NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT)(Insolvency) No. 1093 of 2022

[Arising out of order dated 04.08.2022 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi in IA No. 1447/2022 in CP(IB) No. 354/2021]

IN THE MATTER OF:

SAJ Housing Pvt. Ltd.
(Through Rahul Gupta, Authorized Representative)
House No.558, Sector 16A,
Faridabad, Haryana - 121002 **...Appellant**

Versus

Ms. Priyanka Chouhan,
Liquidator, M/s Drishti Industries Ltd.
C-161, East of Kailash,
New Delhi-110065 **...Respondent No.1**

Committee of Creditors of Drishti India Limited
Through Ms. Renu Meena, Financial Creditor,
10/536, Kaveri Path, Madhyam Marg,
Mansarovar, Jaipur – 302 020 **...Respondent No.2**

Present:

Appellant: **Mr. Mansumyer Singh, Mr. Shravan Chandra Shekhar, Advocates.**

For Respondents: **Mr. Sunil Kumar Jain, Advocate For R-2 & 3**
Ms. Priyanka Chouhan, Liquidator For R-1

with

Company Appeal (AT)(Insolvency) No. 1273 of 2022
& I.A. No.3905 of 2022

[Arising out of order dated 04.08.2022 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi in IA No. 960/2022 in CP(IB) No. 354/2021]

IN THE MATTER OF:

Puneet Aggarwal
Director of Suspended Board of Directors
C-161, East of Kailash, New Delhi **...Appellant**

Versus

Priyanka Chouhan,
Liquidator Drishti India Ltd.
At-5, Commanders Colony,
Near Annapurna Dharm Kanta,
Pachyawala, Sirsi Road,
Jaipur – 302 034 **...Respondent No.1**

Renu Kumar
At-10/536, Kaveri Path,
Madhyam Marg, Mansarovar,
Jaipur **...Respondent No.2**

Present:

Appellant: **Mr. Abhijeet Sinha, Mr. Palash Singhal, Mr. Gaurav Singh, Mr. Saikat Sarkar, Advocates.**

For Respondents: **Mr. Sunil Kumar Jain, Advocate For R-2 & 3**
Ms. Priyanka Chouhan, Liquidator For R-1

With
Company Appeal (AT)(Insolvency) No. 377 of 2022

[Arising out of order dated 01.11.2021 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi in CP(IB) No. 354/2021]

IN THE MATTER OF:

Puneet Aggarwal
Director of Suspended Board of Directors
C-161, East of Kailash, New Delhi **...Appellant**

Versus

Renu Kumar,
W/o Shri Manish Kumar,
At-10/536, Kaveri Path,
Madhyam Marg, Mansarovar,
Jaipur **...Respondent No.1**

Drishti India Ltd.
At-5, Commanders Colony,
Near Annapurna Dharm Kanta,
Pachyawala, Sirsi Road,
Jaipur – 302 034 **...Respondent No.2**

Present:

Appellant: **Mr. Anurag Ohja, Mr. Deepak Somani, Advocates.**

For Respondents: **Mr. Sunil Kumar Jain, Advocate For R-1 & 2**
Ms. Priyanka Chouhan, Liquidator For R-3

With
Company Appeal (AT)(Insolvency) No. 967 of 2021

[Arising out of order dated 01.11.2021 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi in CP(IB) No. 354/2021]

IN THE MATTER OF:

Babulal Aggarwal,
Director of Drishti India Ltd.
C-161, East of Kailash, New Delhi **...Appellant**

Versus

Manish Kumar
10/536, Kaveri Path,
Madyam Marg, Mansarovar,
Jaipur **...Respondent No.1**

Renu Kumar,
W/o Shri Manish Kumar,
At-10/536, Kaveri Path,
Madhyam Marg, Mansarovar,
Jaipur **...Respondent No.2**

M/s Drishti India Limited
(Through Interim Resolution Professional)
905, 8th Floor, Tower C,
Unitech Business Zone,
Sector-50, Gurugram,
Haryana **...Respondent No.3**

Present:

Appellant: **Mr. Krishnendu Datta, Sr. Advocate,**
Mr. Palash Singhal, Mr. Gaurav Singh, Advocates.

For Respondents: **Mr. Sunil Kumar Jain, Advocate For R-1 & 2**
Ms. Priyanka Chouhan, Liquidator For R-3

J U D G M E N T

[Per: Barun Mitra, Member (Technical)]

Present is a set of four appeals filed under Section 61 of Insolvency and Bankruptcy Code, 2016 ("**IBC**" in short) by the Appellant which arises out of two orders dated 01.11.2021 and 04.08.2022 (hereinafter referred to as "**first and second impugned orders**") passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi) in CP(IB) No. 354/2021 and related IAs. Aggrieved by the said impugned orders, the present appeals have been preferred.

2. The brief facts of the case which are necessary for deciding this appeal are as outlined below: -

- The Corporate Debtor – M/s Drishti India Limited ("**Drishti**" in short) had entered into a Development Agreement ("**DA**" in short) with SAJ Housing Private Limited ("**SHPL**" in short) on 29.05.2012. The DA was for development of a piece of land for a housing society. The sole ownership of the land was with the Corporate Debtor.
- As per terms and conditions of the DA, SHPL as the Developer was to bear the cost of construction. The developer paid a total consideration amount of Rs.16.15 cr to the Corporate Debtor in lieu of purchase/acquisition of irrevocable development rights. The SHPL had 56% ownership rights while the Corporate Debtor had 44% rights in the built-up area of the project.
- The Respondent No.2 – Financial Creditor had paid an amount of Rs.1.90 cr purportedly as loan to the Corporate Debtor on 20.12.2011

which was duly reflected in the balance sheet of the Corporate Debtor as "long-term borrowing".

- The Respondent No.2 filed a Section 7 application for admission of the Corporate Debtor into CIRP as it had defaulted in repaying the amount taken in the form of long-term borrowing. The Adjudicating Authority admitted Corporate Debtor into CIRP in the Section 7 application in CP(IB) No. 354(PB)/2021 on 01.11.2021 hereinafter referred to as the "**first impugned order**".
- Following admission of the Corporate Debtor into CIRP, an Interim Resolution Professional was appointed who was later confirmed as Resolution Professional - Respondent No.1.
- The Resolution Professional made public announcement on 04.11.2021 and invited claims. This was also uploaded on the IBBI website on 08.11.2021. The last date of submission of claim was 17.11.2021. Till 17.11.2021, only one claim was received which was from the Respondent No.2. Based on these claims, a single-member CoC was constituted.
- An IA No. 802/2022 was also filed by the Resolution Professional before the Adjudicating Authority to direct SHPL to hand over possession, control and custody of the land of the Corporate Debtor under development.
- In the meantime, an interim stay was obtained from this Tribunal on 25.11.2021 by the Corporate Debtor on the CIRP process subject to deposit of Rs.3 crores by the Corporate Debtor before the Adjudicating Authority within one month. The Corporate Debtor did not deposit the

requisite amount following which this Tribunal on 20.01.2022 vacated the stay on the CIRP proceedings.

- The 1st CoC meeting was called on 25.01.2022 and the 2nd CoC meeting was convened on 15.02.2022. The Resolution Professional also prepared the Information Memorandum and shared it with the CoC.
- The Resolution Professional convened the 3rd meeting of the CoC on 19.02.2022 wherein the CoC with 100% vote share approved the filing of an application for liquidation of the Corporate Debtor.
- SHPL filed its claim before the Resolution Professional on 25.02.2022 for an amount of Rs.148,33,59,926/-. The claim was not accepted by the Resolution Professional on 28.02.2022 on the ground of being time-barred. SHPL filed IA No. 1447/2022 in CP(IB) No. 354(PB)/2021 on 04.03.2022 against rejection of their claim by the Resolution Professional on the ground that their claim was within time as the Adjudicating Authority had excluded 57 days from the CIRP period because of the interim stay granted by this Tribunal.
- Pursuant to 3rd CoC deliberations, the Resolution Professional filed IA 960/PB/2022 in CP(IB) No. 354(PB)/2021 on which the Adjudicating Authority ordered liquidation of the Corporate Debtor on 04.08.2022 hereinafter referred to as the "**second impugned order**".
- Vide the second impugned order, the Resolution Professional was appointed as the Liquidator and IA 1447/2022 filed by SHPL was disposed of by giving them an opportunity to make their claim before the liquidator. The other reliefs sought by SHPL regarding revival of CIRP was held as not surviving any longer in view of the approval of the liquidation proceedings.

- Aggrieved by the two impugned orders, following four sets of appeal have been preferred with the following prayers.
- CA (AT)(Ins.) No. 377/2022 has been filed by the suspended Director of the Corporate Debtor praying for setting aside the first impugned order of the Adjudicating Authority dated 01.11.2021 admitting the Corporate Debtor into CIRP.
- CA (AT) (Ins.) No.967/2021 has been filed by the suspended Director of the Corporate Debtor praying for staying the operation of the first impugned order of the Adjudicating Authority dated 01.11.2021 till disposal of this appeal.
- CA(AT)(Ins.) 1273/2022 has been filed by the suspended Director of the Corporate Debtor praying for setting aside the second impugned order of the Adjudicating Authority dated 04.08.2022 allowing liquidation of the Corporate Debtor.
- CA(AT)(Ins.) No.1093 of 2022 has been filed by SHPL praying for setting aside the initiation of liquidation proceedings of the Corporate Debtor; restarting of the CIRP of the Corporate Debtor with a reconstituted CoC after adding SHPL as a member thereof.

3. For better clarity of understanding and to have a more detailed appreciation of the facts and contentions raised by all the parties in the context of the first and second impugned orders, we propose to begin with by briefly recapitulating the rival submissions made in each of the four appeals separately and thereafter delineate the common issues which merit our consideration to decide the matter.

4. It is the contention of the Corporate Debtor that the Respondent No.2 had signed a letter on 26.03.2012 addressed to the Drishti-the Corporate Debtor stating that Rs.1.90 crore "***have been paid under an agreement to develop your 10 acres of land at village Lakkarpur, Faridabad***". This letter clearly confirms that the money was given for the purpose of development of land. Moreover, the DA of 29.05.2012 clearly records the payment of Rs. 1.90 crore by the Respondent No.2 which therefore substantiates that the payment was made as a consideration amount under the DA and not as a loan to the Corporate Debtor. This transaction was not a debt but a consideration paid under a DA on behalf of SHPL. In such circumstances, even if any liability arises, it arises against the SHPL and not against the Corporate Debtor.

5. Even the balance sheet of the Corporate Debtor which has been relied upon by Respondent No.2 to claim that the Corporate Debtor owed a debt to them shows the alleged amount under the head of "Long-term borrowings" with the sub-head of "Security Deposit - (Under Development of Land Agreement)". This entry in the balance sheet does not establish the jural relationship of debtor and creditor between the Corporate Debtor and the Respondent No.2. Hence, the consideration amount does not fall under the definition of financial debt under Section 5(8) of the IBC. In the absence of any contract or understanding fastening any liability upon the Corporate Debtor, the filing of Section 7 petition by Respondent No.2 was an abuse of the process of law.

6. Emphasizing that the key feature of financial transaction as postulated by Section 5(8) of the IBC is consideration for time value of money, this feature is glaringly amiss in the transaction of Rs.1.90 crore made by the Respondent No.2. Moreover, the Respondent No.2 has failed to produce any document that discloses the nature of transaction to be a loan carrying any interest. Under such circumstances, it cannot be claimed that there was a time value of money and therefore the transaction cannot be viewed as a financial debt.

7. Rebutting the above arguments, the Learned Senior Counsel for Respondent No.2 submitted that the Respondent No.2's passbook of Canara Bank clearly shows that there was a disbursal of an amount of Rs.1.90 crores on 20.12.2011 directly to the bank account of the Corporate Debtor by RTGS. This amount of Rs.1.90 crore paid as long-term loan to Corporate Debtor is also reflected in the financial statement for the year ending 31 March 2020. In Part IV of the Section 7 application, it has been clearly specified that the amount in default is Rs.1.90 crore and the default being of continuing nature, the date of default was treated as 13.07.2021. Hence the debt stands established. The default occurred on 13.07.2021. Section 7 application was filed well in time. All the prerequisites for filing of Section 7 of IBC have been stands met and satisfied.

8. Moreover, the DA between the Corporate Debtor and SHPL does not name or acknowledge any agreement between the Respondent No.2 and SHPL. The Respondent No.2 was therefore in no way connected with the DA and this agreement was purely between the Corporate Debtor and SHPL. The Respondent No. 2 is not signatory to the DA and hence no liability can be fastened upon them qua this agreement. Even the money advanced cannot be

associated with the DA as DA was not in existence when this money was transferred to the Corporate Debtor. It was also asserted that Respondent No.2 was not aware that the Corporate Debtor had fraudulently entered into a DA with SHPL and used their money without their knowledge for the purpose of furthering the development agreement. This is a fraud which has been perpetuated by the Corporate Debtor and SHPL.

9. The Learned Senior Counsel for the Respondent No.2 contended that the appeal to set aside the admission of the Corporate Debtor into CIRP is not maintainable since the CoC had already taken a decision that resolution of the Corporate Debtor was not feasible and had recommended initiation of liquidation proceedings which has already been approved by the Adjudicating Authority. It was also submitted that the CoC was formed on 21.11.2021 and the Corporate Debtor was served with information regarding constitution of CoC. Corporate Debtor was kept informed of various CoC meetings but they chose not to participate in these meetings. Having never objected to the constitution of CoC and having never participated in the said meetings, they cannot claim entitlement to challenge the decision of the CoC to initiate liquidation proceedings with 100% vote share. The CoC having applied its commercial wisdom and proposed liquidation, the CIRP having been concluded and liquidation proceedings under Section 33(2) of the IBC having commenced, the appeal has become infructuous by efflux of time.

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10. It is contended by Learned Senior Counsel of Corporate Debtor that there was no demand of money made by the Corporate Debtor on Respondent

No.2. Neither was any agreement/ document executed with Respondent No.2 with regard to the transaction of Rs.1.90 crore. It was also submitted that there was no consent or agreement on the payment of any interest on the alleged deposit. The said money was not utilized by the Corporate Debtor for its own advantage or earnings. Moreover, the deposit being in the nature of non-refundable security deposit having no commercial effect of borrowing, it cannot be treated as debt amount. Respondent No. 2 does not fall under the definition of Financial Creditor under Section 5(7) of the IBC and the amount paid as consideration by them do not fall under the definition of financial debt under Section 5(8) of IBC. Since the amount paid by Respondent No.2 is not a debt, it is neither liability nor obligation in respect of a claim as defined in Section 3(11) of IBC. It has also been contended that the Adjudicating Authority had wrongly considered the event of debt and default without looking into the aspect that the Respondent No.2 has no locus as financial creditor. There is nothing to substantiate that the amount paid by the Respondent No.2 had time value of money. Neither directorship was offered to the respondent nor was it assured of 24% interest. This not being a fit case for admission of a Section 7 application, the operation of the first impugned order should be stayed.

11. The Learned Senior Counsel for the Respondent No.2 submitted that the Adjudicating Authority had rightly accepted the Section 7 application filed by Respondent No.2 having noted that Rs. 1.90 crore had been received by the Corporate Debtor and remains pending as long-term loan. The loan is also reflected in the books of accounts and hence amounts to admission of debt and the default is apparent from the books.

12. It is further the contention of Respondent No.2 that the Corporate Debtor made a voluntary statement admitting receipt of Rs.1.90 crore before the Appellate Tribunal and having also agreed to return the above amount with reasonable interest, later resiled from the same. No efforts were made for any kind of settlement with the Respondent No.2 in the matter. Not having deposited the assured sum of Rs.3 crore, this Appellate Tribunal on 20.01.2022 had rightly vacated the interim orders staying the CIRP proceedings. It has however been contested by the Corporate Debtor that it had not made any statement before this Tribunal for any kind of settlement in the matter but had only agreed to deposit any reasonable amount as security purpose. Hence, it had filed an application before this Tribunal seeking modification of the order passe by this Tribunal on 25.12.2021.

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13. The Learned Senior Counsel of Corporate Debtor submitted that the DA signed on 29.05.2012 with SHPL for a non-refundable consideration amount of Rs.16.15 crores also included Rs.1.90 crores paid by Respondent No. 2. Therefore, the amount paid to the Corporate Debtor for development rights cannot in any manner be considered as financial debt. Furthermore, the Respondent No.2 had acknowledged in their letter dated 26.03.2012 addressed to the Corporate Debtor that the payment was made under an agreement to develop 10 acres of land. Hence the amount paid by the Respondent No. 2 was not a credit given to the Corporate Debtor but a

consideration amount under the DA which was to be executed between Corporate Debtor and SHPL. Hence even if any liability arose, it was against SHPL and not against Corporate Debtor.

14. It was also contended that even the balance sheet entries do not reflect time value of money as it is captioned 'security deposit for development of land" which is non-refundable. This clearly shows that it was merely security deposit and not in the nature of a debt which is subsisting or presently due. It was stoutly denied that this amount had been given to them as credit with interest rate of 24% for if it was so there would have been a separate agreement to that effect. It was therefore contended that the application under Section 7 of the IBC to initiate CIRP is an abuse of the process of law which has been overlooked by the Adjudicating Authority.

15. It was also submitted that the prerequisite to initiate liquidation under Section 33(1)(a) of IBC is that no resolution plan is received before the expiry of the maximum period permitted for completion of CIRP. In the present case, the Resolution Professional without exploring the possibility to revive and rehabilitate the corporate debtor by inviting resolution plans had filed the application for liquidation on the whims and fancies of the CoC which comprised of a sole member. In the present case, liquidation was initiated to usurp the asset of the corporate debtor without exploring the possibility to revive the corporate debtor.

16. It was also submitted that when the Corporate Debtor had challenged the first impugned order of the Adjudicating Authority dated 01.11.2021 and the said appeal was pending adjudication, the order for approval of liquidation

could not have been passed. It was further submitted by Learned Senior Counsel of Corporate Debtor that the entire process of CIRP was vitiated due to unwarranted acts of Resolution Professional who failed to discharge her duties diligently and acted in collusion with Respondent No. 2 to hastily to liquidate the corporate debtor with an oblique and ulterior motive for unjust enrichment.

17. Refuting the above submissions, the Learned Senior Counsel for the Resolution Professional/Liquidator submitted that that there are limited grounds of challenging the order of liquidation which is provided in Section 61(4) of the IBC. Liquidation order can be set aside only when there is any material irregularity or fraud. In the present case neither any material irregularity nor any fraud has been demonstrated and hence the order passed by the Adjudicating Authority does not warrant any interference.

18. The third CoC meeting had duly considered all facts and circumstances and come to the conclusion that it was not feasible to keep the Corporate Debtor as a going concern and that there was no possibility for resolution plans in the present matter and hence with 100% voting had recommended that an application for liquidation of the Corporate debtor be filed before the Adjudicating Authority. The Corporate Debtor had ample opportunity to raise objections in the meetings of the CoC but deliberately chose not to appear or to participate in the meetings and is now trying to reopen the issues at a belated stage. Moreover, it is the commercial wisdom of CoC whether to continue with CIRP or to liquidate the company. Once the CIRP has been concluded, the wisdom of CoC cannot be questioned. Moreover, when the CoC has resolved to liquidate the company, the Resolution Professional has no

other option but to move an application under Section 33 of IBC for liquidation of the Corporate Debtor.

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19. It has been submitted by the Learned Senior Counsel of SHPL, that they were approached by the Corporate Debtor with the proposal of developing a land for a housing society. For this purpose, a DA was entered into in 2011 with the Corporate Debtor with 56% ownership rights to SHPL in the built-up area. A total consideration amount of Rs.16.15 crore was paid by SHPL and other constituents which also included their share of Rs. 10 crore in lieu of which the possession of land with irrevocable development rights was to vest with SHPL with all authority from the Corporate Debtor. It is submitted that the Corporate Debtor admitted the consideration amount to be an unsecured loan under the heading of "long-term borrowing" in the balance sheet of the Corporate Debtor. Since the consideration amount paid by SHPL as well as the Respondent No.2 was for the same purpose and also appears under the same heading in the balance sheet of the Corporate Debtor, the Adjudicating Authority committed a mistake by according differential treatment to SHPL as Operational Creditor and Respondent No.2 as a Financial Creditor.

20. Submitting further that the project could not progress due to want of certain clearances and in the meantime pursuant to a Section 7 application filed by Respondent No.2 in CP(IB) No. 354/2021, the Adjudicating Authority vide first impugned order initiated CIRP of the Corporate Debtor on 01.11.2021. No intimation was given to SHPL at the appropriate time by the Resolution Professional to file their claim. When SHPL filed its claim with the Respondent No. 1 on 25.02.2022 for an amount of Rs. 148,33,59,926 which

included Rs 10 crores unsecured loan amount, their claim was arbitrarily and summarily rejected on 28.02.2022 by Respondent No. 1 on the ground of being time barred. It was claimed that after exclusion of 57 days granted by the Adjudicating Authority, the date of submission of claim fell very much within the 90 days period under Regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. By not considering their claims, they were denied their due place in the CoC. By excluding SHPL from the CoC, material irregularity and been committed which vitiated the CIRP process.

21. Aggrieved by the rejection of their claim, the Learned Senior Counsel of SHPL stated that they filed IA no. 1447/2022 before the Adjudicating Authority seeking directions to the Resolution Professional to accept their claim. However, the Adjudicating Authority without going into the merit of issues raised by them merely stated that since liquidation had been ordered in IA 960/2022, SHPL could file its claim before the liquidator. It was pointed out that the Adjudicating Authority ignored the objective of IBC of resolution and revival of the Corporate Debtor and failed to uphold the settled law that liquidation is the last resort. The CoC had rushed into liquidation in the 3rd CoC meeting within 38 days of commencement of CIRP. Thus, liquidation was resorted to even before the completion of the statutory period of 180 days as per Section 12 of IBC. The CoC therefore failed to abide by the timelines of CIRP and frivolously passed the resolution to liquidate the Corporate Debtor.

22. Refuting the above contentions made on behalf of SHPL, the Learned Senior Counsel of Respondent No.1 submitted that the Resolution Professional had not only issued a public announcement but email was also

sent to SHPL on 09.11.2021 and 17.11.2021 to hand over possession of the land given to them and file their claim respectively. Hence SHPL was fully aware of the CIRP proceedings. However, they remained silent and did not file their claim within the prescribed time. Therefore, the Resolution Professional rejected the claim since SHPL was not vigilant in filing the claim on time within the statutorily prescribed period.

23. On the stance taken by SHPL that the Adjudicating Authority having excluded 57 days from the CIRP period and hence the claim filed by them on 25.02.2022 was much on time, it was contended that by then the CoC had already approved the liquidation of the Corporate Debtor and hence the claim could not have been accepted by the Resolution Professional. In any case the SHPL was in no ways restrained from filing their claim even during the period of time they had applied for exclusion of time before the Adjudicating Authority. Nothing prevented them from filing their claims but instead they chose to adopt a wait and watch strategy.

24. We have duly considered the rival submissions and arguments advanced by respective parties and perused the records carefully.

25. The main issues for our consideration are as outlined below:

I. Whether the admission of the Corporate Debtor into CIRP by the Adjudicating Authority vide the first impugned order dated 01.11.2021 is sustainable in the eyes of law;

II. Whether the claim made by SHPL that they should be treated as Financial Creditor and the CIRP be started afresh with a newly constituted CoC is legally tenable; and

III. Whether the Adjudicating Authority has erred in affirming the proposal of the CoC to liquidate the Corporate Debtor vide the second impugned order dated 04.08.2022.

26. Dwelling upon the first issue before us for determination, we propose to begin with the findings recorded by the Adjudicating Authority while admitting the Section 7 application. The relevant extracts from the first impugned order of the Adjudicating Authority are as reproduced below: -

> *"11. Considering, the submissions made, and documents placed on record we are convinced that, in the present case the date of default has occurred and with respect to trigger the Corporate Insolvency Resolution Process against the corporate debtor. The pre-requisites of section 7 must be satisfied (a) acknowledgement of "financial debt" (b) default of debt, (c) application shall be within time period. The present application is well versed and fall within the ambit of section 7 and satisfied the conditions. The debt is due of Rs. 1.90 crores, the default has occurred on 13.07.2021 and the present application filed well in time as the date of default is being of continue in nature and still reflecting in the latest Balance Sheet. Therefore, we are supported by the Judgement of Hon'ble Supreme Court in Bank of Baroda v. C. Shivakumar Reddy, 2021 SCC OnLine SC 543 which clearly held that: "The Court also held that an application under Section 7 for initiation of corporate insolvency resolution process against a corporate debtor is not be barred by limitation if there is an acknowledgement of the debt by the corporate debtor before expiry of the limitation period. Such acknowledgment can be by way of statement of accounts, balance sheets, financial statements and offer of one-time settlement."*
>
> *12. In the present case all the requirements are established. The copy of the passbook of Canera bank annexed by the applicant at page 35 of the paper book shows that the withdrawal of Rs. 1.90 crores i.e., disbursal of the debt amount was made on 20.12.2011. The applicants had considered this amount as the loan given to the respondent which is reflected in the Balance Sheet as on 31.03.2020 at note 3 page 50 under the head note of "Long term borrowing".*

13. This Bench is not satisfied with the arguments of the respondent with respect to the security deposit paid by the applicant to the respondent under the heads of long-term borrowing for development of the Land Agreement reflected in the Balance Sheet. It is nowhere proven by the respondent in the absence of any document how it is considered as the security deposit which is non-refundable to the applicants.

14. Therefore, there is an acknowledgment of debt by way of entries passed in the balance sheets, financial statements. The Respondent has defaulted in the repayment of the amount taken in the form of long-term borrowing even after duly acknowledging the same in the balance sheet prepared by it……"

(Emphasis supplied)

27. The Learned Senior Counsel of Corporate Debtor contended that the DA signed on 29.05.2012 with SHPL was for a non-refundable consideration amount of Rs.16.15 crore. A Table finds place in the DA which shows two RTGS payments of Rs.95 lakhs each dated 20.12.2011 made by the Respondent No. 2 as part of that consideration amount. It was added that the Respondent No. 2 had paid this amount on behalf of the developer. Furthermore, the Respondent No.2 had acknowledged in their own letter dated 26.03.2012 that the payment was made under an agreement to develop 10 acres of land. The amount of Rs.1.90 crore was therefore nothing more than an investment to procure development rights under the DA. Hence even if any liability arose, it was against SHPL and not against Corporate Debtor. Thus, the Respondent No.2 does not fall under the definition of the Financial Creditor qua the Corporate Debtor under Section 5(7) of the IBC and the amount of Rs.1.90 crore paid as consideration does not fall under the definition of financial debt under Section 5(8) of the IBC. In support of their contention that any amount paid for development right cannot in any manner be considered as financial debt, the judgement of the Hon'ble Supreme Court

in ***New Horizons Ltd. Vs. Union of India 1995 SCC (1) 478*** *(**"New Horizons"** in short)* has been relied upon by the Learned Senior Counsel for the Corporate Debtor.

28. Advancing their arguments further, it was added that even the balance sheet entries with respect to Rs.1.90 crore did not reflect time value of money as it is captioned 'security deposit for development of land" which is non-refundable. Being a non-refundable security deposit, there is no right to repayment and therefore does not qualify to be a "claim" under Section 3(6) of the IBC. Being merely a security deposit, it was asserted that Corporate Debtor did not owe any amount to the Respondent No. 2 and did not fall under the definition of Corporate Debtor under Section 3(8) of the IBC.

29. It was further asserted that this transaction was definitely not a credit with interest rate of 24% as claimed by Respondent No.2 for if it was so there would have been a separate agreement to that effect. Respondent No.2 has failed to produce any document that discloses the nature of transaction to be a loan carrying any interest. Their letter of 26.03.2012 also does not indicate any terms in the nature of interest, refund, repayment or enhancement in the value of money is stated to be paid. Under such circumstances, it cannot be claimed that there was a time value of money. The Learned Senior Counsel for the Corporate Debtor has relied on the judgment of this Tribunal in ***Nikhil Mehta and Sons v. AMR Infrastructure Ltd. 2017 SCC OnLine NCLAT 859*** ("***Nikhil Mehta***" in short) to emphasize that the key feature of financial transaction as postulated by Section 5(8) of the IBC is its consideration for time value of money which is lacking in the present case. It has also been

denied by the Corporate Debtor that any directorship was offered to Respondent No.2.

30. The Learned Senior Counsel for the Respondent No. 2 vehemently contesting the above arguments submitted that the entire amount of Rs 1.90 crores has been paid directly to the bank account of the Corporate Debtor by RTGS on 20.12.2011. Secondly it was pointed out that the claim of the Corporate Debtor that the payment was done in pursuance to the DA is misconceived since the DA between SHPL and the Corporate Debtor was entered into on 29.05.2012 while Rs. 1.90 crore was paid to the Corporate Debtor three months prior to the DA. Thirdly, it was stated that even the letter of 26.03.2012 being prior to the DA, it would be far-fetched to link the payment of Rs.1.90 crore to the DA as the DA was not even in existence on 26.03.2012.

31. After perusing the DA, we find credence in the argument of Respondent No.2 that the DA which was executed on 29.05.2012 was between Drishti as "Owners" and SHPL as the "Developer" and there is no reference whatsoever to Respondent No.2 as a signatory to the said DA. That Respondent No.2 was not a signatory to the DA is therefore undisputed. There is no other agreement between Respondent No. 2 and SHPL either prior to or subsequent to the payment of Rs. 1.90 crore which has been placed on record. We notice that Respondent No.2 in Part IV had attached copies of their passbook of Canara Bank which clearly shows that there was a direct disbursal to the Corporate Debtor and there is no denial on that count by the Corporate Debtor. Moreover, at item 4(b) of the DA captioned "Consideration", it is mentioned that a consideration amount has been paid to the "Owners" in lieu of purchase

of development rights on the land by the "Developer" and there is no reference to Respondent No.2 therein. We, therefore, have no hesitation in holding that the Respondent No.2 was in no way connected with the DA and hence no liability can be fastened upon them qua this DA.

32. It is trite law that under the IBC once a debt which becomes due or payable, in law and in fact, and if there is incidence of non-payment of the said debt in full or even part thereof, CIRP may be triggered by the financial creditor as long as the amount in default is above the threshold limit. It is also well accepted that debt means a liability in respect of a claim and claim means a right to payment even if it is disputed. We also notice that the Adjudicating Authority in the first impugned order has rightly relied on the judgment of the Hon'ble Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank and Anr. (2018) 1 SC 407*** which held that:

> *"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 provedto the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."*

33. Viewed against this broad backdrop, we now dwell upon the facts of the present case to find out whether in this case debt was due and payable. There is sufficient material on record to prove that there was disbursal of funds by Respondent No.2 to the Corporate Debtor in their account. Admittedly, the amount so disbursed is Rs.1.90 crore. The bank transaction details were

made a part of Part IV before the Adjudicating Authority. In addition, balance sheet of the Corporate Debtor also acknowledged receipt of this disbursal as "long-term borrowings". Neither has any claim been made that any part of this sum was repaid by the Corporate Debtor. That being the case there arises no doubt in our mind that there was a debt on the part of the Corporate Debtor qua Respondent No.2 for an amount of Rs.1.90 crore. The Learned Senior Counsel for the Corporate Debtor has failed to adduce any material on record to establish that this amount was payable by SHPL and not by the Corporate Debtor. Hence the submission advanced that Corporate Debtor was not required to repay Respondent No.2 does not inspire our confidence as it is a mere assertion not supported by evidence.

34. This now brings us to the concern most justifiably raised by the Learned Senior Counsel for the Corporate Debtor while relying on the judgment of this Tribunal in ***Nikhil Mehta (supra)*** that the cardinal feature of time value of money is glaringly amiss in the present transaction. We entirely agree with the above legal proposition. We also like to add that it is settled law as laid down by the Hon'ble Apex Court in ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India (2019) 8 SCC 416*** that any debt to be treated as financial debt, there must happen disbursal of money and the disbursal must be against consideration for time value of money. In the matter of ***Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited & Ors. (2020) 8 SCC 401***, the Hon'ble Supreme Court has held that the essential condition of financial debt is disbursement against the consideration for time value of money. Further in the most recent judgment of Hon'ble Supreme Court in ***Orator Marketing (P) Ltd. v. Samtex Desinz***

(P) Ltd. (2023) 3 SCC 753, it has been clearly held that financial debt does not expressly exclude an interest free loan. It has also emphasized that financial debt includes any amount raised under any other transaction having the commercial effect of borrowing. It would be safe to infer from the above judgements that the concept of time value of money would also include a transaction which does not necessarily culminate into money being returned to the lender or interest being paid in respect of money that has been borrowed and can include anything which is equivalent to the money that has been loaned as long as commercial effect of borrowing or profit as the aim is discernible.

35. In the present facts of the case, that money had been disbursed by the Respondent No.2 to the Corporate Debtor is undisputed. It is also an admitted fact that there is no separate written agreement between Respondent No.2 and the Corporate Debtor for payment of interest though it is claimed by Respondent No.2 that the loan was given to the Corporate Debtor on an assured interest of 24% interest per annum. We also cannot be oblivious of the fact that while seeking stay of the first impugned order, the Corporate Debtor had agreed before the Appellate Authority to pay a reasonable amount of interest. The relevant order of this Tribunal dated 25.11.2021 is reproduced below: -

> *"Learned Counsel for the Appellant submits that he accepts that Respondent Nos. 1 and 2 had given the amount of Rs. 1.9 Crore and he is ready to return their amount with reasonable interest. To show his bonafide let the Appellant deposit an amount of Rs. 3 Crores by way of Demand Draft of a Nationalized Bank before the concerned Adjudicating Authority within one month. After deposit of the amount, let an Affidavit along with the photocopy of the demand draft be placed before this Tribunal.*

2. List the Appeal on 10.01.2022.

In the meantime, no further proceedings shall take place in pursuance of the impugned order."

However, we also notice that the Corporate Debtor later took a stand that it never made a commitment before the Appellate Authority to pay interest and that they had desired to contest the appeal filed against the first impugned order admitting them into CIRP. We may for a moment agree to give benefit of doubt to the Corporate Debtor that they had not admitted before the Appellate Authority to pay any interest amount. Be that as it may, it does not take away the character of financial debt merely on the ground that there was no interest attached to this loan in the light of what has been clearly held by the Hon'ble Supreme Court in ***Orator (supra)***.

36. We therefore now proceed to the next stage to examine whether in the present case, disbursement of money has taken place against the consideration for time value of money and whether commercial effect of borrowing is found to underpin the transaction. Though the concept of time value of money has not been expressly defined in the IBC, ordinarily understood, time value of money is not only a regular or timely return received for the duration for which the amount is disbursed as an amount in addition to the principal, but also covers any other form of benefit or value accruing to the creditor as a return for providing money for a long duration.

37. Even if we presume for arguments sake that the loan extended was not interest-bearing and no time was fixed for repayment, it would be misconceived to hold that the transaction was made by the Respondent No. 1 without time value of money. From the letter of 26.03.2012, which mentions

about development of 10 acres of land of the Corporate Debtor, we tend to subscribe to the plea taken by the Respondent No. 2 that they had advanced the payment with an intent to gain from the development of the land. As long as the lender visualized an expectation to benefit from the development of the land, there was clearly an element of enhancement of economic prospect in return for the money advanced. Hence, to our mind, in the present context, the loan in question entails time value of money and acquires the colour of commercial borrowing and is endowed with all the trappings of a financial debt and squarely falls within the purview of Section 5(8) of IBC.

38. Thus, **to answer the first issue** before us, in our considered view, this is a case where all the pre-requisites for filing a Section 7 stood fulfilled and the Adjudicating Authority cannot be held to have committed an error in admitting the Corporate Debtor into CIRP for having defaulted in repaying a financial debt which was above the threshold and within limitation of time.

39. This brings us to the next question as to whether the Adjudicating Authority erred in affirming the proposal of the CoC to liquidate the Corporate Debtor. It has been contended by the Learned Senior Counsel of SHPL that the CoC had rushed into liquidation within 38 days of commencement of CIRP. The Learned Senior Counsel for the SHPL submitted that this Tribunal in ***Nikhil Tandon (Supra)*** had set aside the order initiating liquidation on the ground of material irregularity when the CoC had hurriedly pushed for liquidation. The CoC in the present case failed to abide by the timelines of CIRP and frivolously passed the resolution to liquidate the Corporate Debtor. The Adjudicating Authority by approving the same acted against the objective of IBC which is to provide an enabling climate for timely resolution and revival

of the Corporate Debtor. Further, the CoC by sending the Corporate Debtor abruptly into liquidation, the intent was clearly to sell off the sole asset of the Corporate Debtor and utilize the proceeds for the personal benefit of Respondent No.2.

40. Similar views were echoed by the Learned Senior Counsel of the Corporate Debtor that the entire process of CIRP was vitiated since Resolution Professional failed to discharge her duties professionally and acted in collusion with Respondent No. 2 to hurriedly call the 3rd CoC meeting on 19.02.2022 to consider a resolution for liquidation of the corporate debtor. The Respondent No. 2 being the sole CoC member voted hastily to liquidate the Corporate Debtor with an oblique and ulterior motive for their unjust enrichment. It was stated that Adjudicating Authority failed to consider the fact that the Resolution Professional acted only on the directions of the Respondent No. 2 to liquidate the Corporate Debtor without taking proper steps to revive the Corporate Debtor by inviting resolution plans and hence the liquidation order deserves to be set aside.

41. The Learned Senior Counsel for the Respondents No. 1 and 2 have contested the contentions of the Corporate Debtor and SHPL. The Learned Senior Counsel of Respondent No.1 submitted that the Resolution Professional had acted with due diligence and issued a public announcement in two newspapers and also uploaded the same on the IBBI website. It has also been stated that after publication of public announcement, the Resolution Professional also gave adequate opportunity to file their claim within the prescribed time. All the borrowers had been informed by email dated 17.11.2021 regarding initiation of CIRP by the Resolution Professional

and requested to file their claim. But none of them filed the claim within the statutory period of limitation.

42. It has been further submitted that when the CoC resolved to liquidate the company, the Resolution Professional had no other option but to move an application under Section 33 of IBC for liquidation of the Corporate Debtor. Reliance has also been placed on the judgement of the Hon'ble Supreme Court in the case of ***Committee of Creditors of Essar India Ltd. Vs. Satishkumar Gupta & ors 2020(8) SCC 531*** where it has been held that it is for the CoC to decide whether or not to rehabilitate the Corporate Debtor. Attention was also adverted to the judgement of this Tribunal in the case of ***Amit Bharana Vs. Gianchand in CA (AT) (Ins) 274/2020*** wherein it has been held that the Explanation which has been added to Section 33(2), empowers the CoC to decide to liquidate the Corporate Debtor any time even before the confirmation of the Resolution Plan.

43. At this stage it may be useful to note the contents of the agenda item No.3 of the 3rd CoC meeting which is as follows:

> *"**Agenda Item No.3**- To **discuss and approve the liquidation of the corporate debtor** in accordance with Section 33(2) of the Insolvency and Bankruptcy Code, 2016 and to approve filing of liquidation application under Section 33 of Insolvency and Bankruptcy Code, 2016.*
>
> *It is submitted that Corporate Debtor has only one major asset i.e Freehold Land of about 10 acres at Sector 39, Village Lakkarpur, Faridabad. Presently, **there are no operations of the company** and there have been no operations for at least last 4 years (the RP has the financial statements since FY 2018). Also, from the financial statements it appears that the **Corporate Debtor does not have any employee.** Further, from the available records, it appears that company entered into a development agreement with SAJ Housing Pvt. Ltd. in 2012 (the Developer) and **no development has taken place since then on any application***

of the Corporate Debtor Developer to convert the land for group housing.

The CoC was of the view that considering these circumstances, ***it is not feasible to keep the Corporate Debtor as going concern and also there is no possibility for Resolution Plans*** *in the present matter. The CoC suggested to file an application for liquidation of the Corporate Debtor before this Hon'ble Tribunal and* ***approved the said agenda by 100% voting*** *in the meeting itself."*

(Emphasis supplied)

44. Clearly the CoC had decided in the 3rd CoC meeting after considering all facts and circumstances that it was not feasible to keep the Corporate Debtor as a going concern and that there was no possibility for resolution plans in the present matter and hence with 100% voting had recommended that an application for liquidation of the corporate debtor be filed before the adjudicating authority. We also notice that there was due compliance to the provisions of IBC in terms of publications being made and informing borrowers to file their claims. Based on available claims filed before the Resolution Professional, the CoC was constituted and timely CoC meetings were held. The Corporate Debtor was also given chance to participate though they did not participate. Once the CoC with 100% vote share had found that the company is not a running company and cannot be revived as there is no employee or any business activity, the decision of the CoC becomes a business decision of the majority of the CoC. Under such circumstances, the Resolution Professional had rightly placed the liquidation proposal before the Adjudicating Authority.

45. Undisputedly, in the statutory framework of the IBC, there is only limited review available which can be exercised by the Adjudicating Authority without trespassing upon the business decision of the majority of the CoC.

The decision as to whether the Corporate Debtor is to be revived or not is essentially a business decision and hence should be left to the CoC so long as it musters more than 66% vote share. And it is here that primacy of the commercial wisdom of the CoC comes into play. There can be no fetters on the commercial wisdom of the CoC. The supremacy of commercial wisdom of the CoC has been reaffirmed time and again by the Hon'ble Supreme Court. It is not for the Adjudicating Authority to consider or evaluate on merits the rationale underlying the commercial decision of the CoC.

46. Thus, **to answer the second issue** before us, we are of the considered view that keeping in mind the limited powers of judicial review available to the Adjudicating Authority, in the given facts of the case, the Adjudicating Authority has not committed any error in ordering the liquidation of the Corporate Debtor as decided by the CoC with 100% vote share.

47. Now that we have decided the first two issues, we come to the third issue as to whether there is force in the contention of SHPL that they should have been treated as Financial Creditor and that not having taken place, CIRP should be started afresh with a newly constituted CoC.

48. It is the contention of SHPL that the payment made by them to the Corporate Debtor was identical in nature to the payment made by the Respondent No. 2 as both the payments were under the DA to develop the land of the Corporate Debtor. The audited financial statements of the Corporate Debtor also treated the payments made by SHPL and Respondent No.2 in a similar manner as unsecured loan under the heading of "long-term

borrowing" in the balance sheet and these entries in the balance sheet have not been disputed by Respondent No.2.

49. We do not wish to repeat the reasoning as recorded at para 31 above for coming to our findings that the payments were made by the SHPL and the Respondent No. 2 was not for the same purpose. The DA entered into between SHPL and the Corporate Debtor was an agreement of reciprocal rights and obligations wherein both parties entered into a consortium of sorts for developing the subject land. SHPL clearly being a profit share owner, who in the event of the success of the project would have received the gains from the proceeds, the amount invested in the land cannot be said to be a 'Financial Debt' as defined under Section 5(8) of the Code. Hence the claim of SHPL and the Respondent No.2 cannot be treated on the same footing. We must add here that the ratio laid down by the Hon'ble Supreme Court in ***New Horizons*** (supra) as relied upon by the Learned Senior Counsel for the Corporate Debtor is squarely applicable in the case of SHPL. We therefore are of the view that the Resolution Professional by admitting the claim of Respondent No.2 as financial debt while treating SHPL as an Operational Creditor did not act in an arbitrary manner and cannot be blamed for having defeated the legitimate claim of SHPL for malafide reasons.

50. It is the case of SHPL that they were not able to file their claims as they were unaware of the ongoing CIRP and became aware only when the Respondent No. 1 made a demand to hand over possession of the land in their possession. It is also contended that their claim was arbitrarily and summarily rejected by Resolution Professional on the ground of being time barred though it fell very much within the prescribed time period if the 57

days period was excluded as granted by the Adjudicating Authority. Consequentially the process of constitution of CoC was vitiated and rendered it void ab initio and that this is a case of material irregularity.

51. Refuting these contentions, the Learned Senior Counsel for the Respondents No. 1 vehemently denied that the SHPL was unaware of CIRP proceedings since they had been informed by email to file their claims. It has been claimed by the Resolution Professional that SHPL was at no stage restrained from filing their claim including the period of time when they had applied for exclusion of time before the Adjudicating Authority. We are persuaded from material on record that due opportunity was given to SHPL to file their claim within the prescribed time. The publication in the newspapers not having been denied by SHPL is ample proof that wide publicity was caused to invite claims. SHPL was also sent a written email by the Resolution Professional to submit claims which has also not been controverted. Nothing prevented them from filing their claims but instead they chose to adopt a wait and watch strategy. Moreover, it has been admitted by SHPL themselves that to begin with they had filed their claim in Form B as an Operational Creditor and not as Financial Creditor. Thus, having failed to file their claim in the appropriate format and in a timely manner due to their own negligence, they should be ready to suffer the consequences of late and improper filing. The bonafide of the Resolution Professional is also established by the fact that even when the statutory period prescribed for submission of claim had expired, the Resolution Professional had advised them in their email dated 28.02.2022 to seek condonation of delay from the Adjudicating

Authority as they had no power to condone such delay with respect to their delayed claim as is reproduced below:-

"From: Priyanka Chouhan drishti.cirp@gmail.com

Subject: Re Claim on behalf of M/s SAJ Housing Pvt. Ltd against: M/s Dirshti India Ltd.

Date: 28th February 2022 at 10:04 AM

To: R.L Bhagat rlbajurist@gmail.com

Dear Sir,

This is in reference to the submission of your claim dated 25th Feb, 2022. It is to inform you that in accordance with Section 15(1) (c) Regulation 6(2) (c) & (12(1) the last date of submission of claims was 17/11/2021 as per the public announcement made by the Resolution Professional.

Further as per Regulation 12(2). If a creditor fails to submit its stipulated time. Who can fo so within 90 days from the insolvency commencement date. I forever you have submitted your claim after ninety days from the date of initiation of CIRP of the Corporate Debtor which is time barred as per rules and regulations provide under the code and the Resolution Professional has no power to condense such delay with respect to your claim. Hence the Resolution Professional has no power admit your claim at this stage.

Further you can to seek directions from the Adjudicating Authority in order to condone this delay.

Priyanka Chouhan
Resolution Professional
Regn. No.: IBBN/IPA-001/IP-P-02348/2020-2021/13447
Drishti India Limited (In CIRP)"

52. We have already noted in the preceding paragraphs the contention of the SHPL that though IBC envisages liquidation as the last resort, in the present case liquidation was resorted to even before the completion of the statutory period of 180 days without even waiting for resolution plans. We do

not wish to dilate on this aspect again as we have already recorded our detailed findings on this matter while answering the second issue.

53. On the issue raised for starting CIRP afresh, the Learned Senior Counsel for the Respondent No.2 has contended that the appeal to set aside the admission of the Corporate Debtor into CIRP is not maintainable since the CoC had already taken a decision that resolution of the Corporate Debtor was not feasible and had recommended initiation of liquidation proceedings which has already been approved by the Adjudicating Authority.

54. We also notice that the Adjudicating Authority while deciding on IA 1447/2022 in the second impugned order has noted the admissibility of exclusion of 57 days from the CIRP period and also held that SHPL was entitled to get benefit of this exclusion. However, having heard the parties and taking cognizance of their submissions and pleadings, the Adjudicating Authority had approved the liquidation of the Corporate Debtor. At this stage, we refer to judgment of this Tribunal in ***CA (AT) (Ins.) 296/2022*** in ***Rakshit Dhirajlal Doshi v. IDBI Bank Ltd.*** which has been relied upon by Learned Senior Counsel for the Respondent No.2 wherein it has been held that admission of the Corporate Debtor into CIRP is not maintainable once the final order for proceedings under the liquidation have already been passed by the Adjudicating Authority. Further, we also notice that SHPL has been allowed by the Adjudicating Authority in the second impugned order to file claim before the liquidator.

55. Thus, **to answer the third issue** before us, we are of the considered view that in the given facts and circumstances of the case, SHPL cannot be

accorded the status of Financial Creditor and therefore the prayer of SHPL to reconstitute the CoC does not merit consideration. Further, since the Adjudicating Authority has already approved the liquidation and allowed SHPL to file its claim, we are satisfied that the interests of SHPL have not been put to prejudice.

56. In result, we are of the considered view that the second impugned order of 04.08.2022 approving the liquidation of the Corporate Debtor has subsumed the first impugned order dated 01.11.2021 which had admitted the Corporate Debtor into CIRP. For the reasons discussed above, we find no reasons which warrant any interference in the second impugned order of the Adjudicating Authority. We direct the liquidator to continue with the liquidation process and inter-alia allow SHPL to submit their claim before the liquidator in terms of the IBC and regulations framed thereunder. The appeals being devoid of merit are dismissed. No costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 01.09.2023

PKM