IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

CP (IB) No.111/BB/2019
U/s. 7 of the IBC, 2016
R/w Rule 4 of the IBC (AAA) Rules, 2016
&
I.A No. 229 of 2019
U/s. 8 of the Arbitration and Conciliation Act, 1996
R/w Rule 11 of the NCLT Rules, 2016

IN THE MATTER OF:

M/s. Urban Infrastructure Trustees Limited
46-47, Maker Chambers VI,
Nariman point,
Mumbai – 400 021 ... Financial Creditor/Petitioner

VERSUS

M/s. Ozone Propex Private Limited
No.38, Ulsoor Road,
Bangalore - 560042. ... Respondent/Corporate Debtor

IN THE MATTER OF:

I.A No. 229 of 2019

M/s. Urban Infrastructure Trustees Limited ... Applicant

And

M/s. Ozone Propex Private Limited ... Respondent

Order delivered on: 24 June, 2022

Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Sh. K.G Raghavan, Sr. Counsel and
Sh. Arun Kumar, Sr. Counsel a/w
Sh. Anind Thomas

For the Respondent : Sh. S.S Naganand, Sr. Counsel a/w
Sh. Kumar Kislay

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ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present petition is filed, under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 4 of the I&B (Application to Adjudicating Authority) Rules 2016, by M/s. Urban Infrastructure Trustees Limited (for brevity 'Financial Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of M/s. Ozone Propex Private Limited (hereinafter referred as 'Corporate Debtor/Respondent').

2. The Petitioner, namely M/s. M/s. Urban Infrastructure Trustees Limited, a Public Company is the Trustee of Urban Infrastructure Opportunities Fund, a scheme of the Urban Infrastructure Venture Capital Fund, established for the purpose of carrying on the business of making investments *inter-alia* in real estate ventures in India.

3. The Corporate Debtor, namely, M/s. Ozone Propex Private Limited is a Company incorporated on 16.11.2004 with CIN: U74210KA2004PTC035015 having its registered office at No.38, Ulsoor Road, Bangalore - 560042, which falls within the territorial jurisdiction of this Adjudicating Authority. The Authorised Share Capital of the Respondent/Corporate Debtor is Rs.98,00,00,000/- and the Paid-Up Share Capital is Rs.93,01,43,579/- as per the Company Master Data attached at Annexure B of this Application.

4. The present application has been filed by the Financial Creditor against the Corporate Debtor in respect of the default amount of Rs.1164,09,64,429/- (Rupees One Thousand One Hundred and Sixty Four Crores, Nine Lakhs, Sixty Four Thousand, Four Hundred and Twenty Nine only) as on 16.11.2018.

LIST OF DOCUMENTS

5. Before the facts are narrated, it is necessary to list out the various documents produced by both the sides, however, in the chronological order and the same is as under:

   (1) Debenture Subscription Agreement dated 14.11.2006 executed by and between M/s. Ozone Propex Pvt Ltd and M/s. Urban Infrastructure

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Trustees Limited (Annexure-D to the C.P.)

(2) Debenture Certificate for OFCD1 dated 14.11.2006 (Annexure-E to the C.P.)

(3) Memorandum of Understanding dated 29.12.2006 between M/s. Ozone Propex Pvt Ltd, M/s. Urban Infrastructure Trustees Limited, Mr. S Vasudevan and Mr. C.P Bothra (Annexure-R1 to the Preliminary Objections)

(4) Ozone Propex Share Subscription Agreement dated 12.01.2007 executed by and among M/s. Ozone Propex Pvt Ltd, M/s. Urban Infrastructure Trustees Limited and Mr. S Vasudevan and Mr. C.P Bothra (Annexure-R2 to the Preliminary Objections)

(5) Ozone Propex Sharehoders Agreement dated 12.01.2007 executed by and between M/s. Ozone Propex Pvt Ltd, M/s. Urban Infrastructure Trustees Limited and Mr. S Vasudevan and Mr. C.P Bothra (Annexure-R3 to the Preliminary Objections)

(6) Debenture Subscription Agreement dated 21.03.2007 executed by and between M/s. Ozone Propex Pvt Ltd and M/s. Urban Infrastructure Trustees Limited (Annexure-F to the C.P.)

(7) Debenture Certificate for OFCD2 dated 21.03.2007 (Annexure-G to the C.P.)

(8) Fresh Debenture Certificate for OFCD1 dated 01.04.2008 (Annexure-H to the C.P.)

(9) Fresh Debenture Certificate for OFCD2 dated 01.04.2008 (Annexure-J to the C.P.)

(10) Fresh Debenture Certificate for OFCD3 dated 01.04.2008 (Annexure-K to the C.P.)

(11) Debenture Certificate for OFCD4 dated 16.07.2008 (Annexure-L to the C.P.)

(12) The first Application sent by M/s. Ozone Propex Pvt Ltd seeking extension of date of maturity of Rs.145.39 Crore OFCDs to M/s. Urban Infrastructure Trustees Limited on 26.03.2011 (Annexure-Q1 to the C.P.)

(13) The first Application sent by M/s. Ozone Propex Pvt Ltd seeking extension of date of maturity of Rs.56 Crore OFCDs to M/s. Urban Infrastructure Trustees Limited on 16.06.2011 (Annexure-R1 to the C.P.)

(14) Debenture Certificate for OFCDS1 dated 17.09.2011 (Annexure-M to the C.P.)

(15) Debenture Certificate for OFCDS2 dated 17.09.2011 (Annexure-N to the C.P.)

(16) Debenture Certificate for OFCDS3 dated 24.10.2011 (Annexure-P to the C.P.)

(17) The second Application sent by M/s. Ozone Propex Pvt Ltd seeking extension of date of maturity of Rs.145.39 Crore OFCDs to M/s. Urban Infrastructure Trustees Limited on 27.02.2013 (Annexure-Q2 to the C.P.)

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(18) The second Application sent by M/s. Ozone Propex Pvt Ltd seeking extension of date of maturity of Rs.56 Crore OFCDs to M/s. Urban Infrastructure Trustees Limited on 07.06.2013 (Annexure-R2 to the C.P.)

(19) The first Application sent by M/s. Ozone Propex Pvt Ltd seeking extension of date of maturity of Rs.55 Crore OFCDs to M/s. Urban Infrastructure Trustees Limited on 07.06.2013 (Annexur-S1 to the C.P.)

(20) The first Application sent by M/s. Ozone Propex Pvt Ltd seeking extension of date of maturity of Rs.16 Crore OFCDs to M/s. Urban Infrastructure Trustees Limited on 07.06.2013 (Annexur-T1 to the C.P.)

(21) The first Application sent by M/s. Ozone Propex Pvt Ltd seeking extension of date of maturity of Rs.4 Crore OFCDs to M/s. Urban Infrastructure Trustees Limited on 07.09.2013 (Annexur-V1 to the C.P.)

(22) The third Application sent by M/s. Ozone Propex Pvt Ltd seeking extension of date of maturity of Rs.56 Crore OFCDs to M/s. Urban Infrastructure Trustees Limited on 23.09.2013 (Annexure-R3 to the C.P.)

(23) The third Application sent by M/s. Ozone Propex Pvt Ltd seeking extension of date of maturity of Rs.145.39 Crore OFCDs to M/s. Urban Infrastructure Trustees Limited on 23.09.2013 (Annexure-Q3to the C.P.)

(24) The fourth Application sent by M/s. Ozone Propex Pvt Ltd seeking extension of date of maturity of Rs.145.39 Crore OFCDs to M/s. Urban Infrastructure Trustees Limited on 04.03.2014 (Annexure-Q4 to the C.P.)

(25) The fourth Application sent by M/s. Ozone Propex Pvt Ltd seeking extension of date of maturity of Rs.56 Crore OFCDs to M/s. Urban Infrastructure Trustees Limited on 04.03.2014 (Annexure-R4 to the C.P.)

(26) The second Application sent by M/s. Ozone Propex Pvt Ltd seeking extension of date of maturity of Rs.55 Crore OFCDs to M/s. Urban Infrastructure Trustees Limited on 04.03.2014 (Annexur-S2 to the C.P.)

(27) The second Application sent by M/s. Ozone Propex Pvt Ltd seeking extension of date of maturity of Rs.16 Crore OFCDs to M/s. Urban Infrastructure Trustees Limited on 04.03.2014 (Annexur-T2 to the C.P.)

(28) The second Application sent by M/s. Ozone Propex Pvt Ltd seeking extension of date of maturity of Rs.4 Crore OFCDs to M/s. Urban Infrastructure Trustees Limited on 04.03.2014 (Annexur-V2 to the C.P.)

(29) Balance Confirmation Certificate as at 31.03.2014 is confirmed by Corporate Debtor on 15.04.2014 (Annexure- AG to the C.P.)

(30) Balance Confirmation Certificate as at 31.03.2016 is confirmed by Corporate Debtor on 26.07.2016 (Annexure- AH to the C.P.)

(31) Balance Sheet of the Corporate Debtor for the F.Y 2015-2016 dated 16.09.2016 (Annexure-AD to the C.P.)

(32) Balance Confirmation Certificate as at 31.03.2017 is confirmed by Corporate Debtor on 24.05.2017 (Annexure- AJ to the C.P.)

(33) Balance Sheet of the Corporate Debtor for the F.Y 2016-2017 dated 16.09.2017 (Annexure- AE to the C.P.)

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(34) Quarterly update of March 2018 issued on 19.06.2018 (Annexure-R10 to the Preliminary Objections)

(35) Balance confirmation certificate in respect of the outstanding amounts against the Corporate Debtor's account as on 31.03.2018, as confirmed by the Corporate Debtor dated 21.06.2018 (Annexure-Y to the C.P.)

(36) Balance Confirmation Certificate as at 31.03.2018 as confirmed by Corporate Debtor on 30.06.2018 (Annexure- R7 to the Preliminary Objections)

(37) Certified extract of Board Resolution evidencing authority of Mr. Devesh Vyas dated 10.08.2018 (Annexure-A to the C.P.)

(38) Balance Sheet of the Corporate Debtor for the F.Y 2017-2018 dated 03.09.2018 (Annexure- AF to the C.P.)

(39) Notice of Event of Default by the M/s. Urban Infrastructure Trustees Limited to M/s. Ozone Propex Pvt Ltd dated 16.11.2018 (Annexure-X to the C.P.)

(40) Applicant's letter stating outstanding liability of Rs.1164,09,64,429/- due and payable by Corporate Debtor dated 16.11.2018 (Annexure-R8 to the Preliminary Objections)

(41) Respondent's letter dated 13.12.2018 replying to Applicant letter dated 16.11.2018 of Applicant (Annexure-R9 to the Preliminary Objections)

(42) Demand Draft dated 14.12.2018 (Annexure-AB to the C.P.)

(43) Certificate issued by the Applicant's Bankers (HDFC) U/s. 2A of the Bankers Books of Evidence Act, 1891 dated 31.12.2018 (Annexure-Z to the C.P.)

(44) Form 2 of the I&B (Application to Adjudicatory Authority) Rules, 2016 along with accompanying Affidavit dated 18.01.2019 (Annexure-C to the C.P.)

(45) Record of financial information before Information Utility dated 13.03.2019 (Page No. 155 of the C.P.)

(46) Applicant letter for service of copy of Application on Corporate Debtor dated 28.03.2019 (Annexure-R11 to the Preliminary Objections)

(47) Respondent's letter dated 30.03.2019 replying to Applicant letter dated 16.11.2018 & 28.03.2019 of Applicant (Annexure-R12 to the Preliminary Objections)

(48) Balance Confirmation Certificate as at 31.03.2019 by the Financial Creditor recording the overall outstanding as approximately Rs.260 Crores dated 08.04.2019 (Annexure-A to the Memo for Production of documents filed by Respondent in I.A No.229 of 2019 dated 29.07.2019)

(49) Letter issued by the Financial Creditor refusing to participate in Board Meeting dated 11.07.2019 (Annexure-B to the Memo for Production of documents filed by Respondent in I.A No.229 of 2019 dated 29.07.2019)

(50) Notice invoking arbitration issued by the Respondent to Financial Creditor dated 26.07.2019 (Annexure-C to the Memo for Production of documents filed by Respondent in I.A No.229 of 2019 dated 29.07.2019)

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(51) Application filed U/s. 11 of the Arbitration and Conciliation Act, 1996 bearing Comm. Arbitration Application (C) No. 426 of 2019 before the Hon'ble High Court of Judicature at Bombay dated 07.08.2019 (Page Nos. 2-17 of the Memo producing Additional Documents filed by Respondent vide Diary No. 1490 dated 08.04.2022)

(52) The Judgement and Decree passed by the High Court of Judicature at Madras in Arb.O.P. (Comm. Div) No. 281 of 2021 dated 03.02.2022 (Page Nos. 18-30 of the Memo producing Additional Documents filed by Respondent vide Diary No. 1490 dated 08.04.2022)

(53) Judgement passed by the Hon'ble High Court of Karnataka in W.A No. 3833 of 2019 connected with W.P. No. 3415 of 2020 dated 10.02.2022 (Page Nos. 2 to 61 of the Memo for Advancement filed by Petitioner vide Diary No. 613 dated 17.02.2022)

(54) Particulars of default amount and date of defaults (Annexure-W to the C.P.)

(55) Certificate issued by the Applicant's Bankers (ICICI) U/s. 2A of the Bankers Books of Evidence Act, 1891 (Annexure-AA to the C.P.)

(56) Shareholding pattern of various Urban Group entities as on 31.03.2021 (Annexure-R4 to the Preliminary Objections)

(57) Chart detailing the existing group structure of the Respondent (Annexure-R14 to the Preliminary Objections)

(58) The Chart enlisting the transactions under the OFCD Agreement (Annexure-R5 to the I.A No. 229 of 2019)

(59) The details of payments made under the OFCD Agreements (Annexure R6 to the I.A No. 229 of 2019)

(60) Chart of the fund infusion (Annexure-C to the Affidavit filed on behalf of the Respondent vide Diary No. 3858 dated 15.07.2019)

(61) Tabular Chart of the Fund infusion by Shareholder Group 1 (Annexure-D to the Affidavit filed on behalf of the Respondent vide Diary No. 3858 dated 15.07.2019)

(62) Status of Ongoing Projects undertaken by the Ozone Urbana (Annexure-E to the Affidavit filed on behalf of the Respondent vide Diary No. 3858 dated 15.07.2019).

(63) Application filed Us/. 151 of the Code of Civil Procedure for directions before Hon'ble High Court of Karnataka bearing WA No. 3833 of 2019 dated 18.11.2019

(64) Judgement passed by the Hon'ble High Court of Karnataka in W.A No. 3833 of 2019 dated 25.11.2019 (Memo filed by Petitioner dated 17.12.2022)

(65) Appeal filed U/s. 61 of the I&B Code, 2016 arising out of Impugned order dated 17.12.2019 passed by the Hon'ble NCLT, Bengaluru Bench, in CP (IB) No. 111/BB/2019 before Hon'ble NCLAT dated 30.01.2020.

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6. The chronology of the above referred documents reveals the following facts:

(1) On 14.11.2006, the Respondent i.e. M/s. Ozone Propex Private Limited and the Petitioner/Financial Creditor i.e. M/s. Urban Infrastructure Trustees Limited, acting in its capacity as the Trustee for Urban Infrastructure Opportunities Fund, (being a scheme of the Urban Infrastructure Venture Capital Fund, a Private Trust) entered into a Debenture Subscription Agreement (DSA1) in relation to the issue of 7,25,00,000 Optionally Fully Convertible Debentures (OFCDs1) for a total amount of Rs.72,50,00,000/- at the rate of 12% p.a. The Petitioner was described in this documents as "*The Investor is the Trustee of Urban Infrastructure Opportunities Fund a scheme of the Urban Infrastructure Venture Capital Fund, which is a venture capital fund, established for the purpose of carrying on the business of making investments inter-alia in real estate ventures in India.*"

(2) On 29.12.2006, the Respondent/Corporate Debtor and the Petitioner/Financial Creditor and Mr. S Vasudevan and Mr. C.P. Bothra i.e. the Promoters of the Respondent/Corporate Debtor have executed a Memorandum of Understanding (MOU) and mutually agreed that the Petitioner shall invest Rs.1040 million by way of subscription and/or acquisition of Equity Shares and/or Equity linked instrument of the Respondent/Corporate Debtor and on making such investment by the Petitioner, it will become 50% Shareholder of the Respondent/Corporate Debtor. It was further agreed therein that the Petitioner/Investor shall undertake and be responsible to organize funds and financing, through UIOF, for all future real estate development projects that Ozone Propex may undertake, either directly or through subsidiary or in joint ventures, at an interest rate not exceeding 12% p.a. and the parties shall be entitled to appoint Directors equally on the Board of the Respondent.

(3) The Petitioner and the Respondent along with the Promoters of the Respondent Company entered into a Share Subscription Agreement on 12.01.2007, agreeing that the Petitioner shall subscribe to the Debentures under a separate Debenture Subscription Agreement in respect of 66,78,000 Debentures for an aggregate amount of

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Rs.66,78,00,000/- and accordingly 85,28,649 Equity Shares are to be allotted to the Petitioner.

(4) In pursuance of the above, the Petitioner and the Respondent/Corporate Debtor along with its Promoters executed the Share Holders Agreement dated 12.01.2007. In terms of the same the Petitioner, in consideration of its investments, will become 19.36% Shareholder in the Respondent/Corporate Debtor Company and shall have the right to appoint or nominate 2 Non-Retiring Directors on the Board of the Respondent/Corporate Debtor Company. The Quorum for the meeting of the Board will be constituted by the attendance (in person or by the alternate) of the minimum of two Directors out of which atleast one Director shall be nominee of the Promoters and one shall be nominee of the Investor. If no Investor Director is present, none of the matters, if any, reserved for affirmative vote pursuant to Clause-6.3 shall be considered at such meeting.

(5) Accordingly, on 21.03.2007, the Corporate Debtor and the Applicant entered into another Debentures Subscription Agreement (DSA2) in relation to the issue of 6,00,00,000 Optionally Fully Convertible Debentures (OFCDs2) with a face value of Rs.10/- each for a total amount of Rs.60,00,00,000/- at the rate of 14% p.a.

(6) It is stated that under the DSA1 and DSA2, the Corporate Debtor is obliged to pay interest at rate of 12% & 14% p.a. to the Applicant until the OCDs1 and OCDs2 are fully redeemed or paid off. The Corporate Debtor was not able to pay the interest to the Applicant under the above mentioned DSA1 and DSA2. Therefore, the Corporate Debtor and the Applicant re-negotiated the rate of interest to 1% p.a. and issued fresh certificates with effect form 01.04.2008. The Corporate Debtor also issued fresh Debentures in favour of the Applicant in the number of 12,89,000 OFCDs3 with a face value of Rs.100/- each with the rate of interest at 1% p.a. for a total amount of Rs.12,89,00,000/-.

(7) On 16.07.2008, 17.09.2011, 17.09.2011 and 24.10.2011 the Corporate Debtor issued a set of debentures in favour of the Applicant in number of 56,00,000, 55,00,000, 16,00,000 and 4,00,000 OFCDs4, OFCDS1, OFCDS2 and OFCDS3 for Rs.100/- each with the rate of interest at 1%

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p.a. for a total amount of Rs.56,00,00,000/-, Rs.55,00,00,000/-, Rs.16,00,00,000/- and Rs.4,00,00,000/-. The Corporate Debtor made an Application to the Applicant seeking an extension of the date of maturity for OFCD1, OFCD2 and OFCD3 for total of which amounts to Rs.145,39,00,000/- on various dates viz. 26.03.2011, 27.02.2013, 23.09.2013 and 04.03.2014 and was granted an extension till 31.03.2013, 30.09.2013, 31.03.2014 and 30.09.2014. Further, the Corporate Debtor made an Application to the Applicant seeking an extension of the date of maturity of OFCD4 on various dates viz. 16.06.2011, 07.06.2013, 23.09.2013 and 04.03.2014 and was granted an extension till 15.07.2013, 30.09.2013, 31.03.2014 and 30.09.2014.

(8) It is further stated that the Corporate Debtor made an Application to the Applicant seeking an extension of the date of maturity of OFCDS1 and OFCDS2 on various dates viz. 07.06.2013 and 04.03.2014 and was granted an extension till 31.03.2014 and 31.05.2014. Moreover, again the Corporate Debtor made an Application to the Applicant seeking an extension of the date of maturity of OFCDS3 on various dates viz. 07.09.2013 and 04.03.2014 and was granted an extension till 31.03.2014 and 30.09.2014.

(9) A Notice of Event of Default dated 16.11.2018 was sent to the Corporate Debtor calling upon to pay a sum of Rs.1164,09,64,429/- as the Corporate Debtor failed to redeem the OCDs at their maturity.

7. On. 26.07.2019, the Respondent issued the notice for invocation of Arbitration under Clause 11 of the OFCD1, OFCD2, OFCD3, OFCD4, OFCDS1, OFCDS2 and OFCDS3. Thereafter, the Respondent filed an Application U/s. 11 of the Arbitration and Conciliation Act, 1996 bearing Comm. Arbitration Application (C) No. 426 of 2019 before the Hon'ble High Court of Judicature at Bombay.

8. Vide order dated 03.02.2022 in Arb.O.P (Comm. Div) No. 281 of 2021, the Hon'ble High Court of Judicature at Madras filed by the Petitioner against the Respondent and 3 Ors., also U/s. 11(6) of the Arbitration and Conciliation Act, 1996 while holding that the Petitioner therein, (is also the Petitioner in the instant Petition) has established case for constitution of the arbitral

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Tribunal and accordingly appointed Mr. Justice K.Kannan, retired Judge of the Punjab and Haryana High Court, as the Sole Arbitrator to adjudicate the dispute in accordance with law.

9. The Hon'ble High Court of Karnataka at Bengaluru in *W.A No. 3833 of 2019* filed by the Petitioner herein against the Respondent and the *W.P. No. 3415 of 2020* filed by the Respondent herein against the Petitioner herein, by way of a Common Order dated 10.02.2022, after hearing both sides elaborately and after discussing the various case laws relevant to the subject, passed the following order:

" .....43. For the reasons aforesaid, we pass the following:

ORDER

i] Writ Appeal is allowed in part.
ii] Order of the learned Single Judge passed in W.P. No. 41710/2019 dated 25.09.2019 impugned, insofar as remanding the matter to NCLT remains undisturbed.
iii] NCLT is directed to consider the Petition filed under Section 7 of the IB Code along with application under Section 8 of the Act, 1996 in terms of Indus Biotech Private Limited and shall take appropriate decision in accordance with law in an expeditious manner.
iv] Writ Petition stands dismissed.
v] In view of disposal of the main matters, all the pending I.As are consigned to file.
vi] No order as to costs."

10. Heard Shri K.G Raghavan, learned Senior Counsel and Shri Arun Kumar, learned Senior Counsel along with Shri Anind Thomas, learned Counsel for the Petitioner and Shri S.S. Naganand, learned Senior Counsel along with Shri Kumar Kislay, learned Counsel for the Respondent and have also perused the pleadings carefully.

11. This Application is filed by the Petitioner against the Respondent U/s. 7 of the IBC, 2016. The Hon'ble Supreme Court of India in *M/s. Innoventive Industries Ltd. vs. ICICI Bank & Anr. (2018)1 SCC 407* observed as under:

> *"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code*

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gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.

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."

12. In view of the above enunciation of law, the following issues are to be determined by this Adjudicating Authority in order to decide whether the Application filed under Section 7 of the IBC, 2016 deserved to be admitted or not:

(1) Whether the C.P. is filed within the period of limitation?

(2) Whether the debt and default are proved?

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13. The learned Senior Counsel appearing for the Petitioner while drawing our attention to the various Debenture Subscription Agreements and various Balance Confirmation Certificates issued by the Respondent and various other documents on record submits that the C.P. is filed within the period of limitation and that the debt and default thereof are proved. It is further submitted that it is already settled that the Subscriber to the Debentures is a Financial Creditor and that the amount paid to the Respondent for the purpose of subscribing the Debentures is a Financial Debt and hence, the C.P. is liable to be admitted. The learned Senior Counsel for the Petitioner further submitted that various proceedings either pending or finalised in respect of disputes, even if relating to the same Debenture Subscription Agreements or any other connected Agreements shall not prevent this Adjudicating Authority from admitting the C.P., as the concept of pre-existing dispute has no role to play in an Application under Section 7 of the IBC, 2016.

14. On the other hand, the learned Senior Counsel appearing for the Respondent/Corporate Debtor while praying for dismissal of the C.P. *inter-alia,* raised the following contentions:

(1) The C.P. is not supported by a valid Resolution to file the same.

(2) All the 7 OFCDs matured in the year 2014 and no steps were taken by the Petitioner to redeem the said 7 OFCDs till the year 2019 and hence, the instant C.P. filed on 18.01.2019 is barred by the period of limitation.

(3) The Petitioner is not the Financial Creditor of the Corporate Debtor and the amount claimed in the C.P. is not the Financial Debt.

(4) The nature of the amount paid by the Petitioner to the Respondent is investment but not debt.

(5) The parties have agreed to resolve the disputes, if any, resolving between them by way of Arbitration under Clause 11 of the OFCDs Agreements. Hence, the C.P. filed under Section 7 of the IBC, 2016 is not maintainable. Even otherwise the Arbitration proceedings initiated by the Respondent before the Hon'ble High Court of Judicature at Bombay are pending as on date. Further, the Arbitration proceedings

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initiated by the Petitioner itself against the Respondent are already pending before Mr. Justice K.Kannan, the Sole Arbitrator appointed by the High Court of Judicature at Madras. Moreover, the Hon'ble High Court of Karnataka at Bengaluru directed this Adjudicating Authority to consider the application filed under Section 8 of the Arbitration and Conciliation Act, 1996, in terms of Indus Biotech Private Limited and shall take appropriate decision in accordance with law, along with the instant Section 7 Petition. Hence, this Tribunal shall first dispose of I.A filed under Section 8 of the Arbitration and Conciliation Act, 1996 seeking to relegate the matter to Arbitration, before determining the merits of the C.P.

(6) The Petitioner is 50% Shareholder and having 50% of the Board of Directors and exercises control as per Section 2(27) of the Companies Act, 2013 on the Respondent and its Subsidiaries and Associate Companies. Hence, the Applicant is disqualified to be Debenture Trustee as per Rule 18(2) (c) of the Companies Share Capital and Debenture Rules, 2014 and hence, no locus standi to maintain the instant Petition in its capacity as a Debenture Trustee.

(7) The relationship between the Petitioner and the Respondent is not of a simple Creditor/Debtor, rather, entire complex, matrix, claims and counter claims needs to be adjudicated with the help of a detailed evidence, by a competent Civil court. The transactions between the Petitioner and the Respondent were sham transactions which are mere illusions that the money has been disbursed in accordance with a pure Creditor-Debtor relation and this Adjudicating Authority require to unearth the real nature of the transactions and to dismiss the C.P.

(8) The instant C.P. is filed claiming a total amount of Rs.1164,09,64,429/- as against the admitted principal amount of Rs.260 Crores, which was already converted to equity, and the same is illegal, untenable and factually incorrect. Hence, the C.P. is liable to be dismissed.

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15. In the back drop of the above referred submissions and the pleadings on record, the following issues fell for our consideration:

(1) Whether the C.P. is supported by a valid resolution of the Petitioner Company resolving to initiate CIRP proceedings against the Respondent Company and whether the person filed the C.P. was validly authorised to do so?

(2) Whether the I.A No. 229 of 2019 filed U/s.8 of the Arbitration and Conciliation Act, 1996 seeking for referring the matter to Arbitration, shall be decided first, before determining the merits in the C.P., in terms of the judgment of the Hon'ble Apex Court in *Indus Biotech Private Limited (supra)*?

(3) Whether the relationship between the parties is not that of the Creditor-Debtor, but that of the Investor/Shareholder and the Debentures are not debt but equity?

(4) Whether the Petitioner is Financial Creditor of the Corporate Debtor and the debt claimed is a Financial Debt?

(5) Whether the C.P. is filed within the period of limitation?

(6) Whether the Petitioner is able to prove the debt and default thereon?

16.1. Both the sides relied on Annexure-A to the C.P. in support of their contentions, with regard to the first issue. Under the Annexure-A, the Petitioner Company filed their Resolution dated 10.08.2018, wherein it was resolved "*to authorise certain persons, including Mr. Devesh Vyas, who filed the instant C.P., to issue notices, represent, act, appear, give evidence and plead on behalf of the Company and for and on behalf of Urban Infrastructure Venture Capital Fund (the Fund), in its capacity as trustees of the Fund before any District Court, Supreme Court, High Court, Magistrates, Tribunals, Government and other Government/ Semi-Government bodies and authorities pertaining to litigation matters, both civil and criminal, by or against the Company and the fund with appropriate authority of the Government under Sections of Acts and other legislations as applicable to the Company and the Fund and to undertake the following activities in relation to all legal proceedings before any authorities:*

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(a) To sign, file and issue notices in the name of the Company, applications, written statements, affidavits, petitions, appeals and submit necessary applications;
(b) To lead and adduce evidence, sign and produce any documents;
(c) To appoint any advocates, solicitors and legal advisors and to sign, execute, deliver, file all necessary plaints, vakalatnamas, warrants to act, Petitions, appeals, applications, defences, written statements, declarations, affidavits and other documents, papers and writings;
(d) To take such acts, deeds and things as may be required from time to time for giving effect to the above mattes.

RESOLVED FURTHER THAT *this resolution shall remain effective until otherwise rescinded by another resolution of the Board of Directors of the Company."*

16.2. It is contended on behalf of the Respondent that no specific Resolution was passed to initiate CIRP proceedings or for that matter any other proceedings against the Respondent. Since, the Petitioner, is a 50% Shareholder of the Respondent Company and having 50% control in the Board of Directors of the Respondent Company through its Nominee Directors, without a proper and valid Resolution resolving to initiate CIRP proceedings against the Respondent Company, it cannot file the instant C.P. It is true that in Annexure-A Resolution dated 10.08.2018, the Petitioner Company, has not specifically resolved to initiate any proceedings against the Respondent Company, though it has generally authorised certain persons to initiate proceedings by representing the Petitioner Company against any Company under any Act. In our view once the Petitioner Company authorised certain persons including Shri Devesh Vyas, who filed the instant Petition to initiate any proceedings by or against the Petitioner Company under any Act, the same has to be treated as sufficient and valid Resolution to file the instant C.P. Accordingly, we hold this issue against the Respondent.

17.1. In *Indus Biotech Private Limited Vs. Kotak India Venture (Offshore) Fund and Ors., (2021) 6 SCC 436 dated 26.03.2021*, the Hon'ble Apex Court observed as under:

".....29. Therefore, to sum up the procedure, it is clarified that in any proceedings which is pending before the adjudicating authority under section 7 of the IB Code, if such petition is admitted upon the adjudicating authority recording the satisfaction with regard to the default and the

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debt being due from the corporate debtor, any application under Section 8 of the 1996 Act made thereafter will not be maintainable. In a situation where the Petition under Section 7 of IB Code is yet to be admitted and, in such proceedings, if an application under Section 8 of the 1996 Act is filed, the adjudicating authority is duty-bound to first decide the application under Section 7 of the IB Code by recording a satisfaction with regard to there being default or not, even if the Application under Section 8 of the 1996 Act is kept along for consideration. In such event, the natural consequence of the consideration made therein on Section 7 of IB Code application would befall on the application under Section 8 of the 1996 Act."

17.2. In the instant case the Respondent/Corporate Debtor filed I.A No. 229 of 2019 on 02.05.2019 i.e. immediately after receipt of the notice and even before filing any reply/objections to the C.P. under Section 8 of the Arbitration and Conciliation Act, 1996 seeking to refer the matter for Arbitration. This Adjudicating Authority, after hearing both sides, vide order dated 26.08.2019 dismissed the said I.A.

17.3. Finally, the Hon'ble High Court of Karnataka at Bengaluru in W.A. No. 3833 of 2019 filed by the Petitioner and in *W.P. No. 3415 of 2020* filed by the Respondent vide its Common Order dated 10.02.2022, after considering the decision of the Hon'ble Apex Court in *Indus Biotech Private Limited (supra)* observed as under:

"........25. The points that arise for our consideration in the Writ Appeal are:

(1) Whether the application filed under Section 8 of the Act, 1996 deserves to be adjudicated upon by the Adjudicating Authority – NCLT prior to adjudication of the proceedings under Section 7 of the IB Code?
(2) Whether the learned Single Judge was justified in entertaining the Writ Petition dehorse the alternative and efficacious remedy available under the provisions of IB Code and the Act, 1996?
(3) Whether the learned single Judge was justified in quashing the order of NCLT exercising the powers of writ jurisdiction and remitting the matter to NCLT for deciding the matter afresh constructing the order of NCLT as cryptic and passed cavalier manner?

26. The points that arise for our consideration in W.P No. 3415/2020 are:

(1) Whether Writ Petitioner filed by the Ozone Propex Private Limited., against the orders of NCLAT and NCLT is maintainable?

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(2) Whether the orders impugned passed by NCLAT and NCLT are justifiable in the facts and circumstances of the case?

xx *xx* *xx*

32. *Considering the dictum laid down in Innoventive Industries Limited., and the other judgment holding the field, the Hon'ble Apex Court in Indus Biotech Private Limited, has summarized the legal principles at paragraphs 26 to 29 and the same is quoted hereunder:*

"26. The underlying principle, therefore, from all the above noted decisions is that the reference to the triggering of a petition under Section 7 of the IB Code to consider the same as a proceedings in rem, it is necessary that the Adjudicating Authority ought to have applied its mind, recorded a finding of default and admitted the petition. On admission, third party right is created in all the creditors of the corporate Debtors and will have erga omnes effect. The mere filing of the petition and its pendency before admission, therefore, cannot be construed as the triggering of a proceeding in rem. Hence, the admission of the petition for consideration of the Corporate Insolvency Resolution Process is the relevant stage which would decide the status and the nature of the pendency of the proceedings and the mere filing cannot be taken as the triggering of the insolvency process.

27. As noted, the issue which is posed for our consideration is arising in a petition filed under Section 7 of IB Code, before it is admitted and therefore not yet an action in rem. In such application, the course to be adopted by the Adjudicating Authority if an application under Section 8 of the Act, 1996 is filed seeking reference to arbitration is what requires consideration. The position of law that the IB Code shall override all other laws as provided under Section 238 of the IB Code needs no elaboration. In that view, notwithstanding the fact that the alleged corporate debtor filed an application under Section 8 of the Act, 1996, the independent consideration of the same dehors the application filed under Section 7 of IB Code, and materials produced therewith will not arise. The Adjudicating Authority is duty bound to advert to the material available before him as made available along with the application under Section 7 of the IB Code by the financial creditor to indicate default along with the version of the corporate debtor. This is for the reason that, keeping in perspective the scope of the proceedings under the IB Code and there being a timeline for the consideration to be made by the Adjudicating Authority, the process cannot be defeated by a Corporate Debtor by raising moonshine defence only to delay the process. In that view, even if an application under Section 8 of the Act, 1996 is filed, the Adjudicating Authority has a duty to advert to contentions put forth on the application filed under Section 7 of IB Code, examine the material placed before it by the financial creditor and record a satisfaction as to whether there is default or not. While doing so the contention put forth by the Corporate Debtor shall also be noted to determine as to whether there is substance in the defence and to arrive at the conclusion whether there is default. If the irresistible conclusion

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by the Adjudicating Authority is that there is default and the debt is payable, the bogey of arbitration to delay the process would not arise despite the position that the agreement between the parties indisputably contains an arbitration clause.

28. That apart if the conclusion is that there is default and the debt is payable, due to which the Adjudicating Authority proceeds to pass the order as contemplated under sub. section 5(a) of Section 7 of IB Code to admit the application, the proceedings would then get itself transformed into a proceeding in rem having erga omnes effect due to which the question of arbitrability of the so-called interse dispute sought to be put forth would not arise. On the other hand, on such consideration made by the Adjudicating Authority if the satisfaction recorded is that there is no default committed by the company, the petition would stand rejected as provided under sub-section 5(b) to Section 7 of IB Code, which would leave the field open for the parties to secure appointment of the Arbitral Tribunal in an appropriate proceedings as contemplated in law and the need for the NCLT to pass any orders on such application under Section 8 of Act, 1996 would not arise.

29. Therefore, to sum up the procedure, it is clarified that in any proceeding which is pending before the Adjudicating Authority under Section 7 of IB Code, if such petition is admitted upon the Adjudicating Authority recording the satisfaction with regard to the default and the debt being due from the corporate debtor, any application under Section 8 of the Act, 1996 made thereafter will not be maintainable. In a situation where the petition under Section 7 of IB Code is yet to be admitted and, in such proceedings, if an application under Section 8 of the Act, 1996 is filed, the Adjudicating Authority is duty bound to first decide the application under Section 7 of the IB Code by recording a satisfaction with regard to there being default or not, even if the application under Section 8 of Act, 1996 is kept along for consideration. In such event, the natural consequence of the consideration made therein on Section 7 of IB Code application would befall on the application under Section 8 of the Act, 1996."

33.Learned Senior Counsel Sri.K.G.Raghavan appearing for the Urban Infrastructure Trustees Ltd, has placed much emphasis on this decision to contend that the proceedings under Section 7 of IB Code has to be decided first or in other words, application fled under Section 8 of the Act, 1996 cannot be adjudicated independently by NCLT. On the other hand, learned Senior Counsel Sri.S.S.Naganand submits that this judgment is in favour of Ozone Propex Pvt. Ltd.,

34. In order to analyze the arguments advanced by the learned Senior Counsel appearing for both sides, marshalling of facts of the Indus Biotech Private Ltd., is necessary. An Arbitration Petition was filled by Indus Biotech Private Ltd., under Section 11[3] read with Sections 11(4)[a] and 11(12)(a) of the Act, 1996 before the Hon'ble Apex Court seeking for appointment of an Arbitrator to

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adjudicate upon the disputes that had arisen between the parties therein, the same being an International Arbitration. The respondents 1 to 4 therein had converted their respective preference shares invested in Indus Biotech Private Ltd., into equity shares. In that process, a dispute was stated to have arisen with regard to calculation and conversion formula to be applied in converting the preference shares of the respondent Nos. 1 to 4, into equity shares. The petitioner company - Indus Biotech Private Ltd., contended that the said dispute has to be resolved through arbitration by the Arbitral Tribunal whereas the respondent Nos.1 to 4 therein contended that as the debt had not been paid by the company, it has given a cause of action for them to invoke the jurisdiction of the adjudicating authority, NCLT by initiating the Corporate Insolvency Resolution Process provided under IB Code. In the petition filed under Section 7 of IB Code before the NCLT, Indus Biotech Private Ltd., had filed a miscellaneous application under Section 8 of the Act 1996 seeking a direction to refer the parties to arbitration which was allowed by the NCLT, Mumbai Bench - IV. As a consequence, the petition under Section 7 of the IB Code was dismissed. Being aggrieved by the said order, the respondent No.2 therein had preferred the SLP. Both these matters were connected and heard together. The Hon'ble Apex Court has observed that in the normal course against the order of NCLT, an appeal would have been preferred to the NCLAT as provided under Section 61 of IB Code. The contention that there is no remedy of appeal against an order disposing of an application filed under the Act, 1996 and an order under Section 61 of IB Code, has been rejected. The Hon'ble Apex Court taking note of the special circumstances where the order was passed by the NCLT while considering the petition under Section 7 of IB Code, in the backdrop of Indus Biotech Private Ltd., seeking for the resolution of dispute through arbitration and the arbitration petition to that effect was already pending before the Hon'ble Apex Court as on the date of the order passed by the NCLT, has examined the scope of Section 7 of IB Code. It has been reiterated that in order to trigger an application under Section 7, existence of four factors are necessary, i.e., (i) there should be a debt; (ii) default should have occurred (iii) debt should be due to "financial creditor" [(iv) such default which has occurred should be by a corporate debtor; on such application being filed with the compliance required under Sub-Sections (1) to (3) of Section 7 of IB Code, a duty is cast on the adjudicating authority to ascertain the existence of a default if shown from the records or on the basis of other evidence furnished by a financial creditor, as contemplated under Sub-section (4) of Section 7 of IB Code.

35. *Further, the scope of application filed under Section 8 of the Act, 1996 before NCLT during the pendency of the petition under Section 7 of IB Code has been extensively discussed in paragraphs 26 to 29 of the said judgment. In our considered view, the underlying principles laid down by the Hon'ble Apex Court in the said paragraphs 26 to 29 are squarely applicable to the facts of the present case. In the light of the said judgment, even if an application under Section 8 of the Act, 1996 is filed, the adjudicating authority has to advert to*

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contentions put forth on the application filed under Section 7 of IB Code, examine the material placed before it by the financial creditor and record a satisfaction as to whether there is default or not after considering the defence put forth by the corporate debtor, even if the application under Section 8 of the Act 1996 is kept along for consideration. In our considered opinion, these legal principles cannot be held to be applicable only in the said factual matrix of the case as contended by the learned Senior Counsel Sri.S.S.Naganand. Though the Hon'ble Apex Court has considered the application filed by the Indus Biotech Private Ltd., under Section 11(3) read with Sections 11(4) (a) and 11(12)(a) of the Act, 1996 which was pending prior to passing of the order by NCLT impugned in SLP and appointed the Arbitral Tribunal, but the underlying principles laid down by the Hon'ble Apex Court in paragraphs 26 to 29 being the ratio decidendi, the same is binding on this Court as well as the NCLT/NCLAT.

36. Thus, it would be appropriate for the NCLT to consider the petition under Section 7 of IB Code along with the application under Section 8 of the Act, 1996, as observed by the Hon'ble Apex Court, the natural consequence of the consideration made therein on Section 7 of IB Code Application would befall on the application under Section 8 of the Act, 1996.

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43. For the reasons aforesaid, we pass the following:

ORDER

i] Writ Appeal is allowed in part.
ii] Order of the learned Single Judge passed in W.P. No. 41710/2019 dated 25.09.2019 impugned, insofar as remanding the matter to NCLT remains undisturbed.
iii] NCLT is directed to consider the Petition filed under Section 7 of the IB Code along with application under Section 8 of the Act, 1996 in terms of Indus Biotech Private Limited and shall take appropriate decision in accordance with law in an expeditious manner.
iv] Writ Petition stands dismissed.
v] In view of disposal of the main matters, all the pending I.As are consigned to file.
vi] No order as to costs."

17.4. In view of the decision of the Hon'ble Apex Court in *Indus Biotech Private Limited (supra)* and the Common Order dated 10.02.2022 of the Hon'ble High Court of Karnataka, it is imperative that the main C.P. filed under Section 7 of the IBC, 2016 is to be decided first and the result thereon, would befall on the I.A No. 229 of 2019 which was filed under Section 8 of the Arbitration and Conciliation Act, 1996. Accordingly, issue No.2 is held against the Respondent.

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18.1. The learned Senior Counsel appearing for the Respondent placed reliance on the Memorandum of Understanding dated 29.12.2006, Share Subscription Agreement dated 12.01.2007 and Share Holders Agreement also dated 12.01.2007 executed between the parties in order to substantiate his submission that the relation between the Petitioner and Respondent is not that of Creditor-Debtor but that of an Investor-Shareholder.

18.2. In *Phoenix Arc Private Limited Vs. Spade Financial Services Limited and Ors. (2021) 3 SCC 475*, when Phoenix Arc Private Limited and Yes Bank filed Applications before the NCLT for the exclusion of AAA Landmark Private Limited ('AAA') and Spade Financial Services Limited ('SPADE') from the CoC on the ground that they are related parties, NCLT allowed the said Applications and whereas the Hon'ble NCLAT while stating that admittedly Spade and AAA are the Financial Creditors of the Corporate Debtor but by holding that they are related parties of the Corporate Debtor, dismissed the Appeal. The Hon'ble Apex Court after referring to Section 5(7) and 5 (8) of the IBC, 2016, while analysing and holding that the transactions between the Corporate Debtor and Spade and AAA were collusive in nature, in Para 66 observed that

> *"while strict determination of intent or mens rea may not always be possible by the NCLT and NCLAT in summary proceedings, it is possible to draw the inference from the facts at hand."*

It was further observed, with regard to collusive transactions and to unearth the real nature of the transactions as under:

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G.3.3. *Collusive transactions*

48. The above discussion shows that money advanced as debt should be in the receipt of the borrower. The borrower is obligated to return the money or its equivalent along with the consideration for a time value of money, which is the compensation or price payable for the period of time for which the money is lent. A transaction which is sham or collusive would only create an illusion that money has been disbursed to a borrower with the object of receiving consideration in the form of time value of money, when in fact the parties have entered into the transaction with a different or an ulterior motive. In other words, the real agreement between the parties is something other than advancing a financial debt. A useful elaboration of "sham transactions" can be found in the opinion of Diplock, L.J. in *Snook* v. *London & West Riding Investments Ltd.*[14]: (QB p. 802)

> "As regards the contention of the plaintiff that the transactions between himself, Auto Finance and the defendants were a "sham," it is, I think, necessary to consider what, if any, legal concept is involved in the use of this popular and pejorative word. I apprehend that, if it has any meaning in law, it means *acts done or documents executed by the parties to the "sham" which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create.*" (emphasis supplied)

49. Diplock, L.J. also stated: (*Snook case*[14], QB p. 802)

> "But one thing, I think, is clear in legal principle, morality and the authorities (see *Yorkshire Railway Wagon Co.* v. *Maclure*[15] and *Stoneleigh Finance Ltd.* v. *Phillips*[16]), that for acts or documents to be a "sham", with whatever legal consequences follow from this, *all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating. No unexpressed intentions of a "shammer" affect the rights of a party whom he deceived.*" (emphasis supplied)

50. This Court in *Prem Chand Tandon* v. *Krishna Chand Kapoor*[17] had to determine whether a usufructuary mortgage was a sham transaction entered into by the respondent there ("the borrower") to avoid payment to creditors. This Court examined the real nature of the transaction to hold that the parties

14 (1967) 2 QB 786 : (1967) 2 WLR 1020 (CA)
15 (1882) LR 21 Ch D 309 (CA)
16 (1965) 2 QB 537 : (1965) 2 WLR 508 (CA)
17 (1973) 2 SCC 366

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entered the transaction with an ulterior motive. A.N. Grover, J., speaking for this Court, held: (SCC p. 371, para 9)

"9. As regards the consideration for the usufructuary mortgage the promissory notes were never produced. It is true that there was some evidence that Smt Dhanta Devi [lender] had received certain insurance monies on the death of her husband but the aggregate of those amounts did not exceed, Rs 13,000. Even if she was possessed of some jewellery and other funds it is difficult to believe that she would have advanced such a substantial amount of Rs 25,000 to the respondent [borrower] by means of two promissory notes on 10-12-1919 and on 17-3-1920. It would further appear and some stress has been laid on this aspect by Jagat Narain, J., in his judgment that the financial position of the respondent at the time the usufructuary mortgage deed was executed was fairly good considering the various articles like diamonds and the car which he had purchased apart from the shares. The house at Ajmer and the Ville Parle land had been mortgaged with possession for Rs 25,000 for a period of 60 years. It was difficult to believe that the respondent would have entered into such a transaction in view of his financial position in the year 1921. It was equally not likely that a person dealing in shares who would require ready money would lock up his assets like the property in dispute in a transaction which was such that the mortgage could not be redeemed before the expiry of the period of sixty years. *The mortgage, therefore, was executed only with an ulterior purpose, it being wholly fictitious.*" (emphasis supplied)

51. The IBC has made provisions for identifying, annulling or disregarding "avoidable transactions" which distressed companies may have undertaken to hamper recovery of creditors in the event of the initiation of CIRP. Such avoidable transactions include:

(*i*) preferential transactions under Section 43 IBC;
(*ii*) undervalued transactions under Section 45(2) IBC;
(*iii*) transactions defrauding creditors under Section 49 IBC; and
(*iv*) extortionate transactions under Section 50 IBC.

The IBC recognises that for the success of an insolvency regime, the real nature of the transactions has to be unearthed in order to prevent any person from taking undue benefit of its provisions to the detriment of the rights of legitimate creditors.

The Hon'ble Apex Court while examining the relationship of the parties, in detail, held that "Spade and AAA cannot be labelled as Financial Creditors u/s. 5(7), due to the collusive nature of their transactions alleged to be a Financial Debt under Section 5(8) and the relevant paragraphs reads as under:

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104. Hence, while the default rule under the first proviso to Section 21(2) is that only those financial creditors that are related parties in praesenti would be debarred from the CoC, those related party financial creditors that cease to be related parties in order to circumvent the exclusion under the first proviso to Section 21(2), should also be considered as being covered by the exclusion thereunder. Mr Kaul has argued, correctly in our opinion, that if this interpretation is not given to the first proviso of Section 21(2), then a related party financial creditor can devise a mechanism to remove its label of a "related party" before the corporate debtor undergoes CIRP, so as to be able to enter the CoC and influence its decision making at the cost of other financial creditors.

105. In the present case, there is a finding that AAA and Spade were related parties within the meaning of Section 5(24) at the time when the alleged financial debt on the basis of which they assert a claim to be a part of the CoC was created. This was due to the long-standing relationship between Mr Arun Anand and Mr Anil Nanda, and their respective corporations. Admittedly, such a relationship still existed even in 2017, since Mr Anil Nanda's JIPL held shareholding in Mr Arun Anand's Spade. Further, we have also concluded that the transactions between Spade and AAA on one hand, and the corporate debtor on the other hand, which gave rise to their alleged financial debts were collusive in nature. Therefore, it is evident that there existed a deeply entangled relationship between Spade, AAA and corporate debtor, when the alleged financial debt arose. While their status as related parties may no longer stand, we are inclined to agree with Mr Kaul that this was due to commercial contrivances through which these entities seek to now enter the CoC. The pervasive influence of Mr Anil Nanda (the promoter/Director of the corporate debtor) over these entities is clear, and allowing them in the CoC would definitely affect the other independent financial creditors.

J. ***Conclusion***

106. In conclusion, we hold that:

106.1. The decision of the NCLAT, inasmuch as it referred to Spade and AAA as financial creditors, is set aside. Due to the collusive nature of their transactions alleged to be a financial debt under Section 5(8), Spade and AAA cannot be labelled as financial creditors under Section 5(7).

106.2. The decision of the NCLAT, inasmuch as it referred to Spade and AAA as related parties of the corporate debtor under Section 5(24), is affirmed.

106.3. The decision of the NCLAT, inasmuch as it excluded Spade and AAA from the CoC in accordance with the first proviso of Section 21(2), is affirmed but for the reasons mentioned above.

107. The appeals are accordingly disposed of. Pending application(s), if any, stand disposed of.

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18.3. We are conscious of the fact that in *Phoenix Arc Private Limited (supra)* the issue was pertaining to exclusion of a Financial Creditor from the CoC on the ground that the Financial Creditor was a related party being the transactions between the said Financial Creditor and the Corporate Debtor therein were collusive in nature. We are also conscious of the fact that the enquiry required while considering admission of an Application filed under Section 7 of the IBC, 2016 is different from that of the enquiry to be conducted by this Adjudicating Authority to determine the relation of the Financial Creditor as a related party to the Corporate Debtor for exclusion from the CoC. However, in our view the principle laid down by the Hon'ble Apex Court in *Phoenix Arc Private Limited (supra)* to the extent of "unearthing the real nature of the transactions between the parties and to determine the *intent* or *mens rea* of the parties by drawing an inference from the fact on hand" is applicable even to examine an Application under Section 7 of the IBC, 2016, since under both the situations i.e. to determine whether the Petitioner is the Financial Creditor or only an Investor/Shareholder of the Corporate Debtor Company as well as to determine whether the Financial Creditor is a related party to the Corporate Debtor and thereby not eligible to include in the CoC, Section 5(7) and 5(8) of the IBC, 2016, are only to be examined and applied to the facts on hand.

18.4. As pointed out by the learned Senior Counsel appearing for the Respondent, the Petitioner described itself as 'Investor' in all the documents including the Debenture Subscription Agreement dated 14.11.2006, i.e. the Debenture Subscription Agreement executed even prior to the Memorandum of Understanding dated 29.12.2006. It is relevant to refer certain Clauses of the Memorandum of Understanding dated 29.12.2006 and the Share Subscription Agreement dated 12.01.2007 and Share Holders Agreement dated 12.01.2007 and the same are as under:

Memorandum of Understanding dated 29.12.2006

"…….WHEREAS Ozone Propex is a company promoted by the Promoters, which carries on the business of development of properties either directly or in joint ventures, with operations in Bangalore, Chennai and Goa

AND WEHEREAS Urban Infrastructure Trustees Ltd. as trustee of the Urban Infrastructure Venture Capital Fund and of the Urban Infrastructure Opportunities

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Fund, a scheme thereof, being in the nature of a venture capital fund, established for the purpose of carrying on the business of making investments inter alia in real estate ventures in India

AND WHEREAS Ozone Propex and the Promoters has proposed to Investor for its investment in Equity Shares or Equity linked instrument of Ozone Propex and Investor has expressed its interest in the said proposal subject to the approval of Investment Committee of Investor.

AND WHEREAS on the basis of representations, the parties hereto have decided to reduce the terms of understanding in writing arrived at between the parties.

NOW THIS MEMORANDUM OF UNDERSTANDING WITNESSETH AS UNDER:

*1.**Purpose:** Pursuant to this MOU and subject to the terms as agreed hereunder Investor either itself or through any other entity/person shall invest Rs.1040 million by way of subscription and/or acquisition of equity shares and/or equity linked instrument of Ozone Propex on mutually agreed terms and conditions between the parties.*

*2. **Change in shareholding of Ozone Propex:** Pursuant to aforesaid subscription and/or acquisition of equity shares of Ozone Propex by Investor, the shareholding pattern of Ozone Propex shall be:*

Sr. No.		Existing Shareholding % in Ozone Propex	Post Shareholding % in Ozone Propex
1.	Sh. Vasudevan	51.00%	45.00
2.	Sh. C.P Bothra	49.00%	5.00%
3.	Investor	--	50.00%

*3.**Responsibilities of the Parties.** That the Parties hereto have agreed that the proposed transaction shall be subject to the parties undertaking the following for the transaction:*

(1) The Investor shall undertake and be responsible to organize funds and financing through UIOF for all future real estate development projects that Ozone Propex may undertake, either directly or through a subsidiary or in joint ventures, at an interest rate not exceeding 12% per annum. The parties may revise such cap from time to time through mutual consent.

(2) Promoters shall undertake and be responsible for design, construction planning and marketing of real estate projects and shall control and solely be responsible for day to day management of the Ozone Propex and its subsidiary company and for the implementation of projects in accordance with the Vision Statement to agreed between the investor and promoters including all aspects relating to design, planning, development, construction and marketing of all projects that Ozone Propex undertakes.

(3) In the event any new project for development is available to or under consideration by the Promoters, then the Promoters shall, first submit such proposal to the Board of Directors of the Ozone Propex for implementation through Ozone Propex. If the Board of Directors of the company reject such project, then the Promoters may independently undertake such project.

(4) The investor shall ensure that the holding of the promoters in all projects that may be undertaken, either directly or through a subsidiary or in joint ventures, is not less than 50% at any time unless otherwise agreed by the Promoters.

(5) Unless otherwise agreed between the parties it is agreed that in no event shall the shareholding percentage of the Promoters be reduced below 50% in Ozone Propex.

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(6) The parties shall be entitled to appoint Directors equally on the Board of Ozone Propex.

*4.**Execution of Definitive Agreement:** That the Parties hereto have decided in enter into formal definitive agreements to give effect to the understanding reached between the parties vide this MOU. Based on the terms agreed hereunder, the parties shall enter into the share subscription agreement, shareholders agreements, share transfer agreement and any other incidental agreement relating thereto. The definitive agreements will describe in detail the rights, responsibilities exit mechanism for the Investor and obligation of the parties.*

This MOU is subject to the execution of binding definitive agreement (s) between the Parties. This MOU shall be effective from the date of execution of this MOU and shall remain enforceable until the execution of definitive agreement (s) or upto 31.07.20078 whichever is earlier.

*5.**Arbitration**: All disputes and differences that may arise between the parties hereto in regard to or touching these present, the carrying out of the terms and conditions hereunder and/or the interpretation thereof in any way whatsoever or as to the construction, meaning, validity or effects of this MOU or any clause, matter or thing herein contained or the rights and liabilities of the parties hereunder, or any breach hereof, which cannot be settled by friendly negotiation, shall be referred to the arbitration. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment in force for the time being. Such arbitration shall be conducted at Bangalore. The enforcement of the award may ben entered in any court of competent jurisdiction."*

xxxx

Share Subscription Agreements Dated 12.01.2007

"......E. Pursuant to an understanding as recorded in the letter dated 2nd March 2006 signed by the company and Dharti Investment and Holdings Limited and certain others, the Company has agreed to issue, inter-alia to Dharti Investment and Holdings Limited 85,28,649 equity shares of the face value of Rs.10/- per share at a premium of Rs.17.18 per equity share.

F. Dharti Investment and Holdings Limited have paid to the company a sum of Rs.23,18,00,000/- towards the subscription price of the said equity shares.

G. Dharti Investment and Holdings Limited has, subsequently, assigned its rights to acquire the said shares in the Company to the Investor and the Company has acknowledged the assignment and agreed to issue and allot equity shares to the Investor in terms of the understanding recorded in the said letter dated March 2, 2006.

II In terms of the said letter dated March 2, 2006, the parties have now agreed to entered into this Agreement.

1. *In order to meet additional fund requirements of the Company, the Investor has agreed to also subscribe to Debentures under a separate Debenture Subscription Agreement as under:*

—Sd—

Name of Investor	*Number of Debentures*	*Aggregate Consideration (Rs.)*
Urban Infrastructure Trustees Limited	*6,67,80.00*	*66,78,80,000*

2.On the Completion Date and subject to the terms and conditions as set out in this Agreement the Investor shall subscribe to and the Company shall issue and allot to the Investor the Equity Shares as set out hereinafter.

xxxxxx

***"Transaction Documents"** mean:*

(a)This Agreement;

(b) the Ozone Propex Shareholders Agreements and

(c) the Debenture Subscription Agreements dated as of the date hereof entered into between the Company and the Investor for the issuance of redeemable optionally convertible debentures of the Company.

xxxxx

*2.2 **Subscription by the Investor**:*

The Company agrees to issue and allot to the Investor, and the Investor agrees to subscribe to, accept and receive on the Completion Date, the number of Equity Shares (the Investor Subscription Shares) for the aggregate consideration (the Investor Subscription Amount) as set forth below:

Name of the Investor	***No. of Equity Shares***	***Aggregate Consideration***
Urban Infrastructure Trustee Limited	*85,28,649*	*Rs.23,18,00,000*

xxxxx

2.6 Shareholding on the Completion Date:

Upon completion of the subscription to the Investor Subscription Shares as contemplated in Clause 2.5, the Shareholding structure of the Company shall be as under:

Sl.	***Name of the Holder***	***No. of Shares***	***% Shareholding***
1.	*First Promoter*	*3,33,17,934*	*75.64%*
2.	*Second Promoter*	*22,02,066*	*5.00%*
3.	*Investor*	*85,28,649*	*19.36%*
	Total	*4,40,48,649*	*100.00%*

xxxxx

*6.**GOVERNING LAW AND ARBITRATION***

6.1 The provision of this Agreement shall be governed by and construed in accordance with India law.

6.2 Any dispute arising under or out of or in connection with or in relation to this Agreement or any alleged breach hereof shall be determined and settled by arbitration pursuant to the Arbitration and Conciliation Act, 1996. Any such dispute shall be

—sd—

determined by a panel of three (3) arbitrators (Arbitrators) of which the Investor shall appoint one arbitrator and the company and the Promoters jointly shall appoint one arbitrator and the Arbitrators so selected shall appoint the third Arbitrator (the Arbitration Board). Any Award rendered upon such arbitration shall be Bangalore. Appeals (if any) in relation to such awards shall i.e. to the competent courts in Bangalore."

xxxxx

Shareholders Agreement dated 12.01.2007

.....WHEREAS:

A. The Parties have executed the Ozone Propex Share Subscription Agreement ("the Ozone Propex SS") by which the Investor has agreed to subscribe to 85,28,649 Equity shares of the Company ("Investor Subscription Shares") on the Completion Date (as defined in Clause 2.2 of the Ozone Propex SSA), on the terms and conditions contained in the Ozone Propex SSA.

B. With effect from the Completion Date, the Parties wish to regulate their relationship in relation to the ownership and management of the company and record hereinafter the terms of their agreement for the governance, management and control of the Company.

xxxxx

4. FUNDING OF THE COMPANY

4.1 Equity Capital; Other Securities

(a) So long as the parties hold shares in the proportion set out in Clause 3.2 above and except to the extent contemplated by the Transaction Documents, the company will not issue any shares or other securities of the company without the approval of the Investor by exercise of its Affirmative Vote rights in accordance with and subject to the provisions of Clause 6.3.

(b)ON the occurrence of the completion Date:

(i) The company shall allot and issue the Investor Subscription shares to the Investor

(ii) The Investor shall provide additional funding for the Business of the company by subscription to 6,67,80,000 redeemable optionally convertible debentures of Rs.10 each (the Debentures") to be issued by the Company in accordance with the Debenture Subscription Agreement and

(iii) The cost in relation to the issue of the Debentures to be issued by the Company shall be borne by the Company.

4.2 Obligation to contribute additional funds; New business

(a)Except as otherwise contemplated in the Transaction Documents, no Shareholder will required to contribute additional funds, extend credit, or otherwise make any financial accommodation in relation to the company without the express written consent of that shareholder.

—Sd—

(b)The Promoters and the Investor agree and acknowledge that the company shall be engaged solely in the Business unless otherwise approved by the Board by the Affirmative Vote of the Investor.

4.3 Obligation to provide business opportunities to Company:

(1) The Promoters shall ensure that all future business opportunities for real estate development are first offered by the Promoters to the Investor to the Investor for joint development through the Company. The Investor shall be provided with all relevant details in relation to the said opportunity including, location of the development, title, price/ valuation of the land/project, terms of payment etc. and such other information as may be requested by the Investor. In the event that the Investor proposes to invest in such opportunity, the Promoters and the Investor shall jointly undertake such opportunity, the Promoters may independently or with any other person undertake such opportunity on the same terms and conditions on which such opportunity was made available to the Investor.

4.4 Obligation of the Investor

The Investor shall undertake and be responsible to organize funds and financing for all future real estate development projects that ozone Propex may undertake, either directly or through a subsidiary or in joint ventures, at the prevalent market interest rate. It is clarified that in case of funds and finance is being organized by the Investors from its own resources, at an interest rate of 12% p.a.

5. BOARD OF DIRECTORS OF THE COMPANY

5.1 Total number of Directors:

From and after the Completion Date, the Board shall comprise of 4 Directors with each of the Promoters and the Investors being entitled to equal representation on the Board of Directors as set out in this Clause.

5.2. Number of Directors that may be appointed by Promoters:

The Promoters shall have the right to collectively appoint 2 Directors on the Board.

5.3. Nominees of the Investors:

(a) The Investor shall, till such time that its equity shareholding percentage in the Company does not fall below 8% of the paid-up equity capital of the Company, have the right to appoint/nominate 2 non-retiring Directors on the Board of the Company.

(b) The Investor entitled to appoint/nominate a Director in accordance with the terms hereof, shall also be entitled to require the removal or substitution of such Director so appointed/nominate by it.

(c) If the equity shareholding of the Investor falls below 8% of the paid up equity capital of the Company, then the Investor must take all steps necessary to ensure that the Director/s appointed by them resign from the Board.

(d) In addition to the above, the Investor shall also be entitled to appoint/nominate one (1) non-retiring director on the board of (i) every subsidiary or joint venture of the Company, which is partly or wholly engaged in the Business; and (ii) every company

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established to carry on the Business in full or part; and the Company shall use its voting power in such other company in favour of the same.

(e) The Investor Directors shall not be required to hold any qualification shares and shall not be liable to retire by rotation.

xxxxx

5.12 Quorum not present

(a) If a quorum is not present within 1 (one) hour from the time specified for a meeting of the Board, the meeting will be adjourned to a date and time 7 (seven) days after the original date and time of the meeting and at the same place as the original meeting by written notice to all Directors.

(b) Clause 5.11 will apply to such an adjourned meeting as well. If a quorum is not present within 1 (one) hour of the time specified for the adjourned meeting, the Directors present shall form the quorum for such meeting subject to the presence of minimum two Directors, provided that if no Investor Director is present none of the matters, if any, reserved for Affirmative Vote pursuant to Clause 6.3 shall be considered at such meeting.

6. DECISION MAKING

6.1 Powers of the Board

Except otherwise specified in this Agreement, or the Act, the Board will have full power to direct the activities of the Company.

6.2 Voting generally

(a) Subject to clause 6.3, all decisions of the Shareholders shall be made pursuant to resolutions passed in accordance with the requirements of the Act.

(b) Subject to Clause6.3, all decisions of the Board, shall be made pursuant to resolutions passed in accordance with the requirements of the Act.

xxxxx

18.5. A careful reading of the above referred covenants between the parties and the fact that the Petitioner is 50% Shareholder in the Respondent Company and having 50% control over the Board of Directors of the Respondent Company through two of its nominee Directors in the Board of the Respondent Company establishes that the Petitioner subscribed to the Debentures issued by the Respondent with an intention to invest in the Respondent Company to acquire the shareholding and thereby to manage the Respondent Company only. This intention was subsisting even from the day one i.e. 14.11.2006 when the first Debenture Subscription Agreement was executed, i.e. even prior to the date of Memorandum of Understanding

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dated 29.12.2006, that is why the Petitioner described itself as 'Investor' instead of describing itself as "Subscriber or Debenture Holder". The learned Senior Counsel appearing for the Petitioner while placing reliance on Section 5(8)(c) of the IBC, 2016 and the decision of the Hon'ble NCLAT in *Shailesh Sangani vs. Joel Cardoso & Ors. bearing CA (ST) (Insolvency) No. 616 of 2018* contended that having an equity interest or being part of management of the Corporate Debtor does not preclude the Debenture holder from exercising its rights as a Financial Creditor. There can be no quarrel with this principle of law, but in a situation where the intention itself for investment to acquire the shareholding of the Corporate Debtor and to gain decisive control on the affairs and management of the Corporate Debtor and where the investment was already converted to equity, and where the Petitioner itself practically running the Corporate Debtor i.e. even prior to the date of alleged default said to have been committed by the Respondent/Corporate Debtor, the said principle has no Application.

18.6. Therefore, the contentions of the Petitioner that this Adjudicating Authority cannot give any finding with regard to the nature of transactions between the parties, at this stage, is unsustainable. On the other hand, admittedly the Petitioner being the 50% Shareholder and having 50% control in the Board of Directors by virtue of its Nominee Directors, has deep and pervasive control over the Respondent Company. Further, the purpose and object of investing in the Respondent Company through the Debenture Subscription Agreement is to acquire shareholding and control of the Respondent Company and to take active and decisive part in the affairs of the Respondent Company. It is also not in dispute that its debt was converted into Equity/Capital and as a consequence of the same, two of its nominees were appointed as Directors of the Respondent/Corporate Debtor.

18.7. The Hon'ble NCLAT in *Rita Kapur Vs. Invest Care Real Estate LLP and Ors. (2020) SCC Online NCLAT 627* bearing CA (AT) (Insolvency) No. 111 of 2020 dated 02.09.2020, where the debt was converted into capital, after referring to Section 5(7) and 5(8) Read with Section 7 of the IBC, 2016 held as under:

"....10. From the above provisions of law, it is latently & patently clear that once the 'Debt' is converted into "Capital" it cannot be termed as

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'Financial Debt' and the Appellant cannot be described as 'Financial Creditor'.

11. Hence, the grievance of the Appellant does not fall under the provision of 'Insolvency and Bankruptcy Code, 2016'. Accordingly, the Appeal is devoid of merits and the same is hereby dismissed. However, the Appellant is at liberty to approach an appropriate forum for seeking necessary relief(s) for redressal of grievances, of course, in accordance with law. Interim orders, if any, were issued, stands vacated. Pending IA(s), if any, stands closed. There shall be no order as to costs."

18.8. The Hon'ble NCLAT in a recent decision *in G.S Constro & Infra Pvt. Ltd. and others Vs. Mr. Gajesh Labhchand Jain, RP of M/s. E & G Global Estates Ltd. and Others bearing C.A (AT) (Ins) No.587 of 2021 dated 18.05.2022* held that *"For all the aforesaid reasons, this Tribunal is of the considered view that the documentary evidence on record clearly establishes that the entire loan was converted into equity and hence no claim is maintainable under the guise that this amount be treated as a 'Financial Debt'."*

19. The Venture Capital funding is different from the business loan. With a Venture Capital funding source, the receiver not expected to repay the funds it receive. Instead, it gives equity to the Venture Capitalist Partner, so it is essentially a trade or a transaction that's settled upon receiving the funds and assigning equity. Whereas in a business loan, the lender expects interest as repayment, which means the Borrower is not giving up valuable equity in its Company to the lender. The Petitioner filed the instant C.P. in its capacity as the Trustee of Urbana Infrastructure Opportunities Fund, a scheme of the Urbana Infrastructure Venture Capital Fund, established for the purpose of carrying on the business of making investments *inter-alia* in real estate ventures in India. The Business of the Petitioner itself is venture capital funding. The narration of the above facts coupled with the covenants agreed between the parties, clearly establishes that the Petitioner subscribed to the Debenture Agreements, only with a clear intention of acquiring equity and control over the management of the Respondent/Corporate Debtor. Hence, the relationship between the Petitioner and the Respondent cannot be said that of a Financial Creditor and Debtor and on the other hand, the same is an Investor/Shareholder. In

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this view of the matter issue Nos. 3 and 4 are held in favour of the Respondent.

20. In view of our finding on issue Nos. 3 and 4 there is no need to delve upon the issue Nos. 5 and 6.

21. In the circumstances and for the aforesaid reasons, the C.P. is dismissed.

I.A No. 229 of 2019

In view of the findings in the C.P., the parties are at liberty either to continue with the existing Arbitration Proceedings initiated at the instance of the Petitioner in the C.P. and pending before the Sole Arbitrator, Hon'ble Mr. Justice K.Kannan or to initiate any fresh Arbitration Proceedings, if they are so advised, in accordance with law, to resolve the disputes between them. Accordingly, the instant I.A is disposed of.

—Sd—

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

—Sd—

(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)