



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA NO.340/2025 IN CP (IB) NO.330/ALD/2018

*(An application under Section 60(5) of the Insolvency and Bankruptcy Code,
2016 R/w Rule 11 of NCLT Rules, 2016)*

IN THE MATTER OF:

SOUTH WEST MINING LIMITED

.....Applicant

Versus

MR. BHUVAN MADAN (RESOLUTION PROFESSIONAL)

For Jaiprakash Associates Limited

Having Address At:

A-103 Ashok Vihar Phase-3 (Behind Laxmi Bai College)
New Delhi, National Capital Territory of Delhi, 110052

.....Respondent

AND IN THE MATTER OF:

ICICI BANK LIMITED

.....Financial Creditor

Versus

JAIPRAKASH ASSOCIATES LIMITED

.....Corporate Debtor

Order pronounced on 17.03.2026

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Spandan Biswal with Sh. Shivendra Pandey & Sh. Pranay Kumar, Advs. : For the Applicant

Sh. Anoop Rawat with Sh. Sagar Dhawan, Sh. Vaijayant Paliwal, Sh. Aditya Marwah, Sh. Nikhil Mathur, Sh. Ahkam Khan, : For the Res./ RP

-Sd-

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Sh. Udbhav Nanda, Ms. Kirti Gupta,
Ms. Varnika Taya, Ms. Rashi Sharma,
Ms. Diksha Sharma, Ms. Ananya Khanna,
Ms. Aditi Rathore, Ms. Shreya Gupta &
Ms. Gunjan Jadwani, Advs.

ORDER

1. The instant Application has been filed on 09.04.2025 by South West Mining Limited, (*hereinafter referred to as “Applicant”*) against the M/s Jaiprakash Associates Limited, i.e., Corporate Debtor (*hereinafter referred to as “Respondent”*), under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as “the Code”*) read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking inter alia the following prayers:

“

- i. Take into consideration overall facts of the case, this Hon’ble Tribunal may be pleased to admit the current Interlocutory Application and condone the delay in filing the claim before the Resolution Professional.*
- ii. This Hon’ble Adjudicating Authority be pleased to direct the Resolution Professional to admit the claim dated October 29, 2024 submitted by the Applicant.*
- iii. In the alternative to prayer ii., this Hon’ble Adjudicating Authority be pleased to direct the Resolution Professional to consider and verify the Applicant’s claim and decide accordingly; and*
- iv. Any other relief(s) that this Ld. Adjudicating Authority deems fit.”*



2. The Applicant, herein, submits that an Agreement to Sell dated 21.10.2022 was executed between the Applicant, the Corporate Debtor and Jaypee Infra Ventures Private Limited, in respect of the purchase of land bearing Khasra No. 116, situated at Village Kaun Khera, Agra. The total sale consideration for the said transaction was agreed at Rs. 17,81,64,000/-, out of which the Applicant had advanced a sum of Rs. 6,00,00,000/- to the Corporate Debtor. It is further submitted that the said Agreement to Sell was subsequently amended on 18.10.2023, whereby the tenure of the agreement was extended to a period of two years or until the date of registration of the sale deed, whichever occurred earlier. As per the terms of the agreement, it was also stipulated that the amount advanced by the Applicant would be refundable upon expiry of the term of the agreement along with interest at the rate of 10% per annum.
3. Pursuant to the order of this Tribunal dated 03.06.2024, the Corporate Debtor was admitted into the Corporate Insolvency Resolution Process (CIRP), and Mr. Bhuvan Madan was appointed as a Resolution Professional (RP). Thereafter, the RP made a public announcement on 06.06.2024, inviting submission of claims from all creditors of the Corporate Debtor on or before 17.06.2024. In response thereto, the



Applicant submitted its claim in Form C dated 29.10.2024 for an amount of Rs. 6,37,21,311/-, along with the relevant supporting documents.

4. The Applicant further submits that the existence of the debt is also substantiated from the accounts of the Corporate Debtor as on 31.03.2023. It is contended that the Applicant, being a property purchaser who had made an advance payment towards the proposed transaction, is to be treated as a *Financial Creditor*, and the amount so advanced is to be regarded as a borrowing by the Corporate Debtor. In support of this contention, reliance has been placed upon the judgment of the Hon'ble NCLAT, Chennai Bench dated 04.09.2023 in the matter of *Yenkat Rao Marpina vs. Vemuri Ravi Kumar & Anr.*, Company Appeal (AT) (CH) (Ins.) No. 134 of 2022.
5. The Applicant also avers that the delay of 134 days in filing the claim before the RP was neither deliberate nor intentional and occurred due to the failure on the part of the RP in the discharge of his duties as detailed under Regulation 13 of the CIRP Regulations. Upon submission of the claim, the Applicant made repeated requests to the RP to consider the claim. However, to date, the Applicant has received no response from RP in respect to its claim dated 29.10.2024. Meanwhile, the RP has continued to admit belated claims even after the filing of the Applicant's



claim, which is evident from the updated lists of claims published on 10.12.2024, 10.01.2025 and 20.02.2025.

6. The Applicant has also placed reliance on the judgment of the Hon'ble NCLAT in *Puneet Kaur vs. K.V. Developers Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No. 390 of 2022, to contend that even if a claim is not filed within the stipulated time, the same ought to be reflected in the Information Memorandum as a liability of the RP where such liability is evident from the records of the Corporate Debtor. The Applicant lastly submits that the Applicant, being a financial creditor to the Corporate Debtor, if deprived of his right to participate in the CIRP, will cause grave injustice to the Applicant.

REPLY FILED ON BEHALF OF RESPONDENT

7. The Respondent filed a reply on 21.07.2025, denying all the averments made by the Applicant on the following grounds as detailed herein under:
 - a. The Respondent at the outset submits that the claim of the Applicant stands collated, verified and admitted in full under the category of "other creditor" and the same remains updated in the list of creditors of the Corporate Debtor. The Respondent contends that the admission of the Applicant's claim stands duly communicated vide email dated 04.06.2025. Therefore, since the claim amount of the Applicant has



already been admitted, the relief in the present application is to be rendered infructuous and dismissed in limine.

- b.** With respect to the averment of the Applicant being a financial creditor, the Respondent clarifies that, as per the agreement to sell, the Corporate Debtor, in the event of termination of the Agreement to Sell, was required to return the entire advance along with interest. However, the Corporate Debtor was unable to fulfil the terms of the Agreement to sell. Furthermore, as per the records of the Corporate Debtor, it was understood that the Respondent was unable to execute the sale deed with respect to the aforementioned land parcels.
- c.** The Respondent further submits that as aforesaid advance transferred by the Applicant to the Corporate Debtor in terms of an Agreement to Sell does not meet the requirement of disbursement against the consideration for the time value of money and also does not fulfil the essentials under Section 5(8) of the Code. As per records of the Corporate Debtor, the amount advanced by the Applicant is treated as "*Current liabilities from other Creditors*".
- d.** The Respondent also contends that the Applicant, itself in para 23 of its averments, admits that it is not a homebuyer and as per Explanation under Section 5(8)(f) of the Code, any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing. Thus, under the Code the recognition of a homebuyer/property buyer as a 'financial creditor' accrues to them on account of them being an 'allottee' under a "real estate project". The Code further provides that the expressions, "allottee" and "real estate project" have the meanings assigned to them in clauses (d) and (zn) of section 2 of the Real Estate



(Regulation and Development) Act, 2016 (16 of 2016) ("RERA Act").

- e. The Respondent vehemently contends that in the present case, the Applicant cannot be classified as an 'allottee', since no development was proposed /Intended to be carried out thereon on the land in question by the Corporate Debtor prior to its sale to the Applicant and neither was the said land part of a project/scheme in relation to development of land into plots or apartments. apartment. It is further submitted that the land proposed to be sold by the Corporate Debtor to the Applicant was on a standalone basis. Accordingly, in terms of the Code read with RERA Act, it is submitted that the aforesaid land parcels that were proposed to be sold by the Corporate Debtor to the Applicant were not part of a 'real estate project'. Therefore, the Applicant does not qualify as an 'allottee' in respect of the land proposed to be sold by the Corporate Debtor in terms of the Agreement to Sell.
- f. In support of his contentions, the Respondent relies on the judgment passed by Hon'ble NCLAT in *Naman Infradevelopers Private Limited v. Metcalfe Properties Private Limited (Company Appeal (AT)(Ins) No. 74 of 2024)*, wherein the Appellant was held to be a speculative buyer and thus being outside the purview of Section 5(8) of the Code.
- g. With respect to the averments of the Applicant alleging the RP in failure of discharge of duties, the Respondent contends that the proviso to Regulation 6A provides that a public announcement is deemed to be a communication to the creditor in cases where communication to the creditor is not possible. Since a public



announcement was duly made by the RP, the said ground becomes obsolete.

REJOINDER ON BEHALF OF THE APPLICANTS

8. The Applicant filed rejoinder on 21.08.2025, in response to the Respondent's contention placed and submitted as follows:

- a.** The Applicant submits that his claim was admitted vide correspondence dated 04.06.2025, but was miscategorised and admitted as "Other Creditors" rather than as "Financial Creditor". The advance received by the Corporate Debtor was, in commercial substance and had legal effect as a borrowing.
- b.** The Applicant submits the erroneous interpretation of Section 5(8) of the Code undertaken by the Respondent and further relies on the judgment passed by the Hon'ble Supreme Court in Kotak Mahindra Bank Limited v. A. Balakrishnan & Anr. (2022) 9 SCC 186. Subsequently, the portrayal of the Applicant as a "speculative buyer" by the Respondent is wholly misleading, as the Applicant had entered into a bona fide transaction with the Corporate Debtor with the intent to acquire land for legitimate business and commercial purposes.
- c.** The Applicant submits that the authority of the Respondent/RP under Regulation 13 of the CIRP Regulations, 2016 is limited to the collation and verification of claims and does not extend to altering or changing the nature of the claim as submitted by the Applicant.
- d.** The Applicant lastly submits that the recognition or entry of the claim in the books of accounts of the Corporate Debtor cannot determine the nature of the debt, which, according to the terms of the Agreement to Sell, constitutes a financial debt. It is also stated that the non-



execution of the sale deed pursuant to the Agreement to Sell does not affect the claim of the Applicant, as the obligation of the Corporate Debtor to repay the amount advanced by the Applicant continues to subsist.

9. It is noted that the Applicant had filed its written submission on 15.02.2026, which has been taken on record and is not repeated herein for the sake of brevity.

FINDINGS AND ORDER

10. Upon hearing the submissions of the parties and perusing the material available on record, it has been observed that the principal grievance of the Applicant pertains to the admission of its claim submitted in Form C dated 29.10.2024 before the RP and the consequential condonation of delay in filing the same. The Applicant bases its claim on the amount advanced pursuant to an Agreement to Sell dated 21.10.2022, executed between the Applicant, the Corporate Debtor/Respondent, and a subsidiary of the Corporate Debtor.
11. Under the said Agreement to Sell, the Applicant had agreed to purchase land bearing Khasra No. 116, Village Kaun Khera, Agra, for a total sale consideration of Rs. 17,81,64,000/-, against which an amount of Rs. 6,00,00,000/- was advanced by the Applicant to the Corporate Debtor/Respondent. It is the case of the Applicant that despite receipt of the said advance, the Corporate Debtor/Respondent failed to execute the



sale deed in accordance with the terms of the Agreement, and consequently, the Applicant became entitled to a refund of the said amount.

12. It has been taken into consideration that the Applicant herein has filed its claim under Form C, asserting that the transaction constitutes a financial debt within the meaning of Section 5(8) of Code, primarily relying upon Clause 14.4 of the Agreement, which provides for refund of the advance amount along with interest in the event of termination or expiry of the agreement.
13. Upon perusal of the submissions on record, it is further noted that the Applicant has contended that despite having duly submitted its claim before the RP, the same was neither admitted nor was any communication provided to the Applicant regarding the status or outcome of the claim verification process.
14. Per contra, the Corporate Debtor/Respondent has submitted that the claim of the Applicant has, in fact, been verified and admitted, although under the category of “*Other Creditors*”, and not as a Financial Creditor, as the nature of the transaction does not satisfy the requirements of a financial debt under Section 5(8) of the Code. It has further been contended that the Applicant’s assertion of being categorised as an “*allottee*” is misconceived. In this regard, the Respondent submits that



no development activity was proposed or intended to be undertaken by the Corporate Debtor on the land in question prior to its proposed sale to the Applicant. The said land was not part of any project or scheme for development into plots or apartments. Rather, the land proposed to be sold to the Applicant was on a standalone basis. Consequently, the Applicant cannot be regarded as an “*allottee*”, nor can the land in question be considered as forming part of a “*real estate project*” within the meaning of the provisions of the Real Estate (Regulation and Development) Act, 2016.

15. Having considered the submissions of the parties and examined the documents placed on record, it is observed that the Agreement to Sell dated 21.10.2022, particularly Recital Clause (D), clearly stipulates that the purchase of the said parcel of land was intended for the Applicant’s own use. In view of the said stipulation, we are of the opinion that the transaction between the parties is essentially in the nature of a contract for the sale of immovable property.
16. For a claim to qualify as a financial debt under Section 5(8) of the Code, the disbursal must be against consideration for the time value of money, which is the foundational element of a financial transaction. In the present case, the amount of Rs. 6 Crores advanced by the Applicant was not disbursed as a loan or financial accommodation but was paid as



advance consideration towards the purchase of land. Therefore, the said payment cannot be construed as a financial transaction undertaken for the consideration of the time value of money.

- 17.** We are of the view that the reliance of the Applicant on Clause 14.4 of the Agreement, which provides for refund of the advance along with interest at the rate of 10% per annum upon termination or expiry of the agreement, to contend that the transaction has the commercial effect of borrowing, cannot be accepted. The stipulation for refund, along with interest in the event of non-completion of the transaction, is merely incidental and ancillary to the principal transaction of the sale of land and does not alter the fundamental character of the arrangement. The mere existence of such a clause cannot convert a contractual arrangement for the sale of immovable property into a financial borrowing within the meaning of Section 5(8) of the Code.
- 18.** Further, we find merit in the submission of the Respondent that the Applicant cannot be treated as an allottee within the meaning of the Code read with the provisions of RERA. The land proposed to be sold to the Applicant was on a standalone basis, and therefore, the transaction does not fall within the scope of Section 5(8)(f) of the Code, which recognises amounts raised from allottees in a real estate project as financial debt.



- 19.** Accordingly, the Applicant fails to satisfy the requirements necessary to be treated as a Financial Creditor, and the contention of the Applicant seeking classification of its claim as a financial debt is legally untenable.
- 20.** It is, however, pertinent to note from the submissions of the Respondent and the material placed on record that the claim submitted by the Applicant vide Form C dated 29.10.2024 for an amount of Rs. 6,37,21,311/- has already been verified and admitted by the Respondent under the category of “Other Creditors”, and the same was communicated to the Applicant vide email dated 04.06.2025. Thus, as per records, the claim of the Applicant has not been rejected but has been admitted in accordance with its nature, upon verification of the books of accounts and supporting documents by the RP.
- 21.** In view of the above facts and circumstances, the primary grievance of the Applicant regarding admission of its claim already stands addressed. The treatment of the admitted claim of the Applicant shall be governed in accordance with the provisions of the approved Resolution Plan, and the Applicant shall be entitled to such treatment or distribution as may be provided therein for the category under which the claim has been admitted.



22. Accordingly, since the claim of the Applicant already stands admitted by the Respondent, the relief sought in the present Application does not survive for further adjudication.
23. Therefore, the present I.A. No. 340 of 2025 stands dismissed as per the aforesaid terms.

-Sd-
(Ashish Verma)
Member (Technical)

-Sd-
(Praveen Gupta)
Member (Judicial)

Date: 17.03.2026