

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition CP (IB) No. 166/KB/2023

An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

**South North Projects LLP
[LLPIN: AAF-8456]**

... Financial Creditor/ Applicant.

Verses

**Avaneesh Infratech Private Limited
[CIN: U45400WB2014PTC200982]**

... Corporate Debtor/ Respondent.

Date of Hearing: November 21, 2023.

Date of Pronouncement: December 12, 2023.

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI D ARVIND, MEMBER (TECHNICAL)

Appearance:

For the Financial Creditor:

Ms. Meenakshi Manot, Adv. and Mr. Arpit Choudhary, Adv.

For the Corporate Debtor:

Mr. Sourojit Dasgupta, Adv. and Mr. Ajay Kumar Agarwal, PCS

ORDER

Per Bidisha Banerjee, Member (Judicial):

1. This Court is congregated through hybrid mode.
2. Heard the Ld. Counsels for both parties.

Brief Facts of the case:

3. This instant application is filed under Section 7 of the Insolvency and Bankruptcy Code, for brevity "I&B Code", read with Rule 4 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, by "South North Projects LLP", registered office at:16 , Netaji Subhas Road, Kolkata - 700001, hereinafter referred to as "Financial Creditor"

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(“Applicant”/ “FC”) against “Avaneesh Infratech Private Limited”, registered office at P-411/16, Hemanta Mukhopadhyay Sarani, Kolkata – 700029, hereinafter referred to as “Corporate Debtor” (“Respondent”/ “CD”) seeking direction from this Adjudicating Authority to initiate Corporate Insolvency Resolution Process (for brevity “CIR Process”/ “CIRP”) in respect of the Corporate Debtor.

4. The Corporate Debtor was incorporated on March 13, 2014, having the Authorized Share Capital of Rs. 10,00,000/- only and the Paid-up Capital of Rs.10,00,000/- only (**MCA Master Data of the Corporate Debtor is annexed at Page 27 as Annexure “B” to the Application**).
5. It is claimed that the amount in default is of Rs. 1,91,00,000/-. The Interest due on such amount as claimed that from 26.02.2017 to 31.03.2021 at the rate of 24% per annum i.e., of Rs. 5,64,16,254/- on which 10,00,000/- was received from the Corporate Debtor from the period of 19.05.2023 to 12.06.2023. **The total amount claimed to be in default is Rs. 7,45,16,254/- and the Date of Default is claimed as March 17, 2023.**

Submissions of the Learned Counsel for the Financial Creditor, herein:

6. At request of the Corporate Debtor the Financial Creditor had agreed to provide a business loan/ investment aggregating a sum of **Rs. 1.5 Crore** to the Corporate Debtor, on its request for the purpose of conducting business during the period of 25.02.2016 to 01.03.2016. A copy of the bank statement in support of disbursement is annexed at page 58 as Annexure “E”. It was verbally agreed between the parties that on or about 15.02.2017 a sum of Rs. 2.5 Crore will be refunded by the Corporate Debtor to the Applicant which would be deemed to be the return on the investment/loan of the amount of Rs. 1.5 Crore.
7. That, M/s 7 Senses Infrastructure Pvt. Ltd., a group company/sister concern of the Corporate Debtor, agreed to secure the return on investment of the loan given by the Financial Creditor to the Corporate Debtor, will appear from the

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Registered Deed of Mortgage dated 26th February 2016, executed by and between M/s 7 Senses Infrastructure Pvt. Ltd. (Mortgagor) and Financial Creditor (Mortgagee). The copy of said registered Deed is annexed to pages 59 – 108, as Annexure “F” to this application will show that several immovable properties as mentioned in Schedule A to L of the Registered Deed of mortgage were mortgaged as security.

8. Vide two agreements for sale dated 26.02.2016, annexed at Page 219 – 260 as Annexure “H”, the Corporate Debtor agreed to sell two Flats situated under Gariahat Police Station, to the Financial Creditor for a total consideration of Rs. 2.5 Crore at the time of execution and registration of deeds of conveyance.
9. It is alleged that the Financial Creditor through letters dated 14.08.2018 and 10.10.2018 requested the Corporate Debtor to execute and register the deeds of conveyance and hand over the possession of the said two flats to the Financial Creditor. However, the Corporate Debtor assured the Applicant to execute and register the deeds of conveyance in respect of the said flats and hand over the same accordingly but in vain.
10. It is further alleged that the Corporate Debtor has sold the said two flats in breach of the terms and conditions of the said agreements for Sale on 04.02.2019 and 25.09.2017 to third parties. Certified copy of the Agreements for sale is annexed at Page 268 – 360 as Annexure “K”.
11. That, after several reminders, the Corporate Debtor paid a sum of Rs. 59 Lakh (Rs. 30 Lakh and Rs. 29 Lakh) in several tranches which were adjusted against the agreed amount of Rs. 2.5 Crore as on 25.02.2017. The Financial Creditor claims that 24% of interest up to 31.03.2023 upon the 2.5 Crore has been calculated that is amounting to Rs. 5,69,16,254/-, in which Rs. 15 Lakh was paid by the Corporate Debtor from 19.05.2023 to 12.06.2023. The Financial Creditor has provided the chart showing the details of payment received from the Respondent and the calculation of total amount due, annexed at Page 409 and 410 as Annexure “U” and “V”, as extracted hereunder for clarity:

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609 Annexure - U

RECEIVABLE from AVANEESH INFRA TECH PVT. LTD.

| AMOUNT | FROM DATE | TO DATE | RATE OF INTEREST | INTEREST AMOUNT | Received | Balance Due & Payable (Principle + Interest) |
|-------------|-----------|-----------|------------------|--------------------|------------------|--|
| 2,33,86,207 | 23-May-17 | 20-Jul-17 | 24% | 9,07,257 | | 2,42,93,464 |
| 2,42,93,464 | 21-Jul-17 | 05-Aug-17 | 24% | 2,55,581 | 5,00,000 | 2,40,49,045 |
| 2,40,49,045 | 05-Aug-17 | 10-Oct-17 | 24% | 10,43,663 | 5,00,000 | 2,45,92,707 |
| 2,45,92,707 | 11-Oct-17 | 13-Oct-17 | 24% | 48,512 | 2,00,000 | 2,44,41,219 |
| 2,44,41,219 | 14-Oct-17 | 10-Nov-17 | 24% | 4,49,986 | 2,00,000 | 2,46,91,205 |
| 2,46,91,205 | 11-Nov-17 | 28-Aug-18 | 24% | 47,24,476 | 5,00,000 | 2,89,15,681 |
| 2,89,15,681 | 29-Aug-18 | 07-Feb-19 | 24% | 30,99,127 | 5,00,000 | 3,15,14,808 |
| 3,15,14,808 | 08-Feb-19 | 11-Feb-19 | 24% | 82,888 | 5,00,000 | 3,10,97,697 |
| 3,10,97,697 | 12-Feb-19 | 31-Mar-19 | 24% | 9,81,494 | | 3,20,79,191 |
| 3,20,79,191 | 01-Apr-19 | 31-Mar-20 | 24% | 77,20,099 | | 3,97,99,290 |
| 3,97,99,290 | 01-Apr-20 | 31-Mar-21 | 24% | 95,51,830 | | 4,93,51,120 |
| 4,93,51,120 | 01-Apr-21 | 31-Mar-22 | 24% | 1,18,44,269 | | 6,11,95,389 |
| 6,11,95,389 | 01-Apr-22 | 16-Mar-23 | 24% | 1,40,83,322 | 5,00,000 | 7,47,78,711 |
| 7,47,78,711 | 17-Mar-23 | 31-Mar-23 | 24% | 7,37,543 | | 7,55,16,254 |
| | | | | 5,69,16,254 | 64,00,000 | 7,55,16,254 |

Principle Amount as on 26-02-2016 1,50,00,000

Agreed Amount as per agreement as on 25-02-2017 2,50,00,000

Less : Amount Received 59,00,000 1,91,00,000


Interest up to 31-03-2023 5,69,16,254

Less : Amount Received as Interest 5,00,000

Less : Amount Received as Interest from 19-05-2023 to 12-06-2023 10,00,000 5,54,16,254

Outstanding Amount 7,45,16,254

S. S. Kumar Choudhary
SOUTH NORTH PROJECTS LLP
Authorised Signatory



Annexure - V 610

RECEIVABLE from AVANEESH INFRA TECH PVT. LTD.

| AMOUNT | FROM DATE | TO DATE | | Received | Agreed Amount to be refunded |
|-------------|-----------|-----------|--|----------|------------------------------|
| 1,50,00,000 | 26-Feb-16 | 25-Feb-17 | | | 2,50,00,000 |

| AMOUNT | FROM DATE | TO DATE | RATE OF INTEREST | INTEREST AMOUNT | Received | Balance Due & Payable (Principle + Interest) |
|-------------|-----------|-----------|------------------|--------------------|------------------|--|
| 2,50,00,000 | 26-Feb-17 | 06-May-17 | 24% | 11,50,685 | 10,00,000 | 2,51,50,685 |
| 2,51,50,685 | 07-May-17 | 08-May-17 | 24% | 33,075 | 15,00,000 | 2,36,83,760 |
| 2,36,83,760 | 09-May-17 | 22-May-17 | 24% | 2,02,447 | 5,00,000 | 2,33,86,207 |
| 2,33,86,207 | 23-May-17 | 20-Jul-17 | 24% | 9,07,257 | | 2,42,93,464 |
| 2,42,93,464 | 21-Jul-17 | 05-Aug-17 | 24% | 2,55,581 | 5,00,000 | 2,40,49,045 |
| 2,40,49,045 | 06-Aug-17 | 10-Oct-17 | 24% | 10,43,663 | 5,00,000 | 2,45,92,707 |
| 2,45,92,707 | 11-Oct-17 | 13-Oct-17 | 24% | 48,512 | 2,00,000 | 2,44,41,219 |
| 2,44,41,219 | 14-Oct-17 | 10-Nov-17 | 24% | 4,49,986 | 2,00,000 | 2,46,91,205 |
| 2,46,91,205 | 11-Nov-17 | 28-Aug-18 | 24% | 47,24,476 | 5,00,000 | 2,89,15,681 |
| 2,89,15,681 | 29-Aug-18 | 07-Feb-19 | 24% | 30,99,127 | 5,00,000 | 3,15,14,808 |
| 3,15,14,808 | 08-Feb-19 | 11-Feb-19 | 24% | 82,888 | 5,00,000 | 3,10,97,697 |
| 3,10,97,697 | 12-Feb-19 | 31-Mar-19 | 24% | 9,81,494 | | 3,20,79,191 |
| 3,20,79,191 | 01-Apr-19 | 31-Mar-20 | 24% | 77,20,099 | | 3,97,99,290 |
| 3,97,99,290 | 01-Apr-20 | 31-Mar-21 | 24% | 95,51,830 | | 4,93,51,120 |
| 4,93,51,120 | 01-Apr-21 | 31-Mar-22 | 24% | 1,18,44,269 | | 6,11,95,389 |
| 6,11,95,389 | 01-Apr-22 | 16-Mar-23 | 24% | 1,40,83,322 | 5,00,000 | 7,47,78,711 |
| 7,47,78,711 | 17-Mar-23 | 31-Mar-23 | 24% | 7,37,543 | | 7,55,16,254 |
| | | | | 5,69,16,254 | 64,00,000 | 7,55,16,254 |

Principle Amount as on 26-02-2016 1,50,00,000

Agreed Amount as per agreement as on 25-02-2017 2,50,00,000

Less : Amount Received 59,00,000 1,91,00,000


Interest up to 31-03-2023 5,69,16,254

Less : Amount Received as Interest 5,00,000

Less : Amount Received as Interest from 19-05-2023 to 12-06-2023 10,00,000 5,54,16,254

Outstanding Amount 7,45,16,254

S. S. Kumar Choudhary
SOUTH NORTH PROJECTS LLP
Authorised Signatory



12. The Financial Creditor has also annexed the Record of Default from the NeSL at Pages 411 and 413 of the Application where the default details are depicted as under:

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Annexure W 411 W
NATIONAL E-GOVERNANCE SERVICES LIMITED

Record of Financial Information - Form C

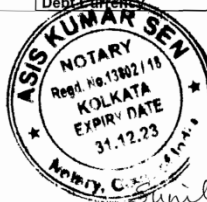
Unique Debt Identifier: ADBFS6659R_001
Submission ID: 1
Submitted by South North Projects LLP
Information as on 16/05/2023

| Submitter Information | | | |
|-------------------------|--------------------------|-------------------|-----------------|
| Name | South North Projects LLP | UIN (PAN) | ADBFS6659R |
| Relationship | creditor | Comm. Address PIN | 700001 |
| DOI / DOB | 03/03/2016 | Telephone No. | 0xxxxxxxxx5 |
| Billing / Comm. Address | 16, Netaji Subhas Road | Email ID | *****@gmail.com |

| Other Party Details | | | |
|---------------------------|---------------------------------------|------------------------|-----------------------|
| Debtor | | | |
| Name | AVANEESH INFRA TECH PRIVATE LIMITED | Relationship | debtor |
| Regd. / Permanent Address | P-411/16, HEMANTA MUKHOPADHYAY SARANI | Regd. Address PIN | 700029 |
| Legal Constitution | PVTL | DOI / DOB | 13/03/2014 |
| CIN/LLPIN | U45400WB2014PTC200982 | PAN | AAMCA7192C |
| MSME Flag | N | Contact Person Name | RAKESH SINGH |
| Mobile No. | 9836235599 | Email ID | rks.singh70@gmail.com |
| Party Sanctioned Currency | INR | Party Sanctioned Limit | 15000000.00 |

| Guarantor | | | |
|---------------------------|---|---------------------|-----------------------|
| Name | 7 SENSE INFRASTRUCTURE PRIVATE LIMITED | Relationship | guarantor |
| Regd. / Permanent Address | PLOT NO. 131 SATYA NAGAR BHUBANESHWAR Khordha | Regd. Address PIN | 751007 |
| Legal Constitution | PVTL | DOI / DOB | 08/03/2011 |
| CIN/LLPIN | U45201OR2011PTC013272 | PAN | AAPCS8275D |
| MSME Flag | N | Contact Person Name | RAKESH SINGH |
| Mobile No. | 9836235599 | Email ID | 7senseinfra@gmail.com |
| Alternative Email ID | rks.singh70@gmail.com | | |

| Debt Information | | | |
|------------------|------------|--------------------|-----|
| Type of debt | financial | Debt Reference No. | 001 |
| Debt Start Date | 26/02/2016 | Debt Currency | INR |



SOUTH NORTH PROJECTS LLP
Sunil Kumar Choudhary
Authorised Signatory

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413
w

NeSL NATIONAL E-GOVERNANCE SERVICES LIMITED
India's First Information Utility

**FORM D
RECORD OF DEFAULT (RoD)**

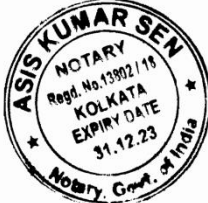
(Issued By information utility under sub-regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)

This Record of Default is issued to the Financial Creditor M/s SOUTH NORTH PROJECTS LLP in respect of the default of debt as per details given below-

(a) Name of the Submitter: M/s SOUTH NORTH PROJECTS LLP
(b) Schedule-2 Bank (Y/N): N
(c) Name of Corporate Debtor: M/s AVANEESH INFRATECH PRIVATE LIMITED
(d) Unique Debt Identifier Number: ADBFS6659R_001
(e) Registered Address: 16, Netaji Subhas Road
(f) Total Outstanding Amount: 75467140.00
(g) Default Amount: 75467140.00
(h) Date of Default: 17-03-2023
(i) Status of Authentication of Default: DEEMED TO BE AUTHENTICATED

| Filing of Default (Submission ID No.) | Submitted on | Status of Authentication (Authenticated / Disputed / Deemed to be authenticated) | Authentication completed on |
|---------------------------------------|------------------------|--|-----------------------------|
| (1) | 16-05-2023 17:24:21 | *DEEMED TO BE AUTHENTICATED Colour Code : YELLOW | 12-06-2023 13:48:12 |

NeSL is authorized to issue this record of default and has accordingly affixed its digital signature, as per the provisions of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, Guidelines for Technical Standards for Performance of Core Services and Other Services and the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2017.



Registered Office : Gresham Assurance House, 4th Floor, Sir P.M. Road, Fort, Mumbai-400001.
Page 1 of 6

SOUTH NORTH PROJECTS LL
Sunil Kumar Choud
Authorised Signator

The said record confirms the default amount and debt.

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13. That after giving credit to all the payments made by the Corporate Debtor till May 22, 2017, a sum of Rs. 2,33,86,207/- remained due and payable by the Corporate Debtor to the Financial Creditor.
14. That, the Corporate Debtor from time to time gave verbal assurances that the entire settlement amount of Rs. 2.5 Crore shall positively be paid by the Corporate Debtor to the Financial Creditor on or before August 11, 2017. Accordingly, the Corporate Debtor even issued 6 postdated cheques in favour of the financial creditor, being nos.
 - a) Cheque being No. 105901 dated July 21, 2017
 - b) Cheque being No. 105903 dated July 21, 2017
 - c) Cheque being No. 105902 dated July 21, 2017
 - d) Cheque being No. 866887 dated July 21, 2017
 - e) Cheque being No. 866897 dated July 21, 2017
 - f) Cheque being No. 866898 dated July 21, 2017
15. The Corporate Debtor made a request to the Financial Creditor, to present the first cheque being No. 105901 dated 21st July 2017 for a sum of Rs. 25,00,000/- on 25th July 2017 and assured that the same will be encased on presentation. The Corporate Debtor also requested the financial Creditor to present the last Five Cheques being nos. 105903, 105902, 866887, 866897 and 866898 i.e., for total sum of Rs. 2,25,00,000/- on 11th August 2017.
16. The cheque dated 21st July, 2017 was returned dishonoured by the Bank on 26th July, 2017 with the endorsement "Insufficient Funds". When, the aforesaid fact of dishonour of cheque was made known to the Corporate Debtor by the Financial Creditor, the Corporate Debtor verbally assured to pay the financial Creditor the said sum of Rs. 25,00,000/- within a week. But, the Corporate Debtor only paid a sum of Rs. 5,00,000/- on 5th August 2017 and assured to pay the balance Rs. 20,00,000/- on or before 11th August 2017.
17. When, the Financial Creditor presented the said five cheques on the verbal instructions and consent of the Corporate Debtor on 11th August 2017, to its

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utter surprise all the said five cheques were identically returned dishonored on presentation with the remarks “insufficient Funds”, on 16th August 2017. Copies of the cheques and bank returning memos are collectively annexed hereto and marked with the **letter “N”**.

18. Thereafter, pandemic Covid-19 struck the world in 2020. Such position stayed from March, 2020 till February, 2022. During this period the financial Creditor verbally requested the Corporate Debtor for refund but the Corporate Debtor on the excuse of Covid- 19 assured Financial Creditor that he shall pay the entire balance amount due together with interest within two years.
19. Finally, on May 16, 2023, the Financial Creditor uploaded the details of default committed by the Corporate Debtor on the online portal of the NeSL. It was only after the correspondence sent by the NeSL that the Corporate Debtor paid an amount of Rs. 10 Lakh from the period of May 19, 2023 to June 12, 2023, being the last payment.
20. It is asserted that the claim of the Financial Creditor is well within the period of limitation as the period from March 15, 2020 till February 28, 2022 stands excluded from the purpose of limitation in terms of the order dated January 10, 2022 rendered by the Hon’ble Apex Court in Misc Application No. 21 of 2022 in Suo Moto Writ Petition (C) No. 3 of 2020 in Re: Cognizance for extension of limitation.
21. Thus, according to the Financial Creditor, it is also entitled to interest at rate of 24% per annum on and from July 21, 2017. Accordingly, the Financial Creditor is now entitled to a sum of Rs. 7,45,16,254.
22. This matter first came on board on August 23, 2023. The Learned Counsel for the Corporate Debtor on that day accepted and sought time to file Vakalatnama and reply affidavit within two weeks. At request, time was granted by this Bench.
23. Further, from an Order dated October 05, 2023, it is evident that the Learned Counsel/ Authorized Representative for the parties were present. No Reply

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affidavit has been filed till the date of final hearing, though the Learned Counsel for the Respondent were present for hearing. However, the written submission has been filed later by the Learned Counsel for the Corporate Debtor, thus we proceed for final consideration and adjudication of this matter on merits, on the basis of oral submission advanced previously and written submissions and documents filed by the parties.

By the way of written submissions, the Learned Counsel for Corporate Debtor per contra contends that:

- 24.** As per page 382 and 409 of the application, the Corporate Debtor has paid certain amounts from 10th October 2017 till 11th February 2019. Thereafter, from 12th February 2019 till 15th March 2023 (for more than 4 years), no payment has been made by the Corporate Debtor. Thus, the benefit under Section 18 of the limitation Act is not available to the financial creditor. From the documents appearing at pages 392 to 397A of the application, it appears that cheque have been dishonoured till 12th March 2020. Admittedly, no payment has been received within 3 years from the date of dishonour of cheque. Further, it is claimed that the financial creditor also cannot avail the benefit of the Suo Motu Orders of the Supreme Court on account of COVID-19 pandemic, and the period in between 15th March 2020 till 28th February 2022 cannot be excluded, for the purpose of calculating limitation. The order dated 10th January 2022 passed by the Hon'ble Supreme Court of India categorically and in unambiguous terms specifies that all persons shall have a limitation period of 90 days from 1st March 2022. In the event the actual balance period of limitation remaining with effect from 1st March 2022 is greater than 90 days, then the longer period shall apply (at page 404-Para III).
- 25.** It further says that, "The period of limitation has expired within 1st March 2022, and then a party would have the benefit of exclusion till 90 days from 1st March 2022- 30th May 2022, and not further" and "The Financial Creditor ought to

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have filed the present petition within 30th May 2022, in order to avail the benefit of exclusion. Thus, reliance on the Suo Motu Order dated 10th January 2022 for the purpose of saving limitation is preposterous and on a misconceived notion of law. The petition, therefore, is squarely barred by the laws of limitation, and is required to be dismissed”.

26. It is further alleged that no agreement for obtaining any financial accommodation exists, and the corporate debtor is liable to repay an amount of Rs. 2,50,00,000/- on or about 25th February 2017. Further, it is claimed that no document to substantiate that the management and shareholding structure of M/s. 7 Sense Infrastructure Private Limited and the Corporate debtor are common, or that the management of M/s 7 Sense Infrastructure Private limited takes decision for and on behalf of the Corporate Debtor.
27. Further, it is alleged that the purported charge created at page 420 to 427 nowhere mentions the name of the Corporate Debtor, no documents to prove that any demand for payments Rs. 2,50,00,000/- was ever made by the Financial Creditor, either on 25th February 2017 and no document to substantiate the promise to repay a sum of 2,50,00,000/- from 26th February 2017 or as in paragraph 16 of the petition no document to substantiate that the corporate debtor agreed to pay a sum of Rs. 25,00,000/- within a week.
28. It is further claimed that the Agreements for Sale dated 26th February 2016 (at pages 219 and 240), makes it clear that the consideration for purchase of the flats were Rs. 1,25,00,000/- (pages 229-Clause 1) and Rs. 1,25,00,000/- (at page 250 - clause 1). The total consideration for purchase of the two flats was Rs. 2,50,00,000/-, that is the same amount which the financial creditor has alleged to be the repayable amount in paragraph no.4 of the petition.
29. Further, it is contended that towards the said Sale Consideration, the financial creditor paid amount of Rs.75,00,000/- for each of the flats (at page 236 and 257), thereby amounting to Rs. 1,50,00,000/- evidently the said allegation of repayment is wholly false, and untrue.

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Analysis and Findings:

- 30.** It is an admitted position that:
- 30.1.** Vide the Registered Deed of Mortgage dated February 26, 2016, M/s 7 Senses Infrastructure (P) Ltd. (who is a sister concern of the Corporate Debtor herein) had approached the Financial Creditor herein, for a loan or financial accommodation of Rs. 1.5 Crore immediately against the security.
- 30.2.** The Financial Creditor had agreed to do so on the assurance of M/s 7 Senses Infrastructure (P) Ltd. of repayment of the said Rs. 1.5 Crore together with the interest, total amounting to Rs. 2.5 Crore with 12 months from the date of a Deed of Mortgage.
- 30.3.** The Financial Creditor herein has received an amount of Rs. 59 Lakh on from the Corporate Debtor which has been adjusted against the agreed amount of Rs. 2.5 Crore.
- 30.4.** The amount of Rs. 15 Lakh has been received as Interest by the Financial Creditor.
- 31.** In regard to the limitation aspect, we are of the view that the Deed of the mortgage dated 26.02.2016 which envisages that Rs. 1.5 Crore provided on 26th February, 2016, would be returnable with interest amounting to total of Rs. 2.5 Crore within 25th February, 2017 takes the limitation period to invoke an application under Section 7 of the I&B Code, to 25th February, 2020.
- 32.** Meanwhile, on 10.10.2017 the Corporate Debtor had made some payments against the due amount, which extends the limitation further to 10.10.2020.
- 33.** Again, from 10.10.2017 - 11.02.2019 some payments have been made by the Corporate Debtor that extends the period of limitation to 11.02.2022.
- 34.** It is evident that various part payments have been made by the Corporate Debtor from time to time. The Particulars of the part payments as collated from Company Petition at Pages 362, 362, 382, 400 as follows:

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| Date | Amount | Mode of payments | Page of CP |
|-------------------|---------------|-------------------------|-------------------|
| 06.05.2017 | Rs. 10 Lakh | RTGS | 362 |
| 08.05.2017 | Rs. 15 Lakh | RTGS | 362 |
| 25.05.2017 | Rs. 5 Lakh | RTGS | 362 |
| 10.10.2017 | Rs. 5 Lakh | Online | 382 |
| 13.10.2017 | 2 Lakh | Online | 382 |
| 10.11.2017 | 2 Lakh | Online | 382 |
| 28.08.2018 | 5 Lakh | Online | 382 |
| 07.02.2019 | 5 Lakh | Online | 382 |
| 11.02.2019 | 5 Lakh | Online | 382 |
| 16.03.2023 | 5 Lakh | Cheque | 382 |
| 17.05.2023 | 5 Lakh | Cheque | 399 |
| 22.05.2023 | 2 Lakh | NEFT | 400 |
| 12.06.2023 | 2 Lakh | NEFT | 400 |
| 12.06.2023 | 1 Lakh | NEFT | 400 |

35. It is evident from the above that prior to COVID period, last payment was made on 11.02.2019. After COVID period, first payment was made on 16.03.2023. There is a gap of 4 years between the dates of 11.02.2019 and 16.03.2023. The last payment made before filing this application was on 12.06.2023. This instant Application has been filed by the Financial Creditor herein on 30.06.2023 with the Registry of the Adjudicating Authority. However, by the virtue of Order passed by the Hon'ble Apex Court in Suo Motu Writ Petition (C) No. 3 of 2020, the period from 15.03.2020 - 28.02.2022 of almost two years stands excluded from the said period of four years i.e., 11.02.2019 and 16.03.2023 and to a further period of 90 days from 01.03.2022 which takes us to 29.05.2022. The relevant portion of the order is reproduced verbatim as under:

“In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all

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persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”

(Emphasis Added)

36. Hence, the limitation would have expired on 10.02.2022 (3years from the last payment on 11.02.2019 but for the “Suo-moto” Order which excludes the period from 15.03.2020 to 29.05.2022 from the computable period. The limitation period would hence be computed as such:

[12.02.2019 – 14.03.2022 = **01-year, 01 month, 02 days.**]

And,

[30.05.2022 – 30.06.2023 (date of filing this application) = **01-year, 01 month, 00 days.**]

37. Thus, excluding the period of a little above 2 years, 3 months of 15.03.2020 to 29.05.2022 from the last date of payment of 11.02.2019 till filing of this company petition, i.e., 30.06.2023, the filing is well within three-year period from the last payment.

38. We would refer the statutory provisions to examine the limitation question as under:

(I) Section 238(A) of the I&B Code, 2016 envisages that: -

“The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.”

(II) Section 18 of the Limitation Act, 1963 further prescribed that **the Effect of acknowledgment in writing** would be as under—

- (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed

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by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(III) Section 19 of the Limitation Act, 1963, that deals with the *Effect of payment on account of debt or of interest on legacy* envisages the following —

Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Explanation.—For the purposes of this section,—

- (a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;
- (b) “debt” does not include money payable under a decree or order of a court.

(IV) Article 137 of the Limitation Act stipulates: -

That for any other application for which no period of limitation is provided elsewhere in this division.

The Period of limitation is “Three Years”.

Time from which period begins to run is: “When the right to apply accrues”.

39. Further, we rely upon the judgment passed by the Hon’ble Apex Court in *B. K. Educational Services (P.) Ltd. v. Parag Gupta & Associates* reported in [2019] 11 SCC 633 that it is thus clear that the provision of Limitation Act are applicable to applications filed under Sections 7 and 9 of the Code from the inception of the

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Code, Article 137 of the Limitation Act, therefore, gets attracted. “The right to sue”, therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, section 5 of the Limitation Act may be applied to condone the delay in filing such application.

- 40.** It is evident that the Corporate Debtor has acknowledged its debt by making last payment on 12.06.2023 which is well within the extended period of limitation as explained above, and by reducing all the part payments made by the Corporate Debtor, Default amount crosses the threshold limits under Section 4 of the I&B Code.
- 41.** In the light of the facts stated in this application bearing **Company Petition (IB) No. 166/KB/2023**, and the evidence placed on record and the discussion hereinabove, we **ALLOW** the application filed under **Section 7 of I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:
- i.** The Application filed by **South North Projects LLP (Financial Creditors)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **Avaneesh Infratech Private Limited (Corporate Debtor)**.
 - ii.** As a consequence of this Application being admitted in terms of Section 7, moratorium as envisaged under the provisions of Section 14(1) of the I&B Code, shall follow in relation to the Respondent (Corporate Debtor) as per clauses (a) to (d) of Section 14(1) of the I&B Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the I&B Code shall come into force.
 - iii.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:

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- 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 (54 of 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.*

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

- iv.** The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- v.** The provisions of sub-section (1) of Section 14 of the I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi.** The Applicant has proposed the name of **Ms. Rashmi Agarwal**, address: **Durgesh Nandan, 74/10, Lala Babu Shire Road, Belurmah, Howrah, Kolkata, West Bengal – 711202, Registration No. IBBI/IPA-001-IP-P-0146/2018-2019/12281**, as the “**Interim Resolution Professional**”. We have perused that there is a written communication, annexed as **Annexure “D”** at **Pages 55-57**, to this Application as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,

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2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or Agency namely Indian Institute of insolvency professional of ICAI. In addition, further necessary disclosures have been made by **Ms. Rashmi Agarwal** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the I&B Code. Hence, we appoint “**Ms. Rashmi Agarwal**” as the **Interim Resolution Professional (IRP)** of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

- vii.** In pursuance of Section 13 (2) of the I&B Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the I&B Code and **call for the submission of claims** under Section 15 of the I&B Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- viii.** During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this

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Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.

- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities** and/or the **Officer-in-Charge** of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 7(5) and 7(7) of the I&B Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

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- xiv.** The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
 - xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority from time to time.
 - xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 42.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.
- 43.** Post this Company Petition on 19/ 01/ 2024 for filing the Periodical Progress Report by the IRP/RP as appointed herein.

D Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 12th Day of December, 2023.

Bose, R. K. [LRA]/ Tiwari, V. [LRA]