



**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT-III**

Item No.03

IB-885(ND)/2022

IN THE MATTER OF:

Mr. RANJIT RAI KOHLI & ORS.

..... Applicants/Financial Creditors

Versus

M/s. ATS INFRASTRUCTURE LIMITED

..... Respondent/Corporate Debtor

Order Pronounced On: 09.06.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Piyush Singh, Mr. Akshay Srivastava,
Mr. Adithya Ramani, Ms. Riddhi Jain, Advs.

For the Respondent : Mr. Krish Kalra, Adv.

ORDER

Order pronounced in open court vide separate sheets. **(IB)-885(ND)/2022** is
dismissed

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III
(IB) – 885(ND)/2022**

Order under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

Mr. RANJIT RAI KOHLI & ORS.

..... Applicants/Financial Creditors

VERSUS

M/s. ATS INFRASTRUCTURE LTD.

..... Respondent/Corporate Debtor

MEMO OF PARTIES

Mr. RANJIT RAI KOHLI & ORS.

1. Mr. RANJIT RAI KOHLI

S/o Mr. Ram Rakha Kohli

**R/o Flat No. 9A, GH-2, Orchid Gardens,
Suncity, Gurugram, Haryana.**

..... Financial Creditor No. 1

2. Ms. MEENA MALHOTRA

W/o Mr. Sunil Malhotra

**R/o Jahaz Apartment, Inder Enclave,
Rohtak Road, Paschim Vihar, Delhi.**

..... Financial Creditor No. 2

3. M/s. A ONE TEXTECH PRIVATE LIMITED

Having Its Registered Office at:

2705, Basement, Bank Street,
Karol Bagh, New Delhi, Delhi.

..... Financial Creditor No. 3

4. Ms. PARUL KOHLI

Mr. Ranjit Rai Kohli & Ors vs. M/s. ATS Infrastructure Ltd.

(IB) – 885(ND)/2022

Date of Order : 09.06.2023



W/o Mr. Himanshu Kohli
R/o GV 12A, The Palm Spring,
Sector-54, Gurugram, Haryana.

..... **Financial Creditor No. 4**

5. Ms. MONISHA GUPTA
W/o Mr. Vipul Gupta
R/o 15, K-115, SDA, Hauz Khas,
South West Delhi, Delhi.

..... **Financial Creditor No. 5**

6. Mr. MANORAMA BUDHIRAJA
S/o Mr. Shashi Bhushan Budhiraja
R/o A-1/202, World Spa East,
Sector-30, Gurugram, Haryana.

..... **Financial Creditor No. 6**

VERSUS

M/s. ATS INFRASTRUCTURE LTD.

Having Its Registered Office at:
711/92, Deepali, Nehru Place,
New Delhi, Delhi- 110019.

..... **Respondent/Corporate Debtor**

Order Pronounced On: 09.06.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Piyush Singh, Mr. Akshay Srivastava, Ms.
Riddhi Jain, Advocates

For the Respondent : Mr. Krish Kalra, Advocate



ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

Description of the Parties:

1. This Application has been filed by Mr. Ranjit Rai Kohli & 5 ORS., the Financial Creditors (FC)/Applicants on 09.11.2022, before this Adjudicating Authority, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “the Code”) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), declaring moratorium and for appointment of Interim Resolution Professional (“IRP”), against the Corporate Debtor (CD)/Respondent viz., M/s. ATS INFRASTRUCTURE LTD., on the ground that the Corporate Debtor has defaulted to make a Payment of a sum of Rs. 10,74,75,585/- [(Rupees Ten Crore Seventy Four Lakh Seventy Five Thousand Five Hundred and Eighty Five Only) Rs.10,02,98,780/- of Principal amount along with Rs.71,76,805/- of Interest amount] as on 15.07.2022.
2. The Respondent Company namely M/s. ATS INFRASTRUCTURE LTD was incorporated on 26.11.1996, as a Company Limited by Shares (Non- govt. Company) having CIN: U45201DL1996PLC083475, under the erstwhile Companies Act, 1956 with the Registrar of Companies, NCT of Delhi and Haryana. The Authorised Share Capital of the Respondent Company is Rs. 2,00,00,000/- (Rupees Two Crore Only) and the Paid-up Share Capital of the Respondent Company is Rs. 1,50,42,000/- (Rupees One Crore Fifty Lakh and Forty Two Thousand Only). The Registered Office Address of the Respondent Company is 711/92, Deepali, Nehru Place, New Delhi, Delhi-110019. Therefore, this Bench has jurisdiction to deal with this application. A true copy of the Respondent Company’s Details/Master Data of the Respondent



Company obtained from the website of the Ministry of Corporate Affairs is filed along with the application.

3. Submissions of the Financial Creditors:

- i.** The present application has been filed under Section 7 of the Code by the Financial Creditors in their individual capacities who had invested in the real estate project namely, "ATS Dolce", situated at Plot No. GH-12A, situated in Sector Zeta-01, Greater Noida, Gautam Buddh Nagar, Uttar Pradesh ("Project") being developed by M/s Domus Greens Private Limited ("DGPL") i.e. the associate company of the Corporate Debtor.
- ii.** The application is being filed by the Financial Creditors who had invested in the Project on the assurances given by the Corporate Debtor that their respective units shall be bought back at a contractually agreed sale consideration on expiry of the prescribed time period. It is on the basis of these assurances that the Financial Creditors invested in the Project and thereby opted for a "buy-back" scheme. As a result, the total amount due to the Financial Creditors consists of the "buy-back" amount which was to be paid by the Corporate Debtor along with interest classifying it as "debt" under Section 3(11) of the Code. A copy of the tabulated sheet reflecting the details of the investment made by the Financial Creditors and units allotted by the DGPL is filed along with the application.
- iii.** The Corporate Debtor along with DGPL had launched the Project with various representations and promises regarding the purchase of units rendering huge returns in terms of the "buy-back" scheme which was so being offered. The Corporate Debtor assured that in case the Financial Creditors invested in the Project and purchased units in the Project, the Corporate Debtor shall "buy-back" the same from the Financial Creditors within a stipulated time period which shall yield huge returns. Based on such representations made by the Corporate Debtor, the



Financial Creditors invested in the Project in the year 2018 and booked a total of 11 (eleven) units. The facts and circumstances for the Financial Creditors with respect to their units have been set out below for the reference of this Adjudicating Authority:

S. No.	Name of the Financial Creditor	Unit Details	Allotment Letter dated	Investment (in Rs.)
1.	Mr. Ranjit Rai Kohli	Unit bearing no. 2292 on the 29th Floor, Tower-2, having super area of 1800 sq. ft., Unit bearing no. 3293 on the 29th Floor, Tower-3, having super area of 1800 sq. ft.	23.10.2018	49,50,000/-
2.	Ms. Meena Malhotra	Unit bearing No. 4292 on the 29th Floor, Tower-4, having super area of 1800 sq. ft.	31.10.2018	24,75,000/-
3.	M/s. A One Textech Private Limited	Unit bearing no. 12PH2 on the Top Floor, Tower-12, having super area of 3180 sq. ft.	24.10.2018	49,50,000/-
4.	Ms. Parul Kohli	Unit bearing no. 12PH1 on the Top Floor, Tower-12, having super area of 3180 sq. ft.	23.10.2018	49,50,000/-
5.	Ms. Monisha Gupta	Unit bearing no. 5PH1 on the Top Floor, Tower-5, having super area of 3750 sq. ft., Unit bearing no. 9202, on the 20th Floor, Tower-9, having super area of 1800 sq. ft., Unit bearing no. 10248, on the 24th Floor, Tower-10, having super area of 1500 sq.	23.05.2018	99,00,000/-



		ft., Unit bearing no. 10272, on the 27th Floor, Tower-10, having super area of 1800 sq. ft., Unit bearing no. 9273, on the 27th Floor, Tower-9, having super area of 1800 sq. ft.		
6.	Mr. Manorama Budhiraja	Unit bearing no. 1PHI on the Top Floor, Tower-1, having super area of 3180 sq. ft.	22.06.2018	1,23,75,000/-

iv. It is pertinent to mention that the Facts of all Applicants No. 1 to 6 are the same, only the Unit details, allotment letters and the amount invested are different. So for the sake of convenience, we are only extracting the facts of Applicant No.1 for consideration, however, we have also considered the facts and circumstances of each Applicant:

Financial Creditor No. 1: Ranjit Rai Kohli:

Unit bearing no. 2292 on the 29th Floor, Tower-2, having super area of 1800 sq. ft., Unit bearing no. 3293 on the 29th Floor, Tower-3, having super area of 1800 sq. ft.

- a.** In the year 2018, the Managing Director of the Corporate Debtor, Mr. Getamber Anand, who is also a Director in DGPL induced the Financial Creditor No. 1 ("FC-1") to invest in the Project being developed by DGPL. That FC-1 had made the said investment under a buy-back scheme whereby the Corporate Debtor was obligated to buy back the units booked by FC-1 at a premium price.
- b.** The FC-1 was allotted the two aforementioned units in the Project being developed by DGPL vide two Allotment Letters dated 23.10.2018, against an investment of Rs. 49,50,000/- (Rupees Forty Nine Lakh and Fifty Thousand Only) paid by FC 1 to DGPL. A copy of the Allotment Letters dated 21.10.2018 issued by DGPL to FC-1 is filed along with the application.



- c. In furtherance of the buy-back scheme a Memorandum of Understanding dated 23.10.2018 was executed between the Corporate Debtor, DGPL and FC-1. As per the Memorandum of Understanding dated 23.10.2018, the Corporate Debtor issued 9 (nine) post-dated cheques for a total amount of Rs. 1,25,44,000/- (Rupees One Crore Twenty Five Lakh and Forty Four Thousand Only) towards the buy-back amount. It was specifically recorded in Clause 3.1 of the Memorandum of Understanding dated 23.10.2018 that each of the post-dated cheques will be signed by Mr. Getamber Anand and that each of the said instruments would be honoured on presentation. A copy of the Memorandum of Understanding dated 23.10.2018 executed between the Corporate Debtor, DGPL and FC-1 is filed along with the application.
- d. Vide letter dated 01.03.2021, the Corporate Debtor extended the 'Holding Period' as defined in the Memorandum of Understanding dated 23.10.2018 till 30.11.2021. In view of giving effect to the extension sought by the Corporate Debtor, the Corporate Debtor issued 10 (ten) new post-dated cheques for Rs. 53,000/- (Rupees Fifty Three Thousand Only) each and one post-dated cheque dated 30.11.2021 for Rs. 1,13,50,350/- (Rupees One Crore Thirteen Lakh Fifty Thousand Three Hundred and Fifty Only). The said post-dated cheques were issued in favour of FC-1 in lieu of the post-dated cheque dated 22.12.2020 for Rs. 99,00,000/- (Rupees Ninety Nine Lakh Only), which was handed over to FC-1 as per the Memorandum of Understanding dated 23.10.2018. That FC-1 was asked to hand over the required post-dated cheque dated 22.12.2020 of Rs. 99,00,000/- (Rupees Ninety Nine Lakh Only) to the Corporate Debtor which was duly complied by FC-1. A copy of the letter dated 01.03.2021 sent by the Corporate Debtor to FC-1 is filed along with the application.



- e. The Corporate Debtor vide letter dated 15.03.2022 again sought further extension of the "Holding Period" as defined in the Memorandum of Understanding dated 23.10.2018 till 30.06.2022. As stated in the letter dated 15.03.2022 sent by the Corporate Debtor to FC-1, in order to give effect to the further extension of time, the Corporate Debtor issued 1 (one) new post-dated cheque dated 30.06.2022 for Rs. 1,26,20,520/- (Rupees One Crore Twenty Six Lakh Twenty Thousand Five Hundred and Twenty Only) in favour of FC-1. The Corporate Debtor undertook to deposit the balance amount of Rs. 1,27,480/- (Rupees One Lakh Twenty Seven Thousand Four Hundred and Eighty Only) with the designated authority as TDS. That the said post- dated cheque was issued in favour of FC- 1 in lieu of the post-dated cheque dated 30.11.2021 for Rs. 1,13,50,350/- (Rupees One Crore. Thirteen Lakh, Fifty Thousand, Three Hundred and Fifty Only), which was issued to FC-1 as per the letter dated 01.03.2021 sent by the Corporate Debtor to FC-1. That FC-1 was asked to hand over the required post- dated cheque dated 30.11.2021 for Rs. 1.13.50.350/- (Rupees One Crore. Thirteen Lakh. Fifty Thousand. Three Hundred and Fifty Only) to the Corporate Debtor, which was duly complied by FC- 1. A copy of the letter dated 15.03.2022 sent by the Corporate Debtor to FC-1 is filed along with the application.
- f. However, the post-dated cheque dated 30.06.2022 for Rs. 1,26,20,520/- (Rupees One Crore Twenty Six Lakh Twenty Thousand Five Hundred and Twenty Only) was dishonoured upon presentation and was returned with the remark "Account Blocked" vide Return Memo dated 15.07.2022. Thus, the principal amount of Rs. 1,27,48,000/- (Rupees One Crore Twenty Seven Lakh and Forty Eight Thousand Only) along with interest stands due and payable by the Corporate Debtor to the FC-1 towards the "buy- back" of the units bearing no. 2292 &



3293. A copy of the return memo dated 15.07.2022 is filed along with the application.

- v. It is hereby crucial to mention that the total amount due and payable by the Corporate Debtor to the Financial Creditors shall include compound interest @25% per annum to be compounded monthly calculated from the date of dishonour of each of the post-dated cheques till the date such amount is actually received. The compound interest is being backed by Clause 6.3(c) of the MoUs whereby it has been clearly stated that the Corporate Debtor, in the event of default due to dishonour of cheques, shall pay an additional sale consideration amount @25% per annum which shall be compounded monthly from the date of dishonour of the cheques till the date such amount is actually received by the Financial Creditors.

4. **Submissions of the Corporate Debtor:**

- i. In the present Application, the Financial Creditors have incorrectly submitted and misled this Adjudicating Authority into believing that the alleged sum of Rs. 10,74,75,585/- has arisen out of a single transaction. In this regard, it submitted that the alleged sum has arisen out of six different and independent MOUs dated 23.10.2018, 31.10.2018, 24.10.2018, 23.10.2018, 23.05.2018 and 22.06.2018 read along with Allotment Letters dated 23.10.2018, 31.10.2018, 24.10.2018, 23.10.2018, 23.05.2018 and 22.06.2018 respectively. In terms of the lex loci, the Financial Creditors were under an obligation to file separate and independent Applications under Section 7 of the Code read with the concerned Allotment Letter.
- ii. It is submitted that even though it is denied that the sum of Rs. 10,74,75,585/- is a financial debt, however, the payment of the alleged sum was in any event subject to the Financial Creditors duly complying with the terms and conditions enshrined under the aforesaid MOUs. However, since the Financial Creditors failed



to perform its obligations under the subject MOUs the Answering Respondent is under no obligation to purchase the 11 Units bearing Nos. 2292, 3293, 4292, 12PH2, 12PH1, 5PH1, 9202, 10248, 10272, 9273, and 1PHI ("Units") in one of its Projects namely, 'ATS Dolce' situated at Plot No. GH-12A, situated in Sector Zeta-01 , Greater Noida, Gautam Budh Nagar, Uttar Pradesh ("Projects") from the Financial Creditors by paying the alleged amount of Rs. 10,74,75,585/-.

- iii.** It is clear from the documents on record that the transaction between the Financial Creditors and the Answering Respondent is that of a sale/purchase agreement and that the nature of the MoUs dated 23.10.2018, 31.10.2018, 24.10.2018, 23.10.2018, 23.05.2018 and 22.06.2018 are in the nature of the agreement to sell.
- iv.** The Financial Creditors while instituting the present application have incorrectly submitted and misled this Adjudicating Authority into believing that the sums alleged to be due and defaulted by the Answering Respondent are in the nature of a 'financial debt' and that the Financial Creditors are 'Financial Creditor', whereas on the contrary the alleged sum of Rs. 10,02,98,780/- along with interest of Rs. 71,76,805/- is not a financial debt and was merely a sale consideration that was agreed to be paid by the Answering Respondent to the Financial Creditors towards the purchase of the units subject to compliance of the MOUs.
- v.** In the present case, upon bare reading of the terms and conditions of the MoUs dated it is evident that firstly the Financial Creditors are merely a seller of the Units to the Answering Respondent, and as a sequitur, the Answering Respondent is merely a buyer and that the sums of Rs. 10,02,98,780/- along with interest of Rs. 71,76,805/- classified as financial debt is only sale consideration, which was also payable by the Answering



Respondent to the Financial Creditors subject to compliance of the terms of the MoUs and the Allotment Letters.

- vi.** Without prejudice to the aforesaid and admittedly the Financial Creditors, in terms of the Allotment Letter dated 23.10.2018, 31.10.2018, 24.10.2018, 23.10.2018, 23.05.2018 and 22.06.2018, paid a total sum of Rs. 1,26,49,500/- to DGPL towards purchase or allotment of 11 Units. The details of the total sum are filed along with the application.

It is submitted that the Allotment Letters are merely a Sale Agreement and the sum of Rs. 3,96,00,000/- is the amount paid by the Financial Creditors to the DGPL towards the allotment of the Units. The said sum was not disbursed against the time value of money.

- vii.** It is submitted that the Answering Respondent is part of the well-known ATS Group of Companies and has numerous projects in the real estate market and continues to enjoy unblemished goodwill and reputation amongst the buyers. As evident from the aforesaid, the Answering Respondent currently has assets/inventory worth Rs. 1000 Cr. across all its projects, which is much more than the alleged sums claimed by the Financial Creditors and sufficient to satisfy the alleged claim of the Financial Creditors.

5. Analysis and Findings

- i.** We have heard the Ld. Counsels appearing for both parties from time to time. We have also perused the documents on record.
- ii.** We have to consider the following issues:
- a.** Whether the Applicant falls in the category of Financial Creditor as per Section 5(7) of the Code or not?
 - b.** Whether the amount claimed by the applicant as per Part IV of the Application of a sum of Rs. 10,74,75,585/- [(Rupees Ten Crore Seventy Four Lakh Seventy Five Thousand Five Hundred and Eighty Five Only)]



Rs.10,02,98,780/- of Principal amount along with Rs.71,76,805/- of Interest amount] is a financial debt under Section 5(8)(f) of the Code or not?

iii. It is clearly mentioned that the facts of the MoU of all Applicants No. 1 to 6 are the same, only the Unit details and the amount invested are different. So for the sake of convenience, we are only extracting the facts of the MoU of Applicant No.2 for consideration, however, we have also considered the facts and circumstances of the MoU of each Applicant

It is submitted that the Financial Creditor No. 2 and the Corporate Debtor entered into MoU on 31.10.2018 to which M/s. Domus Greens Private Limited was also a party. In the said MoU, M/s. Domus Greens Private Limited has been described as a developer, Ms. Meena Malhotra has been described as a seller and M/s. ATS Infrastructure Private Limited has been described as a purchaser.

The relevant clauses of the MoU are extracted below for better understanding of the case: -

a. "The Developer had allotted residential apartment bearing No. 4292, super area of 1800 sq. ft. on 29th floor of Tower/Building No. 4 having total sale price of Rs. 3,500/- per square feet and the right to exclusively use 2 parking spaces with apartment in its group housing residential scheme located at the plot of land numbered as Plot No. GH-12A situated in Sector-Zeta-01, Greater Noida, District Gautam Budh Nagar, Uttar Pradesh, India measuring about 56660.60 square meters ("Subject Lands") has been leased by the Greater Noida Industrial Development Authority ("GNIDA") in favour of M/s. Domus Greens Private Limited ("Lessee/Developer") by and under the Lease Deed dated 27th September, 2013, which is registered in the office of the Sub- Registrar, Sadar, Gautam Budh Nagar vide



Book No. 1 Volume No. 14195 Page No.85 to 114 as Document No. 24069 on 27th September, 2013 ("Lease Deed") in the name of "ATS DOLCE" (hereinafter referred to as the "Project"), along with all rights, interests, liberties, easements, privileges, appurtenances whatsoever and free from all Encumbrances (as hereinafter defined) to the Seller (hereinafter referred to as the "Apartment") in terms of the respective Application Form, Allotment Letter and their respective Terms & Conditions all dated 31.10.2018 (hereinafter referred to as the "Allotment Letter").

- b. The Seller had paid to the Developer a sum of Rs. 24,75,000/- (Rupees Twenty Four Lakh and Seventy Five Thousand Only), by way of Cheque No. 672933 dated 31.10.2018 drawn on State Bank of India, New Delhi, the receipt of which is acknowledged by the Developer, and the Seller has agreed to deposit by way of tax deducted at source a sum of Rs. 25,000/- (Rupees Twenty Five Thousand Only) (all collectively hereinafter referred to as "Purchase Consideration") for purchase of the Apartment.**
- c. AND NOW WHEREAS the SELLER has agreed to further sell the said Apartment and/or its rights under the Allotment Letters to the Purchaser as per the terms of this Agreement, and the Purchaser has agreed to purchase the said Apartments or the rights of the Seller under the Allotment Letters from the Seller for Rs. 62,72,000/- (Rupees Sixty Two Lakh and Seventy Two Thousand Only) plus any balance outstanding dues of seller to the Developer (hereinafter referred to as "Sale Consideration").**



d. The Parties are entering into this Agreement to (i) record the understanding between the Purchaser and the Seller towards the transfer of the Apartment from Seller to Purchaser; and (ii) certain amendments to the terms and conditions of the Allotment Letters executed between the Developer and the Seller.”

From the perusal of the abovementioned clauses, it appears that the MoU is in the nature of a sale agreement. Further, there is no interest element has been provided therein.

iv. We are of the view that the alleged compound interest @25% per annum to be compounded monthly calculated from the date of dishonour of each of the post-dated cheques till the date such amount is actually received is ex-facie illegal as contested and barred by the provisions of the Usurious Loans Act, 1918. As per the provisions of the said Act, a maximum interest of 7.50% per annum is payable on the secured loan and 12.50% per annum is payable on unsecured loans. Even otherwise, the compound interest of @25% is completely ex-facie illegal and exorbitant. Without prejudice, after perusing the relevant clauses of the MoU, the Financial Creditors are speculative investors and cannot claim the status and benefits as a Financial Creditor under Explanation (i) of Section 5(8)(f) of the Code, and it is not an interested party in the financial well-being, growth, and vitality of the Corporate Debtor, but is just interested in his investment.

Guidance in this regard is also available in the judgment of Hon'ble NCLAT in **Sudha Sharma vs Mansi Brar and Anr.** [Company Appeal (AT) (INS) No. 83 of 2020] emphasized: ***“that money deposited/invested for speculative purpose does not entitle a person to take advantage of clause (f) of section 5(8) and be considered a financial creditor by virtue of being an allottee of a housing unit/flat.”***

While determining Issue (a), We are of the view that the status of “Financial Creditor” cannot be accorded to a person who, in the



garb of a lender comes into the project as a speculative investor and for mere recovery of monies files exorbitant claims. Therefore, the benefit of section 5(8)(f) of IBC will not enure in his favour and the amount claimed in Part IV of the application doesn't amount to become Financial Debt as per code.

- v. At this stage, it is pertinent to refer to the definition of the expression "Financial Creditor" in sub-section 7 of Section 5 of the Code.

Section 5 of sub-section 7 reads as follows: -

"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;"

- vi. From the perusal of the recitals of the Allotment Letters executed between the Developer and the seller as well as the MoU, we do not find any clause which would show that any "Financial Debt" is owed to the present Applicant and therefore by no means the present Applicants can be called as a "Financial Creditor".

- vii. At this stage, it is also pertinent to refer to the definition of the expression "Financial Debt" in sub-section 8 of Section 5 of the Code.

Section 5 of sub-section 8 "Financial Debt" reads as follows: -

"Financial Debt" means a debt along with 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) *****

(c) *****

(d) *****

(e) *****

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

(g) *****



(h) *****

(i) *****”

- viii.** We have perused the various clauses of the Allotment Letters as well as the MoU very carefully. We have not come across any clause which shows that the money in question was borrowed against payment of interest and that the amount involved in the transaction is having the commercial effect of borrowing.
- ix.** While determining Issue (b), we are of the considered view that the amount involved in the present case cannot be considered as a Financial Debt within the definition of sub-section 8 of Section 5 of the Code. We are also of the opinion that the Applicants are not Financial Creditors holding any financial debt which is in default of payment by the Corporate Debtor.
- x.** It is submitted that as it is a settled law, the pre-requisites for an application under Section 7 of the Code are the existence of 'financial debt' and a 'default', and as evident from the facts in the preceding paragraphs, it cannot be said that there is any financial debt, much less any default and therefore the present application is not maintainable.

Hence, we are inclined to **dismiss** this application.

6. **Order**

In light of the above facts and circumstances, it is hereby ordered as follows: -

- i.** The Application bearing **(IB)-885(ND)/2022** filed by the Applicants, under section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules for initiating CIRP against the Respondent, is hereby **dismissed**.
- ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.



iii. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

**-SD-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

**-SD-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**