawal of the CP(IB) – 675/(ND)/2024 on or before 15.04.2025.

Sd/-
(REENA SINHA PURI)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)