



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT – II)**

**Item No. 202**  
**IB-218/ND/2024**

**IN THE MATTER OF:**

**Canara Bank,**

112, J.C. Road,

Bangalore- 560002

... **Applicant/Petitioner**

**Versus**

**M/s. VS Realtech Pvt. Ltd.,**

G-26, Gate No. 1, SFS Flats,

Mall Apartment, Mall Road,

West Delhi – 110054

Also at: D- 45, Panchsheel Enclave,

New Delhi - 110017

... **Respondent**

**Under Section: 7 of IBC, 2016**

**Order delivered on 01.04.2025**

**CORAM:**

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

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

**PRESENT:**

**For the Applicant** : Adv. Anju Jain, Adv. Hitesh Sachar,  
Adv. Anjali Singhvi

**For the Respondent** : Sr. Adv. Sunil Fernandes, Adv. Kaveri,  
Adv. Prateek Gautam, Adv. Tushar, Adv. Diksha,  
Adv. Shriya Agarwal, Mr. S.K Mittal (Director of  
Corporate Guarantor)

**Hearing Through: VC and Physical (Hybrid) Mode**

**ORAL ORDER**

The present application has been preferred under Section 7 of IBC, 2016, by Canara Bank (hereinafter, referred to as the “**Applicant/ Financial Creditor**”) seeking commencement of CIRP qua M/s VS Real Tech Pvt. Ltd (hereinafter, referred to as the “**Respondent/ Corporate Debtor**”). The amount of debt and default are mentioned in Part-IV of the petition, which reads thus: -



PART – IV

PARTICULARS OF FINANCIAL DEBT

	TOTAL 1. AMOUNT OF DEBT GRANTED.	
		<p>Vide loan application in the year 2013, the Principal borrower i.e., M/s Suryansh Healthcare Private Limited requested the Applicant Bank for grant of certain credit facilities for Setting up a full-fledged hospital 102 bedded hospital at Moradabad UP.</p> <p>Accordingly, the Applicant bank vide sanction letter dated 22.05.2013 bearing Ref. No. CBHK/SURYANSH/2013 sanctioned Term Loan of Rs.20,22,00,000 (Rupees Twenty Crores Twenty-Two Lakhs Only) under the hypothecation of plant, Machineries, Equipment's Computers, Printers, U.P.S., fittings, Fixtures and other Assets already acquired or to be acquired by the Principal Borrower and created equitable mortgage right of Project land (lease hold rights in favour of the Principal Borrower by the Corporate Guarantor/ Debtor) Bearing Khasra No. 234,(msg.1568 sq.m) &amp; Khasra 236 (msg.2696 sq.m) on which the proposed building is being constructed and proposed building and other P&amp;M, equipments and other assets to be acquired out of the TL</p> <p>Copy of Board Resolution dated 02.05.2013 is annexed here as <b>Annexure- 3</b></p> <p>Copy of the Common Hypothecation Agreement executed by Principal Borrower in favor of the Applicant Bank is annexed here as <b>Annexure-4</b></p> <p>Copy of the said sanction letter dated 22.05.2013 issued by the Applicant Bank is annexed herewith as <b>Annexure – 5</b></p> <p>Corporate Guarantor/ Debtor executed a Guarantee Agreement along with others guarantors towards the term loan facility advance in favor of Principal Borrower dated 14.06.2013.Copy of the said Guarantee Agreement dated 14.06.2013 is annexed here as <b>Annexure-6</b></p>





[...]

<p>3. Amount claimed to be in default and the date on which the default occurred.</p>	<p>That the account of the Principal Borrower with the Applicant Bank slipped into NPA on 29.09.2015, and as on said date the amount in default was Rs.18,84,54,298/- (Rupees Eighteen Crore Eighty-Four Lakh Fifty-Four Thousand Two Hundred Ninety-Eight Only). That it is submitted that as on 29.02.2024 the total amount due is Rs. 40,86,16,723.65 /- (Rupees Forty Crores Eighty-Six Lakhs Sixteen Thousand Seven Hundred Twenty-three and Paise Sixty-Five only) along with contractual rate of interest Per Annum compounded monthly plus 2% overdue penal interest till its realization of the present proceedings is due by the Principal Borrower and Corporate Guarantor/Debtor.</p> <p>Copy of Statement of Account of the Principal Borrower maintained with the Applicant Bank is annexed hereto as <b>Annexure-10(Colly)</b>. Copy of the certificate under Section 65B of the Evidence Act are annexed hereto as <b>Annexure-11</b></p> <p>That further, as per the financial statements for the year 2013 till date, there is clear admission on part of the Principal Borrower and the Corporate Guarantor with respect to the liabilities towards the Applicant Bank and the OTS Proposal sent by Principal Borrower to the Applicant Bank dated 24.02.2023. Copy of OTS Proposal dated 24.02.2023 is annexed herewith as <b>Annexure-12</b>. Accordingly, the present petition is well within the limitation period as prescribed under the Insolvency and Bankruptcy Code, 2016.</p>
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2. The Applicant Bank has given the details of the documents/record and evidence of default in Part-V of the application, which reads thus: -

**PART V**  
**PARTICULARS OF FINANCIAL DEBT [DOCUMENTS,**  
**RECORDS AND EVIDENCE OF DEFAULT]**

1. That at present the amount of total exposure of the credit facilities together with interest, liquidate damages, cost, charges, expenses and other monies whatsoever to be payable to the applicant bank is secured by:

- Charge over Machineries, Equipment's Computers, Printers, U.P.S., fittings, Fixtures and other Assets already acquired or to be acquired by the Corporate Debtor.
- Created equitable mortgage right of Project land (lease hold rights)\* Bearing Khasra No. 234,(msg.1568 sq.m) & Khasra 236 (msg.2696 sq.m) total measuring 4200 Sq.m (5021.33 Sq.yards) including the proposed building to be constructed, situated in the Revenue Estate of Village Bhensia, Tehsil & District-Moradabad, National Highway No.24, Moradabad,U.P

**PARTICULARS OF SECURITIES.**

**Prime Security**

- Project land (Lease hold rights)\* Bearing Khasara No.234,(msg.1568 sq.m) & Khasra 236 (msg.2696 sq.m) on which the proposed building is being constructed
- Proposed building and other P&M, equipments and other assets to be acquired out of the TL

**Collateral Security:**

- Land at Moradabad bearing khasra no. 234(measuring 10073 sq.m) owned by VS Realtch Pvt. Ltd. (Corporate Guarantor)
- Land bearing khasra 150 msg. 5422 sq.m owned by SV Buildcon Pvt. Ltd.

**Personal Guarantee:**

- Sh. Vinod Kumar Sharma  
R/o 592-A, MTNL Exchange,  
JOMC Boys Primary School,  
Bijwasan Village, Delhi-110061
- Sh. Sanjeev Kumar Sharma  
R/o 592-B, MTNL Exchange,  
JOMC Boys Primary School,  
Bijwasan Village, Delhi-110061
- Ms Anjali Bhardwaj  
A-1/66, First Floor, Panchsheel Enclave,  
New Delhi-110017
- Dr. Preeti Saxena

**CORPORATE GUARANTEE:**

- M/s VS Realtech Pvt. Ltd.

**Regd. Office At:**

G-26, Gate no.1 SFS Flats, Mall Apartment,  
Mall road, West Delhi, Delhi,  
Delhi, India, 110054

**Also at:**

D-45, Panchsheel Enclave  
New Delhi-110017

- M/s SV Buildcon Pvt. Ltd.

**Regd. Office at:**

592 A, Bijwasan, South West Delhi,  
New delhi, Delhi, India, 110061

**Also at:**

D-45 Panchsheel Enclave  
New Delhi -110017

**DATE OF ITS CREATION.**

Copy of Index of Charges as available with the Ministry of Corporate Affairs, evidencing creation of charge in favour of Applicant Bank is annexed hereto as **Annexure- 13**

**ESTIMATED VALUE.**

Not available.

2.	Particulars of an order of a Court, Tribunal Or Arbitral Panel Adjudicating on the default, If Any (Attach A Copy Of The Order):  _____NIL_____
3.	Record of default with the Information Utility, If any Record Of Default/Debt/Authentication As Submitted To And Held By National E-Governance Service Limited ('NESL'), and the same is annexed herewith as <b>Annexure-14</b>
4.	Details of Succession Certificate, or Probate of a Will, or Letter of Administration, or Court Decree (as may be applicable), under the Indian Succession Act, 1925 (10 Of 1925) (Attach A Copy)  _____NIL_____
5.	The latest and complete copy of the financial contract reflecting all amendments and waivers to date (attach a copy)  _____NIL_____
6.	A record of default as available with any credit information Company (Attach a copy)  _____NIL_____



7.	<p>Copies of entries in a bankers book in accordance with the Bankers Books Evidence Act, 1891 (18 of 1891) (Attach a copy)</p> <ul style="list-style-type: none"><li>• Copy of statement of account duly executed under Bankers Book Evidence Act along with the certificate under Section 2A (b) of Bankers Books Evidence Act and Section 65B Indian Evidence Act along with Certificate are annexed herewith as Annexure <u>1</u> and Annexure <u>14</u> respectively.</li></ul>
8.	<p>List of other documents attached to this application in order to prove existence of Financial Debt, the amount and date of default.</p> <ul style="list-style-type: none"><li>• Sanction letter dated 22.05.2013 bearing Ref. No. CBHK/SURYANSH/2013.</li><li>• Copy of Board Resolution dated 02.05.2013</li><li>• Common Hypothecation Agreement dated 14.06.2013</li><li>• Guarantee Agreement dated 14.06.2013.</li><li>• NF 461: Letter Evidencing Deposit of Title Deeds executed by VS Realtech Pvt. Ltd. i.e., Corporate Debtor in favor of the applicant bank</li><li>• Original Sale deed dated 20.03.2007 executed by Mohd. Akram s/o Late Haji Mohd. Ahsan in favor of M/s V.S. Real tech Pvt. Ltd.</li><li>• Copy of Khatoni 1406 to 1411 khata no. 356</li><li>• Copy of khatoni 1382 to 1387 khata no. 160</li><li>• Nil Encumbrance Certificate for the aforesaid immovable Properties dated 22.06.2013 issued by the Corporate Guarantor/ Debtor.</li><li>• Notice dated 01.02.2016 under Section 13(2) of the SARFAESI Act, 2002, issued by the Applicant Bank against the Principal Borrower and the Corporate Guarantors.</li><li>• Financial statements from 2015-2016 till date duly evidencing the outstanding liabilities of the Principal Borrower towards the Applicant Bank.</li></ul>



- Statement of accounts of Principal Borrower maintained with the Applicant bank duly certified under Banker Books Evidence Act.
- Copy of Index of Charges as available with the Ministry of Corporate Affairs, evidencing creation of charge in favour of Applicant Bank.
- Copy of OTS Proposal dated 24.02.2023 sent by Principal Borrower to the Applicant Bank.
- Record of Default/Debt/Authentication As Submitted To And Held By National E-Governance Service Limited ('NESL').

3. As can be seen from the aforementioned, the financial facility was extended by the Applicant/ FC to the Principal Borrower namely M/s Suryansh Healthcare Pvt. Ltd. and the Corporate Debtor before us stood as surety/Corporate Guarantor qua the financial facility. Besides the Corporate Debtor before us, several individuals namely Mr. Vinod Kumar Sharma, Mr. Sanjeev Kumar Sharma and Ms. Anjali Bhardwaj also stood as guarantor for the financial facility. Furthermore, in addition to the Respondent before us, M/s VS Realtech Pvt. Ltd. extended the corporate guarantee to repay the amount of financial facility.

4. The Respondent/ CD filed its reply to oppose the application and espoused thus: -

*“3. That the present petition is liable to be dismissed on the ground of fraud, fabrication of records and siphoning/ misappropriation of the bank loan amount, furnishing incorrect information by Mr. Vinod Kumar Sharma, Sanjeev Kumar Shanna and Ms. Anjali Bhardwaj in connivance with Canara Bank in sanctioning and disbursing of the loan in the name of M/s. Suryansh Health Care (P) Ltd for setting up a hospital of 102 beds at Moradabad Rampur Road, Moradabad.*



*The copy of the Sanction Memorandum and Letter dated 02.05.2016 issued by the Canara bank has been annexed herein and marked as Annexure A-2.*

*4. The modus operandi of the fraud of fabrication of the records and then siphoning of the bank loan by the above named persons in connivance with the bank for which M/s VS Realtech (P) Ltd has already stated in his written Statement in detail in OA No. 412 of 2016 Titled as Canara bank Versus Suryash Healthcare Private Limited and others which is well known to the Canara Bank. Despite that Bank has not disclosed all those facts of fraud, fabrication of documents, siphoning of loan by the above said persons in connivance with the bank. Copy of the Written Statement filed before the Debt Recovery Tribunal by the answering company is annexed herewith and marked as Annexure A-3.*

*5. It is submitted that till 1st September, 2014, Mr. Vinod Kumar Sharma and his brother Sanjeev Kumar Sharma of one part having 50% shares holding and Mittal family of other part having 50% share holding in the answering company, were the directors in M/s V.S. Realtech (P) Ltd., meaning thereby there were four directors on the Board of the said company at the relevant time. The registered office of the company was D-45, Basement, Panchsheel Enclave, New Delhi then, Copy of the company master data available on the site of the Ministry of Corporate Affairs is annexed herewith and marked as Annexure A-4.”*

**5.** In sum and substance, the plea raised on behalf of the Corporate Guarantor as espoused by Mr. Sunil Fernandes, Ld. Senior Advocate, during the hearing are: -



- i. The Board Resolution dated 02.05.2013 by way of which the CD authorised its Director, Mr. Sanjeev Kumar Sharma to execute the related loan document, including mortgage deed, is forged and fabricated;
  - ii. The petition is barred by limitation;
  - iii. The financial facility has been extended in disregard of provision of sub-sections (2) and (3) of Section 186 of the Companies Act, 2013;
  - iv. When the proceedings are initiated against the Corporate Guarantor, no proceedings are initiated against the Principal Borrower.
- 6.** Re-joining the submissions, Ms. Anju Jain, Ld. Counsel for the Applicant Bank submitted that the aforementioned resolution has been signed by the directors who participated in the meeting. Moreover, not only the Principal Borrower, but also the Respondent/ Corporate Guarantor entered into a settlement with the creditor from time to time, which amounts to acknowledgement of debt. The Ld. Counsel further submitted that there is no violation of provisions of Section 186(2) & (3) of the Companies Act, 2013. It was further submitted there is no such law which prohibits initiation of CIRP qua the Corporate Guarantor when the same has not been initiated qua the Principal Borrower. She further espoused that since the Principal Borrower is left with no assets, the Applicant, whose primary interest is to see that the amount of financial facility extended by it comes back, was of the view that there are better prospects of an SRA coming forward to submit expression of interest qua the Corporate Debtor.



7. We heard the Ld. Counsels for the parties and perused the record. As far as the resolution passed by the Board of Directors is concerned, we see from the record i.e. Annexure- 3 to the application that the resolution has been signed by the directors namely Mr. Vinod Kumar Sharma and Mr. Sanjeev Kumar Sharma. The resolution dated 02.05.2013 placed on record as Annexure-A3 reads thus: -

# V S REALTECH PVT. LTD.

**Certified True copy of Resolution Passed in the meeting of Governing Body held on 02<sup>nd</sup> May 2013 at Registered office D-45, Basement, Panchsheel Enclave, New Delhi-110017, The following Resolution Passed:**

In the meeting of the Governing Body of the company all the Directors of the company namely Sh. Vinod Kumar Sharma (Director), Sh. Sanjeev Kumar Sharma (Director), attended the meeting and passed following resolution unanimously:

**"RESOLVED THAT"** Our one of the group company i.e. M/s. Suryansh Healthcare Pvt. Ltd. approached to the Canara Bank, A-27, Hauz Khas Branch New Delhi for obtaining Term Loan up to 2200 Lacs for the purpose of construction of a Hospital at Moradabad and for this purpose, the company offering to Canara Bank, our property bearing Khata no. 308, Khasra No. 234 measuring 1800 Sq.yds. & Khata no. 486, Khasara No. 236 measuring 3221.33 S.Yds Approximately as a primary security and Khata no. 308, Khasra No. 234 measuring 12043.34 Sq.yds. as a collateral security situated in the revenue estate of Vill. Bhensiya, Main Rampur Moradabad (N.H.24), Moradabad, as a collateral security. For the above mentioned purpose the company M/S. V S REALTECH PVT. LTD. has no any objection, if the above said property will be offered to the said Canara Bank.

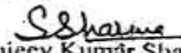
**"FURTHER RESOLVED THAT"** Sh. Sanjeev Kumar Sharma (Director) be and is hereby authorized to execute the related loan document including mortgage deed undertakings promissory notes guarantees or any other formality for this purpose as may be required by the bank on behalf of the company.

**For: V.S. REALTECH PVT. LTD.**

For V.S. Realtech Pvt. Ltd

  
(Vinod Kumar Sharma)  
Director

For V.S. Realtech Pvt. Ltd

  
(Sanjeev Kumar Sharma)  
Director

Registered office at: D-45, Panchsheel Enclave, New Delhi-110017.  
M/s. Suryansh Healthcare Pvt. Ltd.



8. Obviously, the authority letter for filing the reply on behalf of the Respondent/ Corporate Guarantor has been signed by its discretion. Nevertheless, as per the provisions of Companies Act, when the resolution passed by the board in a meeting is attended by persons who were directors, there is no reason for us to not treat the aforementioned resolution as valid. It is not the case of either of the signatory to the resolution that their signatures on the resolution are forged. The deponent qua the reply filed on behalf of the Corporate Guarantor cannot take the plea that the resolution is forged or manufactured, as the resolution has been passed by the directors present with majority of 100% vote. The expression “board” used in the resolution has to be read to be the directors who are present in the Board Meeting and not with reference to the total number of directors qua the company. The relevant provision of the Companies Act, 2013 which provides for the required strength of directors to pass resolution qua the affairs of the company reads thus: -

*“174. Quorum for meetings of Board.—(1) The quorum for a meeting of the Board of Directors of a company shall be one-third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.*

*(2) The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.*



*(3) Where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time.*

*Explanation.—For the purposes of this sub-section, “interested director” means a director within the meaning of sub-section (2) of section 184.*

*(4) Where a meeting of the Board could not be held for want of quorum, then, unless the articles of the company otherwise provide, the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.*

*Explanation.—For the purposes of this section,—*

- (i) any fraction of a number shall be rounded off as one;*
- (ii) “total strength” shall not include directors whose places are vacant.”*

**“175. Passing of resolution by circulation.—***(1) No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or members of the committee, as the case may be, at their addresses registered with the company in India by hand delivery or by post or by courier, or through such electronic means as may be prescribed and has been approved by a majority of the directors or members, who are entitled to vote on the resolution: Provided that, where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the*



*chairperson shall put the resolution to be decided at a meeting of the Board.*

*(2) A resolution under sub-section (1) shall be noted at a subsequent meeting of the Board or the committee thereof, as the case may be, and made part of the minutes of such meeting.”*

**“179. Powers of Board.—***(1) The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do:*

*Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting:*

*Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting.*

*(2) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.*

*(3) The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—*

*(a) to make calls on shareholders in respect of money unpaid on their shares;*

*(b) to authorise buy-back of securities under section 68;*

*(c) to issue securities, including debentures, whether in or outside India;*

*(d) to borrow monies;*

*(e) to invest the funds of the company;*



*(f) to grant loans or give guarantee or provide security in respect of loans;*

*(g) to approve financial statement and the Board's report;*

*(h) to diversify the business of the company;*

*(i) to approve amalgamation, merger or reconstruction;*

*(j) to take over a company or acquire a controlling or substantial stake in another company;*

*(k) any other matter which may be prescribed:*

*Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify:*

*Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdraw able by cheque, draft, order or otherwise, or the placing of monies on deposit by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of monies or, as the case may be, a making of loans by a banking company within the meaning of this section.*

*Explanation I.—Nothing in clause (d) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act.*

*Explanation II.—In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (d) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day-to-day operation on*



*overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.*

*(4) Nothing in this section shall be deemed to affect the right of the company in general meeting to impose restrictions and conditions on the exercise by the Board of any of the powers specified in this section.”*

**9.** Additionally, we may not be oblivious of the fact that when the aforementioned resolution was passed on 02.05.2013, the director who has filed the present reply never moved any petition alleging oppression or mismanagement for 12 long years. It is difficult to believe that a director who could come forward to oppose the present petition could have not acquired any knowledge of the aforementioned resolution for 12 long years. Furthermore, the plea raised in the reply regarding the lodging of FIR itself indicates that the deponent who has issued a letter of authorization for filing reply to the present petition was well aware of the resolution. Even otherwise also as has been noted herein above, once the required strength of director could pass a resolution creating liability qua the company, subsequently in the proceedings instituted by the third party qua such liability of the company, the company cannot be heard saying that the resolution or decision taken by the Board of the Company was forged. If any of the directors or the company violate any of the provisions of the Companies Act, 2013, the consequences provided under the Companies Act would follow.

**10.** As far as the issue of limitation is concerned, the Ld. Counsel for the Applicant could draw our attention to the settlement deed arrived at between the



Applicant and the Principal Borrower acknowledging the amount of debt. The settlement document/letter/OTS is dated 24.02.2023. It is seen from the document that the Principal Borrower acknowledged the liability and agreed to discharge the same. The relevant excerpt of the same reads thus: -

**(VII) CURRENT SETTLEMENT PROPOSAL**

With the above background, M/s Suryansh Healthcare Pvt. Ltd. and M/s SS Realtech Pvt. Ltd. are approaching the Bank with the revised and improved OTS proposal as we wish to close the matter at the earliest.

Particular	Details
Offer amount	Rs. 23 Crore to be payable within 11 months from the date of receipt of sanction at "Acceptable terms".
Payment	<p>Upfront payment of Rs. 2.30 Crore (Approx.) (10% of the OTS Amount) shall be deposited within 7 days of acceptance of this OTS letter, which shall be kept in no-lien account as down payment.</p> <p><b>Balance Amount:</b></p> <ul style="list-style-type: none"><li>- An additional Rs. 3.45 crore shall be paid within 30 days from the date of acceptance of sanction letter. (i.e., a total of about 25% of the OTS amount). Upon payment of said amount Bank shall release all original papers of negative lien on the property situated at <i>Bijwasan, New Delhi and original property papers of A-1/66, First Floor, Panchsheel Enclave, New Delhi-110017 (loan of the same has already been paid)</i></li></ul>
	An additional amount of Rs. 5 Crore shall be paid within three months from the date of acceptance of the OTS proposal. Upon payment of said additional amount of Rs.5 Crores bank shall release all original papers of khata no. 346 Khasra no. 221, 225, 226, 227, 228 and khata no. 345 khasra no. 222, 225, 227, 235 on the property pertaining to the papers mortgaged under the loan of M/s SS Realtech Pvt. Ltd.
	That on receipt of the an additional amount of Rs. 5 Crore within six months from the date of acceptance of the OTS proposal. Upon payment of said additional amount of Rs.5 Crores bank shall withdraw all the civil and criminal litigations pertaining to the cases under section 138 NI Act and other litigation with the DRT.
	That the entire remaining amount shall be paid within 5



		months i.e., the total period of 11 months and on receipt of the same all the property papers mortgaged against the loan of M/s Suryansh Healthcare Pvt. Ltd. Shall be released
Interest on payment	delayed	No interest shall be payable for first 90 days. However, OTS amount outstanding after 90 days shall carry interest @ 8% per annum on simple rate basis.
Charges on Securities		<ul style="list-style-type: none"><li>o That on receipt of the entire OTS amount all charges against the balance securities/personal securities shall be vacated upon the receipt of full OTS amount by the bank</li></ul>
Legal Cases		On receipt of full and final OTS amount, all the civil and criminal cases pending in different Courts shall be withdrawn by the bank.
Guarantees and commitments	and	Company, guarantors and directors shall be released from all guarantees and commitments towards the bank.
Irrevocable sanction		The sanction letter shall be irrevocable subject to the condition that financial obligations are fulfilled in accordance with accepted sanction letter of proposal.
Intimation		Intimation to regulatory authorities/ institutions such as CIBIL shall be sent by bank confirming that the entire secured credit has been settled in mutually agreed manner.
No Dues Certificate		The Promoter/Director/Guarantors / and Company shall be provided No Dues certificates and discharged from all obligation, guarantees upon the receipt of full payment.

#### (VIII) POINTS FOR CONSIDERATION

We request Bank to give appropriate consideration to following facts while considering current OTS proposal

- a) That against total disbursed amount of Rs. 23 Crore, M/s Suryansh Healthcare Pvt. Ltd. and M/s SS Realtech Pvt. Ltd. has already paid Rs 14.81 Crore approx., despite not generating any earnings from both the projects being incomplete. These funds were brought in by promoters by selling their personal properties which shows their bonafide and genuine intentions.
- b) That M/s Suryansh Healthcare Pvt. Ltd. and M/s SS Realtech Pvt. Ltd. has already paid a sum of Rs. 11.36 crore post sanction of OTS till date without getting release of any of the property as they genuinely believed in honoring OTS. However, due to circumstances and Bank not giving permission to sell the properties they could not honor the OTS
- c) That due to non disbursement of entire loan in M/s Suryansh Healthcare Pvt. Ltd. and M/s SS Realtech Pvt. Ltd., both the projects could not be completed resulting in huge losses and as a result account turned into NPA in both the companies.



- d) That both the hotels and hospitals are in semi completed position. Promoters are in no position to raise funds for completion of the properties without which finding a buyer is going to be extremely difficult.
- e) That the Properties are located at Moradabad where hardly any new investments are being made. As such there is not much of interest in the property.
- f) That on account of COVID19, finding a buyer and getting a fair price for the property is extremely difficult.
- g) That in fact, Bank has tried to auction the property several times but did not get any response which establishes the fact that there is not much interest in the property.

It is humbly submitted that we are already suffering a lot due to the NPA accounts and sincerely want to settle the accounts with the Bank. In furtherance thereof, we have already sent the last OTS proposal dated 02.08.2022 which is now being modified through this fresh OTS proposal. That it is needless to mention here that it is difficult to get the financier/buyer for the abovementioned settlement amount. Hence we again request you to consider the fresh OTS proposal, at the earliest, and respond to the same. We believe that this is the best offer that we have been able to negotiate. We shall be awaiting your concurrence in the matter and your favorable response.

**11.** From the aforementioned it is clear that the Principal Borrower had acknowledged the liability on 24.02.2023 and thus, the limitation is deferred for 3 years from said date.

**12.** It is *stare decisis* that the acknowledgement of liability by the debtor extends the period of limitation, if the acknowledgement is before the expiry of the period of limitation. It is clear from the aforementioned letter that by way of offering of OTS from time to time, the borrower was acknowledging the liability to pay the debt. The clause (a) of the aforementioned letter reads thus: -

*“a) That this is in reference to our detailed discussions and earlier OTS proposals dated 30.12.2020, 01.03.2021, 13.07.2021, 29.11.2021 16.12.2021, 03.02.2022, 30.04.2022, 02.07.2022 and 02.08.2022. Now as per our earlier discussion with the then Chief*



General Manager, Sh. Paramshivam alongwith other Senior Officials, wherein the OTS proposal was made to me around Rs. 23 Cr. as full and final OTS. In view of the same a fresh OTS letter is given to you for your sympathetic consideration.”

13. According to the Ld. Counsel for the Applicant, the first acknowledgement of the debt by the borrower before the expiry of period of 3 years was in the balance sheet for the period ending on 31.03.2016. The relevant excerpt of the balance sheet reads thus: -

Note No:- 4. Long Term Borrowings		As at 31.03.2016	As at 31.03.2015
<b>Loans &amp; Advances</b>			
<b>Term Loan</b>			
From Bank (Secured)		203,165,874	170,871,727
<b>Advance from related Party</b>			
Vinod Kumar Sharma		77,161,364	
Sanjeev Kumar Sharma		39,04,235	
Anjali Bhardwaj		2,78,200	
		<b>287,013,473</b>	<b>170,871,727</b>

(i) Term Loan of Rs. 20,31,65,874 as on 31st March 2016 (Previous year Rs. 17,08,71,727/-), has been taken from Canara Bank (Amount is cumulative of Interest accumulated and Principal amount of Loan sanctioned). The loan is secured by way of first pari passu charge on block of assets comprising hospital land situated at Khasra No. 234 (measuring 2696 sq. mt.) at Village Bhainsia, Distt. Moradabad, Uttar Pradesh. Proposed building and other assets to be acquired out of term loan.

(ii) Originally to be repayable in 72 Monthly installment starting from April 2015 with applicable interest rate 14.75% + 0.50% (Term Loan Premium). However for further six months was sought by management due to delay in project completion but it was rejected by the concerned bank.

(iii) Further, the loans are secured by land at Moradabad bearing Khasra No. 234 (Measuring Area 10073 Sq. Mt.) and Khasra No. 150 (Measuring area 5422 Sq. Mt.) owned by VS Realtech Private Limited and SV Buildcon Private Limited respectively.

(iv) Further loan is secured by residential property situated at A-1/65, 1st Floor, Masjid Moth, Panchsheel Enclave, New Delhi - 110017 and 563 - 564, Brijwasan, New Delhi - 110061 owned by Anjali Bhardwaj (Director) and Vinod Kumar Sharma (Director).

(v) Further Loan is secured by the personal guarantee of directors and corporate guarantee of M/s VS Realtech Private Limited and SV Buildcon Private Limited.

14. Our attention is also drawn to the balance sheet of the Principal Borrower for the year ending on 31.03.2018, in which the Principal Borrower has acknowledged the liability. The relevant excerpt of the balance-sheet reads thus:



Note No:- 4. Long Term Borrowings		
	As at 31.03.2018	As at 31.03.2017
<b>Loans &amp; Advances</b>		
Term Loan		
From Bank (Secured)	177,911,765	182,347,022
<b>Advance from related Party</b>		
Vinod Kumar Sharma	101,183,554	91,918,832
Sanjeev Kumar Sharma	3,904,235	3,904,235
Anjali Bhardwaj	8,815,114	4,183,857
Gagan Infrastructure Company	2,000,000	2,000,000
Loans from other party	3,770,100	3,770,100
	<b>297,684,768</b>	<b>288,124,046</b>

15. The liability was also reflected in the balance-sheet of the Principal Borrower for the year ending on 31.03.2019. Thus, apparently there being acknowledgement of liability by the Principal Borrower from time to time, there is no delay in filing the present petition. It is *stare decisis* that the acknowledgement of liability by the Principal Borrower would amount to acknowledgement of the same also by the Corporate Guarantor. In **Laxmi Pat Surana v. Union Bank of India** [(2021) 8 SCC 481], the Hon'ble Supreme Court held that Section 18 of the Limitation Act would come into play every time the Corporate Debtor/Corporate Guarantor acknowledge their liability to pay the debt before the expiry of the prescribed period of limitation. Relevant excerpt of the aforementioned judgment reads thus:

*"43. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 IBC. However, Section 7 comes into play when the corporate debtor commits "default". Section 7, consciously uses the expression "default" — not the date of notifying the loan account of the corporate person as NPA. Further, the expression "default" has been defined in Section 3(12) to mean 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. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 IBC enures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 IBC. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 IBC.*

(Emphasis Supplied)

**16.** Furthermore, the aforesaid legal position has been reaffirmed by the Hon'ble Supreme Court as recently as 22.10.2024 in the matter of **Vidyasagar Prasad vs. UCO Bank & Anr.** [Civil Appeal No. 1031/2022] wherein it was held thus: -



*“7. The commencement of a fresh period of limitation from the time of acknowledgement of the debt is part of the statutory scheme. Section 238A of the Code extends the applicability of the provisions of the Limitation Act to the proceedings under the Code. With the extension of Limitation Act to the provisions of the Code, the benefit of Section 18 of the Limitation Act dealing with the effect of acknowledgement of a debt in writing applies. Considering the same issue in Laxmi Pat Surana v. Union Bank of India, the Court observed: [...]*

*8. In view of the above referred principles, we will now consider the nuanced arguments advanced by Mr. Balbir Singh that there is no unequivocal, unambiguous and specific acknowledgement of debt owed to UCO Bank in the balance sheet entries of Corporate Debtor for the years 2017 and 2019. In the absence of clear demarcation as to what the Corporate Debtor owes to the UCO Bank, the said entries cannot be relied on for the purpose of extending the period of limitation in terms of Section 18 of the Limitation Act. Mr. Balbir Singh further argues that even if said entry is taken to be an acknowledgment of debt, the same cannot aid respondent No.1’s case since it fails to mention the name of financial creditor.*

*8.1 Mr. Partha Sil, counsel on behalf of respondent No. 1-Bank submitted that the Balance Sheets of a company are prepared in the prescribed statutory format as per Section 129, read with Schedule III of the Companies Act 2013, which does not provide for giving specific names of each and every Secured and Unsecured creditor. In support of his submission, Mr. Partha Sil referred to the judgment in Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal where it was observed that there was no compulsion for Companies to make any particular admissions in the balance sheet, except for what is prescribed.*



9. A three Judge Bench of this Court in *Bishal Jaiswal (Supra)* has addressed and clarified this issue by holding that;

*“35. A perusal of the aforesaid sections would show that there is no doubt that the filing of a balance sheet in accordance with the provisions of the Companies Act is mandatory, any transgression of the same being punishable by law. However, what is of importance is that notes that are annexed to or forming part of such financial statements are expressly recognised by Section 134(7). Equally, the auditor's report may also enter caveats with regard to acknowledgments made in the books of accounts including the balance sheet. A perusal of the aforesaid would show that the statement of law contained in *Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff* , that there is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission, is correct in law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis to establish whether an acknowledgment of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act.”*

*(emphasis supplied)*

10. Having considered the specific facts and circumstances of this case, the Adjudicating Authority as well as the NCLAT have concurrently held that the entries in the balance sheets amount to clear acknowledgment of debt. We agree with the findings. Further, Note 3.4 appended to said balance sheet entry dated 31.03.2017 mentions that “company has made certain defaults in the repayment of term loans and interest.” It further mentions of a continuing default. The entry also mentions long-term borrowings. The



*conclusions of NCLT and NCLAT that there is acknowledgment of debt are unimpeachable.*

*10.1 Following the principles as expounded in the case of Bishal Jaiswal (Supra), the Adjudicating Authority as well as the NCLAT have examined the case in detail and have come to the conclusion that the entry made in the balance sheet coupled with the note of the auditor of the appellant clearly amounts to acknowledgement of the liability. We see no reason whatsoever to take a different view of the matter. Their findings are fortified when we examine the matter from another perspective.*

*11. Adjudicating Authority and NCLAT have also considered the Corporate Debtor's proposal of One Time Settlement (OTS) to UCO Bank. The proposal made by letter dated 07.06.2016 acknowledges that there were prior debts owed to UCO Bank. To substantiate the argument that such OTS constituted acknowledgment of debt since it relates to present and subsisting liability and indicates existence of a jural relationship between the parties, UCO Bank relied on judgment of this Court in Lakshmirattan Cotton Mills Co. Ltd. and Messrs Behari Lal Ram Charan v. Aluminium Corporation of India Limited. The implication of a statement about a present and subsisting debt of a Corporate Debtor is articulated by this Court in the following manner;*

*"9. It is clear that the statement on which the plea of acknowledgment is founded must relate to a subsisting liability as the section requires that it must be made before the expiration of the period prescribed under the Act. It need not, however, amount to a promise to pay, for, an acknowledgment does not create a new right of action but merely extends the period of limitation. The statement need not indicate the exact nature or the specific character of the liability. The words used*



*in the statement in question, however, must relate to a present subsisting liability and indicate the existence of jural relationship between the parties, such as, for instance, that of a debtor and a creditor and the intention to admit such jural relationship. Such an intention need not be in express terms and can be inferred by implication from the nature of the admission and the surrounding circumstances. Generally speaking, a liberal construction of the statement in question should be given. That of course does not mean that where a statement is made without intending to admit the existence of jural relationship, such intention should be fastened on the person making the statement by an involved and farfetched reasoning...*

*(emphasis supplied)*

*11.1 It is also relevant to refer to judgment in Dena Bank (Supra) which held as follows:*

*“139. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of onetime settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act...”*

*(emphasis supplied)*

**17.** In view of the aforementioned, we cannot accept the plea of limitation raised on behalf of the Corporate Debtor. As far as the issue of compliance of Section 186 of Companies Act, 2013 is concerned, we are of the view that at the first place violation of the provisions against the company which flouted the provision of the Companies Act against it and would not be available as a ground



is a company to deny its liability to discharge the financial facility extended to company. Furthermore, present is not the case where the Respondent has not extended the financial facility as it stood only as a Corporate Guarantor qua the financial facility extended to principal borrower. In the wake, we do not find any substance in the plea raised on behalf of the Respondent.

**18.** As far as the plea regarding non-institution of the CIRP qua the principal borrower is concerned, it is *stare decisis* that the CIRP can be initiated both qua Principal Borrower and Corporate Guarantor simultaneously. The position could be well settled in the judgment of Hon'ble Supreme Court in ***Laxmi Pat Surana*** (ibid).

**19.** Thus, none of the submissions put forth on behalf of the Corporate Guarantor can be countenanced to nix the admission of the petition. As can be seen from the provisions of Section 7(3) of IBC, 2016, while filing an application under Section 7 of IBC, 2016, the creditor is required to furnish the record of default with the information utility or such other record/ evidence of default; the name of the IP proposed to act as IRP/RP, and any other information as may be specified by the Board. In the present case, the Applicant could already draw our attention to the balance-sheet of the Principal Borrower to show the liability. Further our attention is drawn to corporate guarantee deed dated 14.06.2013 in terms of which the Corporate Guarantor had undertaken the liability to repay the amount of debt/financial facility extended to Principal Borrower in the event of failure of the Principal Borrower to repay the same. The relevant excerpt of the corporate guarantee deed reads thus: -



“[...]

*Whereas the Guarantor has requested the Bank to grant financial assistance to the Borrower by way of facilities including guarantees subject to the specific condition that the Guarantor shall unconditionally and irrevocably guarantee the repayment of all amounts advanced and all liabilities guaranteed by the Bank as also all amounts which may be advanced and all guarantees which may be issued by the Bank from this day.*

*And whereas in consideration of the Bank’s agreeing to do so and in consideration of the Bank’s agreeing at the request of the Guarantor not to require immediate payment of any amount now due from the Borrower to the Bank and in consideration of any sums which may hereafter be advanced by the Bank to the Borrower, and in consideration also of the Bank’s hereafter granting financial accommodation to the Borrower by way of renewal of facilities from time to time at the discretion of the Bank without previous intimation to the Guarantor of such renewal the guarantor has agreed to guarantee payments of all amounts due by the Borrower to the Bank subject to the terms and conditions hereinafter set forth, and whereas the Bank has agreed thereto.*

[...]”

**20.** From the aforementioned, it is clear that the Corporate Guarantor had taken/ accepted liability to repay the amount of debt accorded by the Applicant Bank to the Principal Borrower.

**21.** As per Part III of the application, the Applicant Bank has proposed the name of Sh. Vivek Parti [Reg. No. IBBI/IPA-001/IP-P00813/2017-2018/11376]



to act as the Interim Resolution Professional qua the Corporate Debtor. The Part III of the application reads thus: -

**PART III**  
**PARTICULARS OF THE PROPOSED INTERIM RESOLUTION**  
**PROFESSIONAL**

1.	Name, Address, E-mail Address and the Registration Number of the proposed Interim Resolution Professional.	Name: Sh. Vivek Parti Address: A 166, 2nd Floor Defence Colony, New Delhi, National Capital Territory of Delhi, 110024 E-mail: v_parti@yahoo.com Regn No: Form 2 signed by Insolvency Resolution Profession is annexed hereto as <b>Annexure -2</b>
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**22.** Our attention is also drawn to the communication dated 20.03.2024 in terms of which the RP namely Sh. Vivek Parti has agreed to act as IRP qua the CIRP. In the communication, he has also declared that no disciplinary proceeding is pending against him. The relevant excerpt of the declaration reads thus: -

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/PA-001/IP-P00813/2017-2018/11376 and that I am currently qualified to practice as an insolvency professional;
- (iii) disclose that I am currently having the following assignments in hand:



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 Process						
1	IRP	NIL				
2	RP	NIL				
3	Liquidator (including voluntary liquidation)	1	1	Advance Home and Personal Care Ltd.	06.10.2021	30.05.2024
4	Authorised Representative	NIL				
Individual Processes						
5	Resolution Professional	14				
6	Bankruptcy Trustee					
7	Any other					

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

**23.** In view of the aforementioned, we are left with no option to admit the captioned petition. Ordered accordingly.

**24. 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.

**25.** As proposed by the Applicant/ FC, Sh. Vivek Parti, IP [Reg. No. IBBI/IPA-001/IP-P00813/2017-2018/11376], is hereby appointed as IRP. It is further ordered that the IRP 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.

**26.** The Applicant/ FC 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.



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

**28.** 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.

**29.** After we dictated the aforementioned order, Mr. Sanjay Kumar Mittal who claimed himself as director qua the Corporate Debtor submitted that two of the directors who passed the resolution to extend the corporate guarantee could commit forgery and fraud with him. On a specific query, he could agree that he was director along with Mr. Vinod Kumar Sharma and Mr. Sanjeev Kumar Sharma i.e. the directors who signed the Board Resolution, in more than 10 companies.

**30.** In the present proceedings as the Corporate Debtor before us has to be identified as a separate person, the present proceeding would not stand in the way of proceedings which Mr. Sanjay Kumar Mittal has instituted.

**31.** Once it is not disputed that Mr. Vinod Kumar Sharma and Mr. Sanjeev Sharma were director qua the Corporate Debtor and they had passed the board resolution, we cannot take a view that such resolution was forged or fabricated.

**Sd/-**

**(REENA SINHA PURI)  
MEMBER (T)**

**Sd/-**

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

*Ashima/ Atul Raj*