

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

I.A. NO. 5731 OF 2024
IN
COMPANY PETITION NO. (IB)-72(ND)/2024

IN THE MATTER OF CP(IB)-72(ND)/2024
(Under Section 7 of IBC, 2016)

M/s A-ONE Homes

Through Mr. Rajiv Hooda,
Plot No. 362, Omaxe City, Sector- 28,
Rohtak, Haryana- 124001

**... Applicant/
Financial Creditor**

Versus

M2M Buildtech Pvt. Ltd.

39-G, Pocket A-1,
Mayur Vihar Phase- III,
New Delhi - 110096

**... Respondent/
Corporate Debtor**

AND IN THE MATTER OF I.A. NO.5731 OF 2024:
(Under Rule 11 r/w Rule 55 of NCLT Rules, 2016)

M2M BUILDTECH PRIVATE LIMITED,

Off: House No. G-3/193-194,
First Floor, Sector 16, Rohini,
West Delhi – 110085

... Applicant

Versus

M/S A-ONE HOMES,

Plot No. 362, Omaxe City, Sector 28,
Rohtak, Haryana - 1240001

... Respondent

Order Delivered on: 24.03.2025

CORAM:

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

SH. ANIL RAJ CHELLAN, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Sr. Adv. Rashmi Chopra, Adv. Avtaar Singh Deol

For the Respondent : Adv. Abhishek Anand, Adv. Karan Kohli

PER SH. ASHOK KUMAR BHARDWAJ, MEMBER (J)

ORDER

Stating succinctly, the captioned company petition has been preferred under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s A-One Homes (hereinafter, referred to as the “**Financial Creditor/ FC**”) with prayer to initiate the corporate insolvency resolution process qua M2M Buidtech Private Limited (hereinafter, referred to as the “**Corporate Debtor/ CD**”).

- 2.** The brief facts as stated in the captioned petition reads thus: -
- i. The Corporate Debtor executed a Collaboration Agreement dated 07.02.2022 with certain landowners for developing an affordable plotted residential colony under the scheme of “Deen Dayal Jan Awas Yojna” on the land parcels measuring 7.418 acres situated within the revenue estate of Village Kheri Sadh, Tehsil Sampla, District Rohtak, Haryana. To this effect, the aforesaid agreement was registered with the Joint/ Sub- Registrar, Tehsil Sampla, District Rohtak in terms of Registration No. 4008 dated 07.02.2022.
 - ii. Before the aforementioned agreement, the Corporate Debtor had entered into a Development Agreement dated 05.11.2012 with the

landowners of the same land parcels for developing a residential group housing colony. However, the CD failed to start the development of said housing colony due to financial crunch. Further, due to such failure on the part of the CD, it was impleaded as party to multiple civil and criminal litigation before several judicial forums.

- iii. The Corporate Debtor approached the Financial Creditor to rehabilitate itself and to get funds for resolving all disputes. In this regard, the CD and the FC entered into a “Loan-cum-Finance Agreement” dated 31.05.2022 (hereinafter, referred to as the “**Loan Facility**”) in terms of which, the FC transferred a total loan amount of Rs. 14,11,46,600/- to the court litigants and the outside court litigants on terms and conditions mentioned in the loan facility.
- iv. As the CD failed to make the payments on various due dates, the parties sat together in May, 2023 and after adjusting the payments already made, a final outstanding amount of Rs. 5,84,48,329/- qua the financial facility was arrived at. In addition to above, an amount of Rs. 1,55,51,672/- was also owed by the CD to the FC for other expenses. To settle these debts, the Corporate Debtor issued a cheque dated 22.05.2023 for a sum of Rs. 7,40,00,000/- to the FC. However, on the presentation of said cheque, the same was returned on 17.08.2023 on ground of insufficient funds in the account of the CD. Thus, the default occurred on 17.08.2023 due to non- payment of the aforementioned outstanding amounts.

v. On 24.11.2023, the FC issued a loan recall notice, thereby cancelling all outstanding commitments under or in connection with the loan facility. Further, the Corporate Debtor was called upon to repay the entire due amount of Rs. 6,11,78,103/- within 7 days of the date of loan recall notice. Neither any payment was made by the CD nor any reply was received from it with respect to the aforesaid notice, and consequently, the FC preferred the present petition under Section 7 of the Code for initiating CIRP qua the Corporate Debtor.

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

i. The FC has concealed the existence of an agreement dated 08.12.2021 which mentions the obligations to be fulfilled by the FC and refers only to an agreement dated 31.05.2022 in the petition. Relevant excerpt of the agreement dated 08.12.2021, as stated in the application, reads thus: -

“I. That the second party will do and complete the necessary statutory formalities as maybe required for grant of license for affordable group housing and setting up residential Deen Dayal Jan Awas Yojana from the appropriate authorities. The second party covenants with the first party that the second party will do all appropriate and necessary acts, deeds and work as may be required to be submitted to the Director Town and Country Planning Haryana (DTCP), Haryana Urban Development Authority and/or such other authorities concerned with the matter and further that the first party shall sign and execute all such documents, letters, applications, undertakings, etc.,

as may be appropriate and necessary for obtaining necessary approvals/ and for development, construction and completion of the said project and for giving effect to the terms of this agreement. The second party shall bear all costs, expenses, penalties, professional and legal fees for obtaining the said license of the project.

II. That the second party stands committed and wilfully support the first party financially as well as technically in respect of all development work to be undertaken by the first party.”

- ii. Subsequent to the aforesaid agreement, a Loan-cum-Finance Agreement dated 31.05.2022 was executed between the FC and the CD and as per the same, the Financial Creditor is to finance the Corporate Debtor for settlement of the litigations pending against it before various judicial forums and further, to finance the residential project under the Deen Dayal Jan Awas Yojna. As per said agreement, the Corporate Debtor was required to pay back the Financial Creditor the entire amount paid by the Financial Creditor in settlement of court cases within or outside the Court.
- iii. As far as FC's contention regarding bouncing of cheque no. 000923 dated 22.05.2023 is concerned, as per the bank statement of the CD, the cheque no. 000923 was already encashed on 16.02.2023 as payment made to "Haryana Real Estate". Therefore, the FC's claim of the date of default occurring on 17.08.2023 is denied.
- iv. With regard to FC's claim of debt of Rs. 6,11,78,103/- for the period 12.11.2021 to 30.10.2023 is concerned, it is stated that the same has already been received by the FC from the allottees on behalf of

the Corporate Debtor. Thus, there exists no debt as defined under Section 5(8) of the Code.

- v. The primary ingredient for filing an application under Section 7 of the Code is occurrence of “default”. In the present case, it is clear from the bank statements of the Financial Creditor that they were already in receipt of payments from the Allotees of the Corporate Debtor and as per said bank statement, an amount to the tune of Rs. 8,19,82,120/- has already been received by the Financial Creditor and therefore, no debt stands due and there is no default in the present case.
- vi. Since the FC failed to apprise this Tribunal of the aforementioned agreement dated 08.12.2021 and also maliciously stated that the date of default is 17.08.2023 (i.e. the date on which the cheque no. 000923 bounced), the FC has come to this Tribunal with unclean hands and has suppressed material facts. Therefore, the petition is liable to be dismissed.

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

- i. With respect to CD’s contention that the FC deliberately did not mention the agreement dated 08.12.2021, it is stated that both the FC as well as the CD were parties to the subsequent agreement dated 31.05.2022 and in this subsequent agreement, the parties had not mentioned about the earlier agreement dated 08.12.2021 as the same was never acted upon. Another reason for not referring to the agreement

dated 08.12.2021 in the petition was that after signing of the agreement, it came to the knowledge of the FC that the CD had made certain misrepresentations in the agreement regarding ownership of the land which rendered the agreement *void ab initio*. Furthermore, by entering into a fresh agreement dated 31.05.2022 containing all the covenants as were there in the agreement dated 08.12.2021, the latter was impliedly treated as superseded.

- ii. Further, the contention of the Respondent/ CD regarding encashment of cheque bearing no. 000923 as payment made to “Haryana Real Estate”, it is stated that a cheque bearing no. 000923 dated 22.05.2023 issued by CD to FC bounced with the reason “FUNDS INSUFFICIENT” and for which proceedings under Section 138 of NI Act, 1881 has been initiated against the CD. It is further submitted that the Corporate Debtor or the Bank Manager should be put to strict proof of providing the original cheque/ true copy of the cheque bearing no. 000923.
- iii. The contention of the Respondent/ CD that allottees of the CD had already made payments to the Financial Creditor on behalf of the Corporate Debtor is false as the persons who have allegedly transferred the amounts are not the allottees of the CD. Further, there is no tripartite transaction *inter se* between the Financial Creditor and the alleged allottees relating to any of the dues of the Corporate Debtor. Furthermore, the names of the alleged 38 allottees is not mentioned in any of the agreements between the CD and the FC viz. agreements dated 08.12.2021, 31.05.2022 and 29.10.2022. Moreover, the names of the

persons who have allegedly transferred the amounts have transferred such amounts to the Financial Creditor for other separate business purposes which are not at all related to any of the business/transactions of the Corporate Debtor.

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5. The captioned IA has been filed by the Corporate Debtor to place additional documents on record. The documents mentioned therein are as follows:

- i. Copy of sale deeds executed between the CD and the allottees, enclosed as Annexure A-1 (Colly).
- ii. Copy of affidavits of the allottees for corroborating the contention that payments have been made by the allottees directly to the FC qua their units, enclosed as Annexure A-2 (Colly).
- iii. Copy of mutual settlement agreement dated 04.06.2023 recording Panchayat settled dispute between the parties whereby the CD had to pay a sum of Rs. 74,50,000/- to the FC in tranches, enclosed as Annexure A-3 (Colly).
- iv. Copy of whatsapp communication between a partner of FC acknowledged the payments made to the FC along with the allotment letters issued by CD and the ledger maintained by CD, enclosed as Annexure A-4 (Colly). Certificate of the aforesaid documents for the purpose of Section 63 of Bhartiya Sakshya Adhiniyam, 2023 is enclosed as Annexure A-5 (Colly).

- v. Copy of authority letter for authorizing the Applicant to file said I.A., enclosed as Annexure A-6 (Colly).
- 6.** In response to the aforementioned I.A., the Financial Creditor made the following averments: -
- i. The application has been filed by one of the Directors of the CD viz. Mr. Rakesh Sharma, who does not have the authorization to file the application.
 - ii. The transactions of the alleged 38 persons/ allottees, on which the CD is placing reliance to substantiate its contention of repayment of the debt amount, has nothing to do with the loan facility between the CD and the FC.
 - iii. Out of the list of said 38 persons/allottees, the CD has provided allotment letters for only 3 persons and even in these allotment letters, there is no mention of any Loan-cum-finance agreement or repayment of loan on behalf of the CD.
 - iv. The sale deeds, which the CD has sought to be brought on record, mentions that the sale consideration of the same have been received by the CD and there is false attempt by the CD to connect these transactions with the alleged repayment of the admitted debt owed to the FC.
 - v. The Panchayat settled agreement dated 04.06.2023 was for resolving the issue of registration of 4500 sq. yards that were allotted to the FC by the CD qua the assigned development work done by the FC

and for recovery of other expenses incurred by FC on behalf of the CD. This agreement was entirely separate from the loan facility between the CD and the FC.

- vi. The whatsapp communications on which the CD has placed reliance was not with any of the partners of the FC and further, the communication nowhere mentions that it was for return of the loan amount.

ANALYSIS & FINDINGS: -

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

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

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

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

8. The definition of ‘financial debt’, as provided under Section 5(8) of the Code, means disbursement of any debt against the consideration for the time value

of money and includes money borrowed against the payment of interest. The Section 5(8) of the Code reads thus: -

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

[...]

(8) “financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—

- (a) money borrowed against the payment of interest;*
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
- (e) receivables sold or discounted other than any receivables sold on nonrecourse basis;*
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or*

any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;”

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

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

The relevant excerpt of the judgment reads thus: -

“61. The definition of “financial debt” in Section 5(8) then goes on to state that a “debt” must be “disbursed” against the consideration for time value of money. “Disbursement” is defined in Black’s Law Dictionary (10th ed.) to mean:

“1. The act of paying out money, commonly from a fund or in settlement of a debt or account payable. 2. The money so paid; an amount of money given for a particular purpose.”

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

10. In the facts of the present case, the Respondent/ Corporate Debtor has not disputed the existence of the agreement dated 31.05.2022 which is enclosed as Annexure A-3 to the captioned petition. The title of the agreement reads “Loan Cum Finance Agreement”. The terms of the agreement clearly shows that the First Party to the agreement viz. ‘M/s M2M Buildtech Pvt. Ltd.’ secured financing from the Second Party to the agreement viz. ‘A One Homes’ with a condition that the First Party shall repay all the amount which the Second Party had provided with interest at the rate of 12% p.a. Relevant excerpt of this agreement reads thus: -

LOAN CUM FINANCE AGREEMENT

This agreement is made, entered and executed at Rohtak on this 31st of MAY 2022 between:-

M/s M2m Buildtech Pvt. Ltd. a company incorporated under the Companies Act, 1956 having its office at Rajan Tower, Ground Floor, Omaxe City, Sector 28 Rohtak through its Authorised Person Sh. Rakesh Sharma S/o Sh. Kishan Chand authorized vide its Board resolution dated 28/01/2022 (Annexure -A) and General Power of Attorney Document registration No 53 dated 07/02/2022 registered before Registering Authority/Joint/Sub Registrar, Sampla (Annexure-B) hereinafter called as **First Party/Builder** of one part which expression shall unless repugnant to the context or meaning thereof be deemed to mean and includes his legal heirs, assigns, executors, administrators and survivors.

And

A ONE HOMES Through its Partner **Rajiv Hooda S/o Sh. Inder Singh Hooda** having its office at Rajan Tower, Ground Floor, Omaxe City, Sector 28 Rohtak here in after called as **Second Party/Financer/Developer/Contrator** of one part which expression shall unless repugnant to the context or meaning thereof be deemed to mean and includes his legal heirs, assigns, executors, administrators and survivors.

[...]

Whereas second party is developer of real estate projects including site development work viz. roads, laying down sewer system, laying down water supply system , piping and sanitary work, electrification work, construction work, building boundary walls, flooring , laying parks, flowering and plantation work etc. and also does work of advancing loan, financing etc. in the real estate projects and to the builders.

Whereas First Party/Builder is undergoing a phase of financial crunch and every genuine and bonafide effort is being made to rehabilitate the company and to bring the company in the normal process of working .

Whereas several litigations are/were pending before several courts/ commission including District Consumer Disputes Redressal Commission against the first party. First Party/Builder is bonafidely desirous to resolve the disputes with the litigants and to enter into settlements and to bring an end to the litigations and to finally settle disputes. First Party/Builder is solely and exclusively liable and responsible to clear all the outstanding amount from such litigants as per court orders.

First party took several loans from some people for the project and loan/advances from such persons is/are still outstanding . The first party is bonafidely desirous to resolve the disputes with them and to enter into settlements and to bring an end to finally settle all disputes. First Party/Builder is solely and exclusively liable and responsible to clear all the outstanding amount from such people and if any obstructions as in the case of settling the above clients or delay will be solely responsibility of the first party .

Whereas the Parties are now desirous of entering into present loan cum finance agreement for financing the residential Deen Dayal Jan Awas Yojna project on the Said Land and for financing outstanding amount from said litigants as per court orders and in court cases.

Whereas the present agreement is entered between all aforesaid parties with their free consent and without any sort of pressure, force, or coercion from any nook or corner on the following terms and conditions:

1. That First Party/Builder is/has been bonafidely desirous to resolve the disputes with the litigants and to enter into settlements and to bring an end to the litigations and to finally settle disputes on following terms of settlement. The second party is ready to give loan to first party in settlement of the litigations . The second party on behalf of first party is ready and has paid Demand Draft/Bankers Cheque of Rs. One lakh each to the appropriate complainant/ executionist/ litigant on behalf of first party. After paying rupees one lakh to each of the litigants, Rs. Two lakhs from balance due amount of each litigant shall be given to litigant within Six months time

- from date of settlement i.e. In May, 2022 to each relevant litigant /complainant/executionist, thereby one PDC cheques of May, 2022 will be/has been given by the second party to each relevant litigant / complainant/ executionist on behalf of first party. Another four months time is settled to clear all dues and balance if any, so such balance amount would be/has been paid in two installments to each relevant litigant / the complainant/ executionist with a gap of sixty days each thereby two PDC cheques of July, 2022 and September, 2022 would be/has been given by the second party to each relevant litigant / complainant/executionist to clear remaining balance amount on behalf of first party.
2. That **First Party/Builder** shall give and pay back to second party all the amount which is paid by the second party to said litigants/ clients vide aforesaid demand draft/cheque of Rs one lakh to each litigant as per said settlement in said court/ District Consumer Disputes Redressal Commission cases within ninety days from the date of getting LOI of the said project from appropriate authorities through PDC cheques of M2M Buildtech Pvt. Ltd. as mentioned in (Annexure-C).
 3. That **First Party/Builder** shall give and pay back to second party all the amount which is paid by the second party to said litigants/ clients vide PDC cheques as per said settlement in said court/ District Consumer Disputes Redressal Commission cases thirty days before the due date of each respective PDC cheque through PDC cheques of M2M Buildtech Pvt. Ltd. as mentioned in (Annexure-C). In case the first party fails to make the payment thirty days before the due date of each respective PDC cheque, first party shall give and transfer all ownership rights, title and interest of the 'equivalent land' in favour of the second party @ Rs. 25,000/- per sq. yds out of the said developed project land and first party will allot and thereafter get the said equivalent land registered before registering authority immediately after getting the license from appropriate authority, in favour of the second party or in favour of any person of the desire of second party @ Rs. 25,000/- per sq. yds out of the said developed project land.
 4. That **First Party/Builder** shall give and pay back to second party all the amount which second party has paid on behalf of first party for settlement of the court cases settled in the courts or in without court cases or in court cases settled outside the court, with interest @12% p.a.
 5. That **First Party/Builder** shall also be under obligation to execute a general power of attorney in favour of the second party for the purpose mentioned in the agreement.
 6. That **First Party/Builder** have nominated, constituted and appointed **Rajiv Hooda Partner A ONE HOMES/second party** as a lawful attorney in respect of the marketing, sale and allotment to sell the said ' equivalent land' @ Rs. 25,000/- per sq. yds out of the said developed project residential land from the date approval of RERA and date of license of the said project from the relevant authorities of Haryana Government or in any other manner of transfer or creation of mortgage, create third-party rights and to price such residential plots/units/ spaces/floors/ apartments in accordance with the provisions of the applicable laws and to collect / receive all such payments and to decide upon the payment plan, interest on delayed payments, forfeiture charges, etc. collected from such allottees/purchasers of saleable area / units / apartments and collect the same from such Allottees and to handover possession of such saleable area to the purchasers / allottees and to

cancel/ alter the allotments to purchasers / allottees in the event of any default by the allottees / purchasers and agree to refund of such amounts as may be refundable in such cases or otherwise to allottees / purchasers and to alter / waive any default penalties / charges payable by the allottees / purchasers under the allotment document and / or grant additional term for payment and to charge interest on the same and to undertake all steps and processes generally required and necessitated in the process of allotments / sale of residential units/ apartments / spaces as per applicable bye laws and to execute builder buyer agreement and agreement to sell and is authorized to get said all such residential units/ apartments / spaces registered before registering authority in respect of the said ' equivalent land' out of the said developed project land.

7. The **First Party/Builder** is solely and exclusively liable and responsible to clear all the outstanding amount of aforesaid litigants and in case any cheque bounces/ cheques get dishonored at the time of clearance due to any reasons then it shall be sole responsibility of the first party and second party shall not be liable and responsible for such payments and dishonor of the cheques and under section 138 of Negotiable Instruments Act and **First Party/Builder** shall be exclusively liable for any consequences under section 138 of Negotiable Instruments Act and for all disputes in consequential court cases with such litigants.
8. That the courts/forums/ District Consumer Disputes Redressal Commission at Rohtak alone shall have exclusive jurisdiction to entertain any dispute with regard to the present agreement.
9. That both parties shall honor all terms and conditions of this Agreement.
10. That the present agreement is entered between both aforesaid parties with their free consent and without any sort of pressure, force, or coercion from any nook or corner and both parties have signed the same after understanding , reading and hearing Hindi version of this agreement.

11. It can also be seen from the agreement dated 29.10.2022, enclosed as Annexure A-4 to the captioned petition, that the agreement dated 31.05.2022 was a loan cum finance agreement and it was further acknowledged therein that there had been a default on the part of the CD to repay the amount extended by the FC. It was further recorded in the agreement dated 29.10.2022 that if the CD could not repay the defaulted amount, certain plotted lands belonging to CD were to be allotted to the FC in lieu of the outstanding amount. Relevant excerpt of the agreement dated 29.10.2022 reads thus: -

[...]

13. That A-one Homes had entered into the Loan cum finance agreement with M2M Build tech Pvt. Ltd. through its authorized Signatory/Person Mr Rakesh Sharma S/O Sh Kishan Chand resident of 255/19, Gali No.1, Kailash Colony, Sonipat-131001 (HR), (vide its Board Resolution dated 28/01/2022 and power of Attorney Document bearing No 53 dated 07/02/2022 registered before Registration Authority / sub Registrar) on dated 31/05/2022 for settling/ settlement of the various court cases on behalf of M2M Buildtech Pvt Ltd. by issuing Rs. One lakh demand drafts , Rs. Two lakh PDC cheques for may 2022 , and two PDC cheques for clearing the each litigators amount along with interest in next four months and for that Rs. 5,32.50,000/- (Rupees Five crores thirty two lakh fifty thousand only) were spent/given by A-One Homes and as per agreement dated 31/05/2022 M2M Buildtech Pvt. Ltd. had to pay back above mentioned amount but however M2M Buildtech Pvt. Ltd. has failed to payback this amount.
14. That if the company M2M Buildtech Pvt. Ltd. is not in the position to return the said unsecured loan to A-One Homes so as agreed mutually by the M2M Buildtech Pvt. Ltd. and A-One Homes , for that total 2300 sq yard of plotted area is to be allotted and the following Residential Plots mentioned along with area in sq yard and 715 sq yard of commercial space are hereby allotted to A-One Homes against the payment given in court .

S.NO	BLOCK	PLOT NO	AREA IN SQ YARD	FREEZED/UNFREEZED
1	A	13	178.98	UNFREEZED
2	A	14	178.98	UNFREEZED
3	E	61	176.28	FREEZED
4	E	62	176.4	FREEZED
5	E	63	176.4	FREEZED
6	E	64	176.4	FREEZED
7	E	65	176.4	FREEZED
8	E	66	176.4	FREEZED
9	E	67	176.4	FREEZED
		COMMERCIAL SPACE	715	
		TOTAL	2307.64 SQ YD	

[...]

12. The Respondent/ CD in the reply dated 06.04.2024 has also admitted the existence of the aforesaid agreement and further acknowledged that it was required to pay back the entire amount paid by the FC in settlement of court cases of the CD. Relevant excerpt of the reply reads thus: -

“4. It is submitted that before delving into these questions and provisions of the Code, it is vital to bring on record correct factual position which pertains to present Company petition. A brief factual background of the present matter is as follows:

BRIEF BACKGROUND:

[...]

f) That thereafter, the Loan cum Finance Agreement dated 31.05.2022 was executed between the Financial Creditor and the Corporate Debtor and as per the same, the Financial Creditor is financing the Corporate Debtor for settlement of the litigations pending against them before various Courts and further for financing the residential Deen Dayal Jan Awas Yojna on the said land. That as per the said agreement the Corporate Debtor was required to pay back the Financial Creditor the entire amount paid by the Financial Creditor in settlement of Court cases within or outside the Court.”

13. In view of the above, this Tribunal is of the view that the financial facility extended by the Financial Creditor to the Corporate Debtor, in terms of the aforesaid agreement dated 31.05.2022, was in the nature of a ‘financial debt’ for the purposes of the Code.

14. As can be seen from the provisions of Section 7(3) of IBC, 2016, while considering admission of the application filed under Section 7, we need to

satisfy ourselves as to whether the record of default is enclosed with the petition. The Section 7(3) reads thus: -

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

[...]

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

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

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

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

15. In the facts of the present case, the Financial Creditor has enclosed the loan recall notice dated 24.11.2023 at Annexure A-9 to the petition as evidence of the default in repaying the loan amount. Relevant excerpt of the same reads thus: -

“SUB: LOAN RECALL NOTICE

REF: Loan-cum-finance facility availed by M2M Buildtech Private Limited vide Loan-cum-Finance Agreement dated 31-May-2022

Dear Sir/Madam,

1. We refer to the sanction of loan-cum-finance facility under the Loan Cum Finance Agreement dated 31.05.2022 (hereinafter referred to as the "said Agreement"), vide which, we, M/s A One Homes, a partnership firm duly registered with the Registrar of firms and societies, Haryana (hereinafter referred to as the

“Lender”), upon your request, had granted Loan/Finance Facilities to you the Addressee i.e. M2M Buildtech Private Limited (hereinafter referred to as the **“Borrower”**) represented through its Director/Authorised Person Mr. Rakesh Sharma (via Board Resolution dated 28.01.2022 and General Power of Attorney dated 07.02.2022 from land owners' of your project (document registered via document no 53, at Sub Registrar office Sampla, Rohtak, Haryana).

2. That, you (the Borrower), were under extreme financial hardships and you had approached and requested the lender, to rehabilitate your company, to get the company's project land detached from the court, to settle the court litigants against your company, to settle your company's financiers outside the court for their previously booked flats. You, the Borrower, requested loan for the same, and we, the Lender had granted Loan/Finance Facilities in the shape of transferring the loan amount, on your behalf, directly into the accounts of your court litigants and your financiers/litigants/flat buyers outside the court, on behalf of you/the addressee i.e. M2M Buildtech Private Limited, and we had thus transferred the total loan amount (to the court litigants and outside court litigants) for a sum of Rs. 14,11,46,600/- (Rupees Fourteen Crores Eleven Lakh Forty-Six Thousand and Six Hundred Only) vide the aforementioned agreement executed between Lender and You, the addressee as the Borrower on terms and conditions fully mentioned in the said Agreement dated 31.05.2022.

3. That the details of the total loan/finance facilities for a sum of Rs. 14, 11,46,600/- (Rupees Fourteen Crore Eleven Lakh Forty-Six Thousand and Six Hundred Only) granted to the Borrower are attached herewith as **Annexure A**.

4. That the details of the outstanding loan/finance, due from you (the Borrower), which are in default, amounting to Rs.

6,11,78,103/- (Rupees Six Crore Eleven Lakh Seventy-Eight Thousand One Hundred and Three Only) are attached herewith as **Annexure B**.

5. That you, the Borrower accepted the terms and conditions of the aforesaid Agreement inter alia agreeing to pay interest, along with the principal amount on the due dates as per the terms of the said Agreement.

6. That you, the Borrower was required to comply with the terms and conditions of the said Agreement as well as to maintain the said finance facilities and to repay the principal, together with interest amount to the Lender in the said credit facilities. However, you the Borrower had failed to maintain financial discipline in your loan cum finance facilities, despite repeated requests and follow-ups, and you, the addressee have failed to repay the said loan amount. That since the different repayment dates were not honoured by the Borrower, and thereafter, the Lender and the Borrower finally sat together in the month of May, 2023, and finally, upon last payment of Rs. 37,70,000 (Rupees Thirty-Seven Lakh Seventy Thousand only) as made by the Borrower to the Lender via RTGS Ref No. UTIBR52023052200357711 on dated 22.05.2022, a final balance amount of Rs. 5,84,48,328/- (Rupees Five Crore Eighty-four Lakh Forty-Eight Thousand Three Hundred and Twenty-Eight Only) against the said Loan/Finance amount was arrived at between the parties to be due and outstanding for immediate payment by the Borrower to the Lender, and for the said balance amount of Rs. 5,84,48,328/-, a cheque bearing number 000923 from account no. 912020064423225 of the Borrower of Axis Bank Ltd., amounting to Rs. 7,40,00,000/- (Rs. Seven Crore Forty Lac Only) dated 22.05.2023, was issued in favour of the Lender i.e. A - One Homes (This cheque amount included the above said outstanding due amount of Rs. 5,84,48,328/- plus another amount of Rs.1,55,51,672/- (Rupees

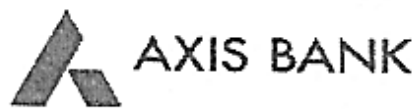
One Crore Fifty-Five lakh Fifty-One Thousand Six Hundred and Seventy-Two only) for other adjustment among the parties). And, upon presentation of the said Cheque with the Bank of the Lender, the said Cheque got bounced and the same was returned along with cheque return memo dated 17.08.2023, reason for return mentioned in return memo as "FUNDS INSUFFICIENT". And hence, the default occurred on 17.08.2023 due to the non-payment of the principal and its interest on the amounts which were due and outstanding.

7. In these circumstances, the Lender hereby cancels all outstanding commitments under or in connection with the said Agreement, and hereby recalls the loan-cum-finance facilities granted to you, the Borrower, and invoke its rights under the said Agreement as well as all its rights under the law, and call upon you the Borrower, to repay the entire outstanding due amount of Rs. 6, 11,78, 103/- (Rupees Six Crore Eleven Lakh Seventy-Eight Thousand One Hundred and Three Only), including interest, as on date 30.10.2023, together with penal interest, until realization of the entire amount of outstanding dues, within 7 days from the date of this notice.

8. That the Lender further reserves its rights to call upon you the Borrower, to re-pay contingent liabilities (if any) in the event any claim arises in future, or in the event of default.

9. Please take notice that, in case of non-payment of the demanded amount within a period of 7 days from the date of this Notice, the Lender shall be constrained to initiate appropriate legal proceedings, under the applicable laws for all costs, charges and expenses, including for non-payment of the above stated dues within the stated time, besides any remedy as available under the Civil Laws as well as under the Indian Penal Code read with Code of Criminal Procedure, at your own risk as to the costs and consequences.”

16. Thus, the Applicant/ FC has espoused that the date of default is 17.08.2023 when the cheque issued by the CD for repaying the outstanding amount bounced. The factum of the loan facility extended in terms of agreement dated 31.05.2022, subsequent part payments by the FC and dishonoring of cheque issued by CD on 17.08.2023 has been mentioned in the aforesaid loan recall notice dated 24.11.2023. It is pertinent to note that the CD in its reply has not provided any response qua aforementioned loan recall notice. Rather, it has primarily stated in its reply that the contention of the FC is untenable as a cheque bearing the same number i.e. 000923 was encashed as payment to Haryana Real Estate on 16.02.2023. To buttress the plea, the Respondent/ CD has enclosed a copy of the bank statement as Annexure R-3 to the reply, relevant excerpt of which reads thus: -



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M2M BUILDTECH PRIVATE LIMITED

Joint Holder :-
 FRIENDS COLONY GROUNDS FLOOR
 NEAR-OMAXE CITY GATE RAJAN TOWER
 ROHTAK
 HARYANA
 124001

Customer ID :847160826
 IFSC Code :UT180002148
 MICR Code :124211005
 Nominee Registered : N

Registered Mobile No :XXXXXX6622
 Registered Email ID:yuXXXX27@gmail.com
 Scheme :CURRENT ACCOUNT-NORMAL

PAN :AAICM1721F

Statement of Account No :912020064423225 for the period (From : 22-02-2022 To : 22-02-2023)

Tran Date	Chq No	Particulars	Debit	Credit	Balance	Init. Br
[...]						
16-02-2023	923	TRF/2148/HARYANA REAL ESTATE/Transfer	110000.00		893940.13	2148

17. To counter the aforesaid plea of the Respondent/ CD, the Financial Creditor in its rejoinder submitted that the aforesaid bank statement is incorrect and the CD/ Bank Manager should be put to strict proof of providing the original cheque bearing no. 000923 or provide a true copy of the same. The FC further submitted that once the cheque bearing no. 000923 was dishonored, it initiated proceedings against the CD under Section 138 of the NI Act, 1881 before Ld. Judicial Magistrate, Rohtak, Haryana. The FC has also enclosed a court- certified copy of the cheque bearing no. 000923, the memo dated 17.08.2023 regarding dishonoring of said cheque as well as copy of the order dated 02.02.2024 passed by the Ld. Judicial Magistrate, Rohtak as Annexure P-3 (Colly.) to the rejoinder, which reads thus: -

Annexure P-3 (Colly.)

(9)

DATE 22 05 20 23
D D M M Y Y Y Y

AXIS BANK LTD
Rohtak, Haryana, 124501
IFS CODE: AXC000

PAY TO THE ORDER OF A-one homes OR ORDER / या उनके आदेश पर

RUPEES Seven Crore fourty lakh only अदा करें ₹ 74000000/-

AGNO. 9120200064423225
CABCA 000490

Payable at par at all branches of Axis Bank Ltd in India.

MP000923 124211999 000490 29

[...]

To — 8295444228.
A-C NE HOMES
PL. NO-26 OMAXE CITY
ROHTAK,
ROHTAK - 124001
HARYANA, INDIA

Dear Customer,
Subject : Return cheque advice

We return herewith a cheque which has been dishonoured with the following information:

Account No : 0713663905
Cheque No : 923
Amount : INR 74,000,000.00
Reason for Return : FUNDS INSUFFICIENT

Date : 17-Aug-2023

Please feel free to contact our nearest Branch or our 24 hour Customer Contact Centre on our toll free number 18002662666 for any clarifications.
We assure you our best service at all times and look forward to a long and mutually beneficial relationship.

Yours faithfully,
For Kotak Mahindra Bank Ltd.

Authorized Signatory

[...]

A-One Homes Vs. M/s M2M Buildtech NACT-2077-2023

Present: Sh. Jitender Kr. Hooda, Counsel for complainant.

Case was fixed for arguments on the point of summoning and during the course of arguments photocopy of cheque of respondent company M/s M2M Buildtech Pvt. Ltd. has been submitted which go on to show that the cheque C1 also belongs to respondent company only. The signatures on the cheque draw support and comparison from signature of respondent Sanjay Chugh and Sanjay Malhotra, Directors of respondent company.

Briefly stated, the facts of the present case are that the accused issued cheque bearing No. 000923 dated 22.05.2023 of Rs. 7,40,00,000 for the payment to the complainant in discharge of his liability. The said cheque(s) on presentation to the banker of the accused was/were received back with the remarks "Funds Insufficient" & "Kindly Contact drawer/drawee bank & present again". Complainant served a legal notice upon the accused through post demanding the cheque amount. Despite that accused failed to make the payment to the complainant.

2. To substantiate the fact, the complainant stepped into the witness box as CW1 and reiterated the contents of the complaint. Complainant further placed on record the original cheque, return memo, legal notice, postal receipts etc.

3. Heard. On perusal of documents placed on record, it reveals that the complainant had presented the cheques issued by the accused/Company to his banker in time. Thereafter, complainant issued a legal notice to the accused within a period of 30 days from the date of receipt of communication about the fact of dishonour of the cheque, still the accused failed to make payment.

4. Keeping in view the aforesaid discussion there are sufficient ground to proceed against the accused under Section 138 of the Negotiable Instruments Act. As a necessary corollary of the above discussion, Sanjay Malhotra (respondent no. 3) and Sanjay Kumar Chug (respondent no. 4) being directors of M/s M2M

Buildtech Pvt. Ltd. (respondent no. 1) are hereby summoned for commission of offence punishable under Section 138/141 of Negotiable Instruments Act. While there is nothing on record to connect respondent No. 2 & 5 Ramrishi Parashar and Rakesh Kumar Sharma with the cheque in question, complaint against respondents no. 2 & 5 stands dismissed.

Now summons be issued to accused Sanjay Malhotra, Sanjay Kumar Chug and M/s M2M Buildtech Pvt. Ltd. for 01.08.2024 on filing of process fees through registered cover/Speed Post/Approved courier Service/e.mail. Summons be given dasti, if so desired.



(Aashish Arya)
JMIC, Rohtak
UID No. HR0389
02.02.2024

18. In view of the aforesaid contentions and documents relied upon by the parties, this Tribunal is of the view that there was a default in repayment of the financial debt owed to the FC by the CD. The documents filed by the Financial Creditor constitute 'record of default' in terms of Section 7(3)(a) of the Code.

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

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

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

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

(Emphasis Supplied)

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

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

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

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

.....

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

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

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

Part- IV

PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED	RS. 14,11,46,600/- (RUPEES FOURTEEN CRORES ELEVEN LAKHS FORTY-SIX THOUSAND AND SIX HUNDRED ONLY)
	DATE (S) OF DISBURSEMENT	THE DETAIL-SHEET OF THE TOTAL OUTSTANDING FACILITIES FOR A TOTAL SUM OF RS. 14,11,46,600/- (RUPEES FOURTEEN CRORES ELEVEN LAKHS FORTY-SIX THOUSAND AND SIX HUNDRED ONLY) GRANTED TO THE

		CORPORATE DEBTOR IS ANNEXED HEREWITH AND MARKED AS <u>ANNEXURE A-5</u>
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	RS. 6,11,78,103/- (RUPEES SIX CRORES ELEVEN LAKHS SEVENTY-EIGHT THOUSAND ONE HUNDRED AND THREE ONLY) CONSISTING OF RS. 5,15,71,850/- (RUPEES FIVE CRORES FIFTEEN LAKHS SEVENTY-ONE THOUSAND EIGHT HUNDRED AND FIFTY ONLY) AS PRINCIPAL AND RS. 96,06,253/- (RUPEES NINETY-SIX LAKHS SIX THOUSAND TWO HUNDRED AND FIFTY-THREE ONLY) TOWARDS INTEREST @ 12% P.A. CALCULATED FROM 12.11.2021 TILL 30.10.2023. COPY OF THE DETAIL-SHEET OF THE OUTSTANDING LOAN / FACILITIES DUE AND IN DEFAULT IS ANNEXED HEREWITH AS ANNEXURE A-6 DEFAULT OCCURRED ON 17.08.2023 (i.e. the date of bouncing of cheque of the Corporate Debtor)

22. In Part- III of the application, the Applicant has proposed the name of Mr. Akhil Ahuja to act as the Interim Resolution Professional. Relevant excerpt of the same reads thus: -

Part- III

PARTICULAR OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL		
1.	NAME ADDRESS, EMAIL ADDRESS REGISTRATION NO. WITH IBBI	Mr. AKHIL AHUJA ADD: B-29, LOWER GROUND FLOOR, LAJPAT NAGAR – III, NEW DELHI - 110024 Email: caakhilahuja@gmail.com M: 9911331599 IBBI REGN. NO.: IBBI/IPA- 001/IP-P-02072/2020-2021/13213 COPY OF FORM 2 - WRITTEN COMMUNICATION BY PROPOSED INTERIM RESOLUTION PROFESSIONAL (IRP) IS ANNEXED HEREWITH AS <u>ANNEXURE A-11.</u>

23. It is also pertinent to mention that the aforementioned proposed IRP has submitted a declaration under Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by way of Form 2 to indicate that no disciplinary proceedings are pending against him and he is eligible to be appointed as the RP qua the Corporate Debtor. The relevant excerpt of the same reads thus: -

FORM2
(See sub-rule (1) of rule 9)
(Under rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

(703)

**WRITTEN COMMUNICATION BY PROPOSED INTERIM
RESOLUTION PROFESSIONAL**

October 06, 2023

To,

**The National Company Law
Tribunal New Delhi**

Ground, 6th, 7th Floor & 8th C.G.O.
Complex, Lodhi Road, Block No. 3,
New Delhi, Delhi-110003

Akhil Ahuja

Communication Address
B-29, Lower Ground Floor,
Lajpat Nagar - III,
New Delhi-110024

Subject : Written communication in connection with consent to act as interim resolution professional in respect of M2M Buildtech Private Limited.

Madam/Sir,

I, **Akhil Ahuja**, an insolvency professional registered with ICAI Institute of Insolvency Professionals having registration number **IBBI/IPA-001/IP-P-02072/2020-2021/13213** **Email: caakhilahuja@gmail.com** **mobile: 9911331599**, have been proposed as the interim resolution professional by **A-One Homes Private Limited**, in connection with the proposed corporate insolvency resolution process of **M2M Buildtech Private Limited** under section 7 of the Code.

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

- (i) Agree to accept appointment as the interim resolution professional if an order admitting the present application is passed;
- (ii) State that the registration number allotted to me by the Board is **IBBI/IPA-001/IP-P-02072/2020-2021/13213** and that I am currently qualified to practice as an insolvency professional.
- (iii) disclose that I am currently having the following assignments in hand: (700)

Sl. No.	Assignment as		Number of assignment (s)	No.	Name of corporate debtor	Date of commencement of Process	Expected date of closure of process
Corporate Processes							
1	IRP		1	1	Emergent Traders Private Limited	06-04-2022	15-01-2023
				2	Swani Motors Services Private Limited	28-10-2022	23-09-2023
2	RP		NIL	3.	Atul Projects India Private Limited (Stay by NCLAT, New Delhi vide order dated 02.08.2023)	NA	NA
3	Liquidator (including voluntary liquidations)		NIL	1.	Cango Networks Private Limited	16-01-2023	30-09-2023
4	Authorised Representative		NIL				
Individual Processes							
5	Resolution Professional		NIL				
6	Bankruptcy Trustee		NIL				
7	Any Other		NIL				

- (iv) certify that there are no disciplinary proceedings pending against me with the Board or The ICAI Institute of Insolvency Professionals;
- (v) affirm that I am eligible to be appointed as a resolution professional in respect of the corporate debtor in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;
- (vi) make the following disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016;

DISCLOSURES:

I, Akhil Ahuja, an Insolvency Professional enrolled with ICAI Institute of Insolvency Professionals, having Enrolment number **IPA-001/IP-P02072** and registered with Insolvency and Bankruptcy Board of India having registration No **IBBI/IPA-001/IP-P-02072/2020-2021/13213** hereby, certify that I am eligible to be appointed as Interim Resolution Professional for the Corporate Debtor, namely M/s **M2M Buildtech Private Limited** (hereinafter referred to as the 'Corporate Debtor')and that I am independent of the Corporate Debtor in accordance with Regulation 3 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation.

I further certify that I am:

- eligible to be appointed as an independent Director on the board of the Corporate Debtor under section 149 of the Companies Act, 2013;
- not a related party of the Corporate Debtor; or
- not an employee or proprietor or a partner—
 - of a firm of auditors or company secretaries in practice or cost auditors of the Corporate Debtor ;or
 - of a legal or a consulting firm,

that has or had any transaction with the Corporate Debtor amounting to ten percent or more of the gross turnover of such firm, in the last three financial years.

24. As has been provided in sub-section (5) of Section 7 of IBC, 2016, where this Adjudicating Authority is satisfied that a default has occurred and the application filed under Section 7(2) is complete and there are no disciplinary proceedings pending against the proposed Resolution Professional, it may admit the application. Section 7(5) of the Code reads thus: -

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

[...]

(5) Where the Adjudicating Authority is satisfied that—

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

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

25. As far as the additional documents are concerned, on the basis of the same, we cannot arrive at any conclusion that the financial creditor could enter into any settlement with the corporate debtor regarding the amount referred to in Part- IV of the application. Besides, it is not the case of the Corporate Debtor that the amount referred to in Part -IV was never disbursed by the Financial Creditor to discharge the liability of the CD. Even the loan agreement entered into between the Applicant and the Respondent is not disputed by the CD. During the course of hearing, initially Mr. Kohli, Ld. Counsel for the CD argued that there is no evidence to show that the Applicant paid the amount to settle the liability of the CD, in terms of the court order, but subsequently, Mr. Abhishek Anand who could take over the argument from Mr. Kohli submitted that the amount was paid back by those to whom it was disbursed on behalf of the CD who settled the amount in terms of the court orders. The arguments could not inspire any confidence. When the additional documents sought to be filed by the CD do not substantiate that

there was any settlement regarding the loan amount referred to in the agreement, the same leads to an inference that there was transaction between the Applicant and the Respondent. On our direction, the parties filed their written submissions and along with the written submission filed on behalf of the FC, balance sheet is enclosed to show the liability of the CD. The relevant excerpt of the balance sheet reads thus: -

23

**A ONE HOMES
Balance Sheet
1-Apr-23 to 31-Mar-24**

	A ONE HOMES as at 31-Mar-24	Assets	A ONE HOMES as at 31-Mar-24
Liabilities			
Capital Account		Fixed Assets	4100008.85
INDER SINGH CAPITAL A/c	1334854.67	CAR (New Car)	2400008.85
RAJIVE HOODA CAPITAL A/c	2544854.67	CAR (Old Car)	1700000.00
SUNITA RANGI CAPITAL A/c	384854.67	Current Assets	129098053.11
YASHVIR RANGI CAPITAL A/c	-615145.33	Closing Stock	2787523.93
Loans (Liability)	127821488.70	Loans & Advances (Asset)	117753083.20
Secured Loans	1077911.70	Cash-in-Hand	47991.58
Unsecured Loans	126743576.00	Bank Accounts	1098111.98
Current Liabilities	1725164.58	Advance for Land (Purchase)	3480000.00
Sundry Creditors	255154.58	Duties and Tax	1914895.52
Work Advance Received	1470000.00	SITE EXP.	541444.90
		Aggarwal Trader	12900.00
		DEVELOPMENT EXP.	272322.00
		Gaurav Bhatta Advance	49900.00
		M2M EXPENSES	550000.00
		Other Assets	550400.00
		Rajesh Jhejjar Advance	37500.00
		Profit & Loss A/c	
		Opening Balance	495601.45
		Current Period	94806.35
		Less: Transferred	-590207.80
Total	133196059.96	Total	133196059.96

AUDITED REPORT AUDITED IN THE TERMS OF OUR SEPARATE REPORT IN THE FORM OF 3CB AND 3CD THERE TO

FOR AM & CO.
CHARTERED ACCOUNTANTS
 CA RAKESH KUMAR
 M. No. 09/937
 FRN: 01/07C
 ROHTAK
 FCA
 DATE: 30.09.2024
 PLACE: ROHTAK



True Copy

[***]

A ONE HOMES
Loans & Advances (Asset)
 Group Summary
 1-Apr-23 to 31-Mar-24

~~23~~
 (24)

Page 1

	Closing Balance	
	Debit	Credit
M2M BULIDTECH PVT LTD (LOAN AND ADVANCE)	14,11,46,600.00	
AYUSH URJA	5,00,000.00	
CHETAN SHARMA STATE	3,30,047.20	
HARIKISHAN CANARA BANK	7,50,000.00	
M2M BUILDTECH PVT LTD		3,29,47,650.00
MISS POOJA MALIK	19,00,000.00	
NIDHI KKBK	14,50,000.00	
RAJEEV SHARMA PARHAWAR	10,00,000.00	
RAJIV HOODA	20,000.00	
RAKESH SHARMA M2M	21,12,066.00	
RAMRISHI PARASHEAR	12,95,000.00	
UMA SHIV PLYWOOD	1,97,000.00	
Grand Total	15,07,00,713.20	3,29,47,650.00

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

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

- (a) The institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the Respondent in respect of its property including any

action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

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

28. As proposed by the Petitioner, Mr. Akhil Ahuja, having Registration No. IBBI/IPA-001/IP-P-02072/2020-2021/13213, is hereby appointed as IRP. It is further ordered that Mr. Akhil Ahuja, shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC, 2016 specifically under Section 15, 17, 18, 20 and 21 of the Code read with extant provisions of CIRP Regulations, 2016.

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

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

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

32. In the wake of the present order, I.A. No. 5731 of 2024 stands disposed.

**-Sd-
(ANIL RAJ CHELLAN)
MEMBER (T)**

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