

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IB) No.1185/MB-IV/2022**

Under Section 7 of the IBC, 2016

*In the matter of*

MANISH PARDASANI AND ORS

[PAN: AHDPP1965F]

...Financial Creditor

v/s.

ATUL PROJECTS INDIA PRIVATE  
LIMITED

[CIN: U45200MH2007PTC173576]

...Corporate Debtor

**Order Delivered on: 25.07.2023.**

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Financial Creditor:

Mr. Amir Arsiwala a/w Ms.  
Samiksha and Ms. Nupur Shah, Ld.  
Counsel.

For the Corporate Debtor:

Mr. Roop M. Vasudev a/w Mr.  
Yashwant.

**ORDER**

*Per: Prabhat Kumar, Member (Technical)*

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by MANISH PARDASANI AND ORS (“the Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of ATUL PROJECTS INDIA PRIVATE LIMITED, the Corporate Debtor.
  - 1.1. The Company Petition is filed on 11/08/2022 claiming an amount of Rs.7,28,09,697/-, including interest calculated up till 30.06.2022. The Part IV of Form 1 specifies the date of default as 30.07.2019.
2. The Corporate Debtor approached the Financial Creditors that the Corporate Debtor is re-developing a project ("Said Project") wherein the property, being all that piece and portion of Land admeasuring 576.93 square meters registered in the books of the Collector of Land Revenue under Old No. 52, New 1C/455, Old Survey No. 763 Malabar and Cumbala Hill Division and in the books of the Collector of Municipal Rates and Taxes under "D" Ward No. 3521(2) and former Street No. 37A and present Street No. 618 ("Said Property"), will be redeveloped and accordingly, the Corporate Debtor entered into a Memorandum of Understanding ("Said MOU") dated 16.05.2010 with the Owners of the Said Property. Further, the Corporate Debtor represented to the Financial Creditors that one Mr. Deepak Thakkar and Mr. Prasan Thakkar ("Vendors") were interested in Jointly re-developing the Said Property. The Corporate Debtor subsequently approached and induced the Financial Creditors to invest in the Said Project and upon the various assurances and representations by the Corporate Debtors as well as that of the Vendors; an Articles of Agreement (on a franking of INR 100/- dated 15.05.2010) ("Said

AOA") was entered into by and between the Vendors therein; Financial Creditors and Corporate Debtor.

2.1. The Financial Creditors, in terms of the Said AOA, agreed to invest an initial investment amount, being a sum of Rs.6,00,00,000/- (Rupees Six Crores only), in lieu of allotment of one floor in the new building, admeasuring not less than 1350-1400 square feet of carpet area at 18<sup>TH</sup> floor of the new building along-with the car decks for the 18<sup>TH</sup> floor (collectively referred to as the "Said Flat" of the Building that was to be constructed/ developed on the Said Property, and this amount was to be paid in the manner as enumerated in the Said AOA.

2.2. The Financial Creditors invested an initial amount of Rs. Rs.3,00,00,000/- (Rupees Three Crores only) on execution of the Said AOA and the balance sum of its 3,00,00,000/ (Rupees Three Crores only) was required to be paid by the Financial Creditors, subjected to the Corporate Debtors duly complying with all the obligations under the Said MOU including but not limited to obtaining Intimation of Disapproval ("IOD"), Commencement Certificate ("C. C."), execution and registration of an) Agreement for Sale of the Said Flat, etc. The Said AOA categorically records that the Corporate Debtor shall comply with all the obligations under the Said MOU within 06 months from the date of execution of Said AOA.

2.3. That, the Said AOA categorically records that in the event the Corporate Debtor fails to comply with its obligations under the Said MOU and/or fails to enter into a Development Agreement with the Vendors within 06 months from the date of execution of the Said AOA, then the Financial Creditors shall have an option to terminate the Said AOA and the Corporate Debtor shall be liable to return to the Financial Creditors the sum of Rs.3,00,00,000/- (Rupees Three Crores only) so invested by the Financial

Creditors with the Corporate Debtor along-with interest at the rate of 18% per annum.

- 2.4. The Corporate Debtor did not comply with the obligations under the Said MOU and accordingly pleaded to the Financial Creditors not to terminate the Said AOA and remain invested in the Said Project. Pursuant to this, the Corporate Debtor also paid a sum of Rs.1,30,00,000/- (Rupees One Crore Thirty Lakhs only) vide Cheque bearing No. 837304 towards interest on the amount Invested by the Financial Creditors on 05.11.2011.
- 2.5. That, since the payment of Rs.1,30,00,000/- (Rupees One Crore and Thirty Lakhs only), the Financial Creditors have been continuously and regularly calling upon either the Corporate Debtor or the Vendors as to the further progress of the Said Project including obtaining IOD and CC; however, time and again the Corporate Debtor has been only expressing the various hurdles faced in complying with the obligations under the Said MOU.
- 2.6. Subsequently, the Corporate Debtor is stated to have filed an Application dated 04<sup>th</sup> July 2019 with the Senior Police Inspector of MIDC Police Station to register a Complaint against the Vendors for siphoning of money. The aforementioned Complaint enumerates various dealings by and between the Corporate Debtor and the Vendors, to which the Financial Creditors was neither a party nor concerned with the same. The Corporate Debtor has vide the aforementioned Complaint has acknowledged that the Corporate Debtor has paid certain monies directly to the Vendors on behalf of the Financial Creditors.
3. The Corporate Debtor in its reply dated 06.12.2022 stated that the present petition is barred by the law of limitation as the termination of the AOA dated 16.05.2010 is on 30.07.2017 and the last date of filing the application was 29.07.2022 claim is barred; the AOA is neither stamped nor registered and has

not been executed by the Corporate Debtor and is executed by the Vendors therein and the same is in the nature of speculation, Corporate Debtor is not signatory to AOA; Undisputedly, cheque for the amount of Rs.3,00,00,000/- was paid by Mumbai Wines and Traders Pvt. Ltd., of which one of the Applicant is a Director, and the refund of Rs. 1,30,00,000/- was made to Mumbai Wines & Traders Private Limited, in view of the specific directions by the Director of Mumbai Wines & traders Private Limited. The balance amount was to be paid by the Vendors, and the liability to return the balance amount by the Corporate Debtor was to the Director of Mumbai Wines & traders Private Limited; that the payment of Rs.1,70,00,000/- was purportedly made to Mr. Deepak Thakkar by the Vendors to Mr. Deepak Thakkar and vision infrastructure Pvt limited as per direction of the applicant Mr. Manish Pardasani.

4. The Financial Creditor has filed Affidavit in Rejoinder dated 09.01.2023 stating that the present petition is within the limitation period in view of decision of Hon'ble Supreme Court in *Suo-moto* writ petition (c) No 03/2020 the period from 14.03.2020 to 28.02.2022 shall be excluded for the purpose of limitation; insufficiency of stamp on AOA cannot be a ground for consideration of a petition u/s 7 of the Code; the initial payment was made via M/s Mumbai Wines & traders Private Limited on behalf of financial creditor; and Rs.1.70 Crore was made to the Mr. Deepak Thakkar on temporary basis for development works by the Corporate Debtor and not in discharge of debt of the Financial Creditor. It is stated that the Corporate Debtor has a mala fide and deceitful conduct; the Corporate Debtor has numerous times failed to comply with obligations under contract executed between the parties.

5. The Corporate Debtor has filed Affidavit in Sur Rejoinder dated 28.02.2023, it is stated that the contention of financial creditor in relation to letter of Mr. Manish Pardasani being forged is false and the forensic report has been obtained on the basis of scan copy of the documentary evidence. The Corporate Debtor has also got the said letter examine from the forensic expert who found that the signature on the said letter are of Mr. Manish Pardasani when compared with other documents executed by him.
6. The Financial Creditor has filed Affidavit in Sur Sur Rejoinder dated 14.03.2023 that the corporate Debtors submission in relation to letter of Mr. Manish Pardasani are baseless, and the advocates for the financial creditor had inspected the original undated letter and it seemed like the same was a fresh page on the given date. It would be pertinent to state herein that, a 2011 document, would have turned a bit torn or pale due to the age of document, however, it seemed to be as if it was freshly taken out. It is further stated that the mala fide and deceitful conduct of the Corporate Debtor to first Fabricate and forge a document and subsequent thereto, actually getting an inaccurate Corporate Debtor Forensic Report which is nothing but a failed attempt to wriggle out its contractual obligations to pay the Financial Creditor.
7. We heard both the counsel and perused the material available on record.
  - 7.1. The fact of an amount of Rs.1.70 Crore remaining due from the Corporate Debtor on the date of payment of Rs.1.30 Crores made in November, 2011 is not in dispute. However, it is the case of Corporate Debtor that an amount of Rs.3 Crore was paid by the Corporate Debtor to the vendors on instruction of Mr. Manish Pardasani. On perusal of the Bank statement of the Corporate Debtor, it is seen that payments of Rs.1.70 Crore on different dates from May, 2010, July 2011, and August, 2011 were made to Mr. Deepak Thakkar and Vision Infrastructure Pvt Limited. It follows therefrom that this payment of Rs.1.70 Crore was made prior to Rs.1.30

Crore. If, these facts are analysed in the light of undated letter of Mr. Manish Pardasani relied by the Corporate Debtor, this bench is unable to agree with the Corporate Debtor's contention that this Rs. 1.70 was paid Mr. Deepak Thakkar and vision infrastructure Pvt limited on behalf of Applicant. If, that is so, why the Corporate Debtor paid Rs.1.30 Crore to M/s Mumbai Wines & traders Private Limited in case the applicant had directed them to pay the whole of Rs.3 Crore to Mr. Deepak Thakkar and Vision Infrastructure Pvt Limited. Accordingly, this bench does not find any merit in the argument based on the undated letter Mr. Manish Pardasani, the authenticity is also in challenge by the applicant, that the debt has been fully paid.

7.2. The Financial Creditor has also relied upon the decisions in the case of *Pioneer Urban Land And Infrastructure Limited & Anr. Vs. Union of India (2019) 8 SCC 416*, *M/s. Larissa Builders LLP v/s Shree Shakti Consultancies Ltd, Orator Marketing Pvt. Ltd. Vs. Samtex Desinz (2023) 3 SCC 753*, *Shivam Agriols Pvt. Ltd. Vs. Shree Krishna Vanaspati Industries Pvt. Ltd. 2023 SCC Online NCLAT 233* to contend that the amount advanced to the Corporate Debtor has a commercial effect of borrowing, accordingly, the debt qualifies to be a financial Debt ; *Arun Goradia vs. Manish Jaisukhlal Shah 2009 (1) Mh.L.J.611* to contend that the developer has a continuous obligation, hence the default continues; *Mr. Kolla Koteswara Rao Vs. Dr. S.K. Srihari raju & Ors.* on interest component; *Praful Nanji Satra Vs. Vistra ITCL (India) Ltd. & Ors. 2022 SCC Online NCLAT 336* to contend that insufficiency of stamp duty on the document evidence debt is not relevant in sec 7 proceedings; *M/s. KVR Industries Pvt. Ltd. Vs. M/s P.P Bafna Ventures Pvt. Ltd* on forged signatures; *Before Hon'ble Supreme Court Suo Moto Writ Petition No. 03 of 2020* extending limitation period on account of COVID-19; *Smartworks Coworking Spaces Pvt. Ltd. vs. Turbot Hq India Pvt. Ltd. 2023 SCC Online*

*NCLAT 234* to contend that if Corporate Debtor accepted and agreed upon Agreement, mere fact that not engrossed on stamped papers shall have no advance consequences on claim; *Piramal capital & Housing Finance Ltd. Vs. Manpreet Developers Pvt. Ltd CP IB 700 of 2022*; *Bank of India vs. Maharashtra Ayurved Centre Pvt. Ltd CP IB 1263 of 2022.*; *GPR Power Solutions (P) ltd. Vs. Supriyo Chaudhuri 2021 SCC Online SC 1328* to contend that Hon'ble Supreme Court in Suo Moto Writ Petition had ordered exclusion of COVID 19 period for determination of limitation.

7.3. As regards, insufficiency of stamp duty on the AOA, this bench feels that this issue is not relevant in determination of the question u/s 7 of the Code so long as the debt and default exist.

7.4. On the issue of limitation, this bench finds that date of default is stated as 30.07.2019. Accordingly, the period of three years expires on 29.07.2022. The financial creditor has relied upon the decision in the case of *GPR Power Solutions (P) Ltd vs Supriyo Chaudhuri 2021 SCC Online SC 1328* wherein the Hon'ble Supreme Court held that in computing limitation for any application, the period from 22.03.2020 till 14.03.2021 is to be excluded. However, in this case the application was filed between these dates and accordingly the period of 90 days was allowed from after 14.03.2021 to determine the period of limitation. This bench has held in the case of *Piramal Capital Housing Finance Limited Vs. Manpreet Developers Private Limited* in CP.IB.700/2022 vide order dated 11.01.2023 that the whole period i.e. 15.03.2020 to 28.02.2022 shall be excluded for the purpose of determination of limitation. Following this decision, this bench finds that the petition is in limitation.

8. Considering the facts placed before us and the fact that, the Corporate Debtor owes the financial debt in excess of Rs.1 Crore, which is in default, this bench is of the view that in such circumstances, it is imperative that the Corporate

Insolvency process to be initiated in the matter of the Corporate Debtor. The petition is complete in all aspect. Since, the debt and default exist, this bench is of the view, that the present case deserves to be admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016.

9. The Financial Creditor has proposed the name of Interim Resolution Professional Mr. Ashish Kanodia, an Insolvency Professional.

### ORDER

10. This Application being C.P. (IB) No. 1185/NCLT/MB/C-IV/2022 filed by MANISH PARDASANI AND ORS (“the Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of ATUL PROJECTS INDIA PRIVATE LIMITED, the Corporate Debtor is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
- a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor 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 corporate debtor 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 corporate debtor 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 possession of the corporate debtor.

- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
  - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints Mr. Ashish Kanodia, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00634/2017-2018/11106], having registered address at 5, Hetal Apt, 1st Floor, Above Arti Scan Centre, N. S. Road, Mulund(W) ,Mumbai City, Maharashtra ,400080; email- [ashishkanodia@abnjca.com](mailto:ashishkanodia@abnjca.com) as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- VII. The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public

notice and inviting claims, in case the Funds are not found available with the Corporate Debtor by the IRP. The said amount shall be treated as Interim Finance provided by the Financial Creditor. The expenses, so incurred by IRP, are subject to ratification by the Committee of Creditors (CoC).

VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

IX. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Designated Registrar is to be submitted today.

**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**

**25.07.2023**

**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**