

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

COMPANY APPEAL (AT) (Insolvency) No. 879 of 2021

(Arising out of the Order dated 13.10.2021 passed by the National Company Law Tribunal, Jaipur Bench, Jaipur in CP No. IB 291/7 /JPR/2019.)

IN THE MATTER OF:

Pankaj Khandelwal,
S/o Shri Goverdhan Bhavwar Khandelwal,
Aged about 48 years,
R/o of B-2002, Gokul Concorde,
Thakur Village, Kandivali (E), Mumbai

Also At :-
233, Sonthalio Ka Rasta,
Kishan Pole Bazaar, 302001.
Nominal Partner Of A. Gangwal Real Estate L.L.P.
Having Its Office At The Crest,
Suite No. 9, Plot No. 4A,
Airport Enclave Scheme,
Tonk Road, Jaipur, Rajasthan – 302018.

...Appellant

Versus

1. A. Gangwal Real Estate L.L.P.,
Through IRP Mr. Prashant Sharma
Having his Office At V.P. Sharma & Associates,
611, Arcade, 6th Floor, K-12,
Malviya Marg, C- Scheme, Jaipur – 302001.

...Respondent No. 1

2. Shankar Khandelwal
Through Tikam Khandelwal,
R/o Plot No. 171,
Officer Campus Extension,
Near Sanskar School,
Sirsi Road, Jaipur 302012

...Respondent No. 2

Present

For Appellant: Ms. Archana Pathak Dave, Ms. Ankita Chaudhary, Mr. Shrayas Balaji & Mr. Vaibhav Dwivedi, Advocates.

For Respondents: Mr. Prabhash Sharma, for R-1/ IRP.

Mr. K. Dutta, Sr. Advocate along with Mr. Ankit Sareen, Mr. Yash Tandon & Mr. Gaurav, for R-2.

With

COMPANY APPEAL (AT) (Insolvency) No. 270 of 2022

(Arising out of the Order dated 13.10.2021 passed by the National Company Law Tribunal, Jaipur Bench, Jaipur in CP No. IB 291/7 /JPR/2019.)

IN THE MATTER OF:

Rajasthan State Industrial Development and Investment Corporation Limited,

Having its registered office at Udyog Bhawan,
Tilak Marg, C- Scheme,
Jaipur, Rajasthan through its authorised
representative.

...Appellant

Versus

**1. Shri Shankar Khandelwal
Through Shri Tikam Khandelwal**

171, Officers Campus Extension
Near Sanskar School, Sirsi Road
Jaipur, Rajasthan - 302012

...Respondent No. 1

2. A. Gangwal Real Estate LLP

The Crest Suite No. 9
Plot No. A-4
Airport Enclave Scheme
Tonk Road,
Jaipur, Rajasthan - 302018

...Respondent No. 2

Present

For Appellant:

Mr. Anuj Bhandari & Mr. Rajat Gupta, for RIICO.

For Respondents:

Mr. K. Dutta, Sr. Advocate along with Mr. Prakul Khuran, Mr. Gourav Asati & Mr. Yash Tandon, for R1.
Mr. Prabhash Sharma, for R-2/ IRP.

J U D G E M E N T

(07.12.2023)

NARESH SALECHA, MEMBER (TECHNICAL)

1. There are two Appeals i.e., Company Appeal (AT) (Insolvency) No. 879 of 2021 and Company Appeal (AT) (Insolvency) No. 270 of 2022 filed under Section 61(1) of the Insolvency and Bankruptcy Code, 2016 (in short '**Code**') against the common Impugned Order dated 13.10.2021 passed by the National Company Law Tribunal, Jaipur Bench (in short '**Adjudicating Authority**'), whereby the Adjudicating Authority admitted the Application filed by the Respondent No. 2 in Company Appeal (AT) (Insolvency) No. 879 of 2021 and Respondent No. 1 in Company Appeal (AT) (Insolvency) No. 270 of 2022 i.e., Shankar Khandelwal as Financial Creditor under Section 7 of the Code. Mr. Pankaj Khandelwal is the Appellant in Company Appeal (AT) (Ins.) No. 879 of 2021 and Rajasthan State Industrial Development and Investment Corporation Limited (for short '**RIICO**') is the Appellant in Company Appeal (AT) (Insolvency) No. 270 of 2022.

2. The Corporate Insolvency Resolution Process (in short '**CIRP**') was initiated against A. Gangwal Real Estate L.L.P who is the Corporate Debtor and the Respondent herein. A moratorium was declared under Section 14 of the Code.

3. Since both appeals have been preferred before us against the same common Impugned Order dated 13.10.2021 and are based on same or similar facts and were also heard conjointly, as such we will examine both these appeals together in coming discussions and will decide by single order.

4. Heard the Counsel for the Parties, perused the records made available including cited judgements.

5. The Corporate Debtor, "A. Gangwal Real Estate L.L.P", a Limited Liability Partnership (in short "**LLP**"), was incorporated on August 5, 2014 under the provisions of the Limited Liability Partnership Act, 2008. It has further been informed that the Corporate Debtor as LLP has undergone various changes since its incorporation, in respect of admission and retirement of designated partners and nominal partners.

6. The Corporate Debtor was formed initially with Mr. Ajay Gangwal and his wife Mrs. Rakhi Gangwal as designated partners, having a 50:50 profit sharing ratio, with capital contribution of Rs. 50,000/- each. Thereafter, Mr. Ajay Gangwal and Mrs. Rakhi Gangwal retired from A. Gangwal Real Estate LLP and vide a supplementary agreement dated September 25, 2014, Mr. Shankar Lal Khandelwal, the Respondent No. 2 Company Appeal (AT) (Insolvency) No. 879 of 2021 and Respondent No. 1 in Company Appeal (AT) (Insolvency) No. 270 of 2022 and his wife Mrs. Guman Khandelwal were admitted as designated partners along with the Corporate Debtor. It has been brought out that at present the designated partners of the Corporate Debtor are Narendra Singh Lakshman Singh Rathod and Charan Singh Khangrot besides Mr. Pankaj Khandelwal and Mudit Danagyach at its nominal partners.

7. It has been alleged by the Appellant that during the tenure of Shankar Khandelwal being a Partner of the LLP, the Corporate Debtor obtained a Loan from RIICO which after being credited to the Bank Account of the Corporate

Debtor, the said amount was transferred immediately to the accounts of concerns which were either family owned companies of Shankar Khandelwal or his family members. It is the case of the Appellant that when such fraud was tracked, Shankar Khandelwal allegedly admitted such transfer upon personal fund requirements and also agreed to adjust the same with his outstanding loans with the Corporate Debtor along with his retirement from the LLP/ Corporate Debtor.

8. It is the case of the Appellant that Shankar Khandelwal was arrested in SYNDICATE BANK SCAM as one of the main accused and was taken into custody where he remained for more than two years.

9. It has been submitted that the LLP Agreement dated 31.12.2015 is the Agreement which incorporates the retirement of the Respondent Shankar Khandelwal from the Corporate Debtor w.e.f. 01.04.2016. It is the case of the Appellant that the entire outstanding duty along with unsecured loans belonging to Shankar Khandelwal, his wife Guman Khandelwal and their concerns were squared off against outstanding debts and adjustment paying off balance outstanding in terms of LLP Agreement dated 31.12.2015.

10. The Appellant castigated the conduct of the Respondent Shankar Khandelwal who filed false FIR to deceive other partners of the Corporate Debtor for the purpose of extortion and blackmail and the said FIR was closed by the Police putting a FR being false FIR.

11. The Appellant submitted that the liabilities of both, the incoming and outgoing partners' were crystallized and determined by way of preparing

audited balance sheets, duly signed by the Statutory Auditors of the Firm and all these well duly registered with the office of the Registrar of Companies.

12. The Appellant denied the averments of the Respondent - Shankar Khandelwal regarding dishonours of 6 alleged cheques out of which 3 cheques were issued by Mr. Mudit Danagyach. 2 cheques were issued by Nihal Danagyach and one cheque was issued by Vinay Tambi. The Appellant stated that the alleged dishonour of cheques have no link to the alleged claims by the Shankar Khandelwal, as the said alleged cheques were issued by the drawers in their personal capacity and not in capacity of the partners of the Corporate Debtor.

13. The Appellant emphasised that the Adjudicating Authority whilst passing the Impugned Order ignored the decision of the Hon'ble Supreme Court of India in the case of ***Phoenix Arc Pvt Ltd v Spade Financial Services Ltd & Ors***, Civil Appeal No. 2842 of 2020, wherein the Hon'ble Supreme Court held that whilst admitting Section 7 application, it is the duty of the Adjudicating Authority to investigate the real nature of transaction.

The Appellant assailed the Impugned Order which failed to consider that Shankar Khandelwal is neither a financial creditor, nor falls within the purview of Section 5(8) of the Code, and therefore, Section 7 application was not maintainable against the Corporate Debtor as all amounts owed by the Corporate Debtor to Shankar Khandelwal have been repaid.

14. The Appellant assailed the conduct of the Shankar Khandelwal who falsely claimed outstanding financial debt of Rs. 38,73,94,501/- including

Rs. 18,84,74,920/- as the principal and Rs.19,89,19,581/- as interest, only for purpose of extortion from the Appellant and the Corporate Debtor.

15. It is the case of the Appellant that as per its balance sheet of the Corporate Debtor for the Financial Year 2015-16, the balance due and payable to the Shankar Khandelwal was Rs.5,16,55,842/-, which was repaid by the Corporate Debtor, with the last remaining sum of Rs. 4,12,97,252/-, being paid vide two demand drafts dated 28.10.2016 amounting to Rs. 4,12,72,252 & Rs. 25,000/-respectively in accordance with LLP agreement dated 31.12.2015. The Appellant highlighted that the Corporate Debtor paid Rs. 30 Crores to M/s Guman Builders and Developers Private Limited wherein the Shankar Khandelwal and his wife are the shareholders and as such there was no debt due and payable which was not disputed by Shankar Khandelwal or his wife Guman Khandelwal

16. Per contra, the Respondents denied all averments of the Appellant and stated that the Appellant is the only nominal partner of the Corporate Debtor of the LLP Company and as per rules only Designated Partners of the Corporate Debtor can act on behalf of the LLP, hence Appeal deserves to be dismissed for the want of locus of the Appellant.

17. It is the case of the Respondent Shankar Khandelwal that the LLP agreement dated 31.12.2015 is forged & fabricated document. The Respondent Shankar Khandelwal claimed that in the year 2016, a false case was planted against him because of which he was arrested and during his time in jail, other partners of the Corporate Debtor pressurised him (Shankar Khandelwal) and his wife to sign few documents on the false

promise to pay back him his entire dues by the Corporate Debtor and accordingly the Respondent Shankar Khandelwal signed these documents which were later used for printing the LLP agreement dated 31.12.2015, the terms and clauses of which were never agreed by and between the then partners. The Respondent Shankar Khandelwal submitted that the LLP document dated 31.12.2015 relied upon by the Appellant is disputed and an FIR to this effect had already been filed. The Respondent Shankar Khandelwal claimed that he was forcefully and deceitfully made to retire from the firm and the then partners of the Corporate Debtor had given the 6 post-dated cheques (PDCs) totalling to Rs. 6,07,00,000/- which were deposited in the month of April 2017, however, all the cheques got dishonoured and no payment could be received by the Respondent- Shankar Khandelwal.

18. The Respondent Shankar Khandelwal emphasised that the Bank statements of the Corporate Debtor cannot be valid proof for the discharge of its debt owed to the him as the same has not been paid but to third independent entities like M/s Guman Builders and Developers Private Limited which in no manner can be regarded as a valid discharge of debt.

19. The Respondent Shankar Khandelwal submitted that the balance sheet of the Corporate Debtor showed that around Rs. 40 Crores was due as on 31.03.2015 and payable to the Respondent Shankar Khandelwal which was falsely reduced to Rs. 5,16,55,842/- against which only an amount of Rs. 4,12,97,252/- has been alleged to have been, thereby leaving a deficit payment of Rs. 1,03,58,590/- which still remains due and payable to him.

20. The Appellant RIICO gave the background of the property under challenge and clarified that the property situated as A-5, Airport Enclave, Airport Plaza Extension, Tonk Road, Jaipur, admeasuring 7276.40 sq. mtrs. ("Mortgaged Property") was purchased by the Corporate Debtor M/s A. Gangwal Real Estate LLP (Respondent No. 2) in Company Appeal (AT) No. 270 of 2022 in an open auction from Jaipur development Authority (JDA) held on 23.09.2014 for construction of a Residential Complex. The Corporate Debtor approached the Appellant RIICO for a term loan of Rs. 40 Crores to repay the unsecured loans raised for making payment to JDA towards the cost of land and the Appellant approved the same vide its Letter of Intent No. ID.D.1 (2205) dated 09.11.2015. It is the case of the Appellant RIICO that the plot situated at A-5, Airport Enclave, Airport Plaza Extension, Tonk Road, Jaipur was kept as primary security with the Appellant RIICO against the loan amount and the Appellant RIICO has the first and sole charge over the aforesaid property.

21. The Appellant RIICO stated that the Respondent Shankar Khandelwal resigned from the Corporate Debtor and the LLP agreement dated 31.12.2015 clearly records that no amount is due from LLP to him. It is the case of the Respondent No. 2 i.e., the Corporate Debtor that as per its balance sheet of the Financial Year 2015-16, the balance due and payable to the Respondent No. 1 Shankar Khandelwal was only Rs.5,16,55,842/- and the same was repaid and thereby there is no debt due and payable as on date by the corporate debtor to the Respondent No. 1.

22. The Appellant RIICO gave the background of CBI case against the Respondent Shankar Khandelwal who is allegedly to be one of the masterminds in money laundering of approximately Rs. 1055.79 Crores from Syndicate Bank and based on various FIR's registered by the CBI, ECIR No. JPZO/01/2016 was registered on 11.07.2016 by the Enforcement Directorate ("ED"). The Appellant RIICO stated that the Respondent Shankar Khandelwal was arrested in connection with the said Fraud on 18.03.2016 and in pursuance to the said ECIR, Provisional Attachment order was issued on 10.05.2018 by the Deputy Director, Enforcement Directorate, Jaipur wherein the aforesaid Mortgaged Property of the Corporate Debtor M/s. A. Gangwal Real Estate LLP was attached under the provision of Prevention of Money Laundering Act (in short '**PMLA**').

23. It has been submitted that when the said attachment came to the Appellant RIICO's knowledge, the Appellant challenged the same before PMLA Appellate Authority and vide order dated 17.06.2019, PMLA Appellate Authority, after observing that Corporate Debtor is beneficiary of proceeds of crime, held that rights of RIICO being Financial Institution would prevail over attachment of ED. The Appellate Authority therefore vacated the attachment over Mortgaged Property permitting RIICO to realize and liquidate the same and allowed rest of the attachment. The Appellant RIICO took possession of the Mortgaged Property on 18.09.2019 and the Appellant. RIICO thereafter issued 4 advertisements dated 20.12.2019, 24.02.2020, July 2020 and 02.11.2020 for auction of Mortgage Property. In the 4th advertisement for auction, Appellant RIICO received bids from one Argas

Homes LLP for Rs. 59.39 Crores. The Appellant RIICO took steps to realize its security interest to settle the debt owed to it. However, Writ Petition No. 710 of 2021 was filed by the auction purchaser and D.B. Misc. Appeal No. 5318/2019 was filed by Enforcement Directorate and the Hon'ble High Court of Jaipur directed parties to maintain status quo over the Mortgaged Property vide its order dated 17.12.2020. The said Petitions are presently pending before Hon'ble High Court of Jaipur.

24. The Appellant submitted that the Respondent Shanker Khandelwal had transferred substantial money in account of Corporate Debtor while under his control only to park his proceeds of crime and there was no written contract or requirement of money nor any terms of debt were settled between the parties and the transaction therefore cannot be termed as financial debt. The Appellant requested to this Appellate Tribunal to pierce the veil and appreciate the real nature of transaction and see if the same was of the nature of "Financial Debt" as defined in Code. The Appellant cited judgement of this Appellate Tribunal in **Sach Marketing Pvt. Ltd. v. Resolution Professional of Mount Shivalik Industries Ltd., Ms. Pratibha Khandelwal**, CA (AT) (Ins) No. 180 of 2021, where it was held that:

"15. The Hon'ble Supreme Court in 'Ram Janki Devi and Ors.' Vs. 'Juggilal Kamlatpat', AIR 1971 SC 2551 in para 12 has observed as follows:-

"12. The case of a deposit is something more than a mere loan of money. It will depend on

the facts of each case whether the transaction is clothed with the character of a deposit of money. The surrounding circumstances, the relationship and character of the transaction and the manner in which parties treated the transaction will throw light on the true form of the transactions."

16. The Hon'ble Supreme Court in 'V.E.A Annamalai Chettiar and Anr.' Vs. 'S. V.V.S. Veerappa Chettiar & Ors.', AIR 1956 SC 12 has observed that 'the answer to the question whether it was a loan or deposit would not depend merely on the terms of the document but has to be judged from the intention of the parties and the circumstances of the case. That is manifestly the correct approach'."

(Emphasis Supplied)

The Appellant submitted that as per the above, it can be clearly noted that the true intent behind a transaction being a loan/debt or not has to be determined on the basis of the surrounding circumstances of the case as well as the intention of the parties.

25. The Appellant also cited the judgment of the Hon'ble Supreme Court in **Phoenix ARC Private Limited v. Spade Financial Services Limited & Ors.**, [(2021) 3 SCC 475], wherein it was held as follows:

"48. The above discussion shows that money advanced as debt should be in the receipt of the borrower. The borrower is obligated to return the money or its equivalent along with the consideration for a time value of money, which is

*the compensation or price payable for the period of time for which the money is lent. A transaction which is sham or collusive would only create an illusion that money has been disbursed to a borrower with the object of receiving consideration in the form of time value of money, when in fact the parties have entered into the transaction with a different or an ulterior motive. In other words, the real agreement between the parties is something other than advancing a financial debt. A useful elaboration of "sham transactions" can be found in the opinion of Diplock, L.J. in *Snook v. London & West Riding Investments Ltd.* [*Snook v. London & West Riding Investments Ltd.*, (1967) 2 QB 786: (1967) 2 WLR 1020 (CA)]: (QB p. 802)*

"As regards the contention of the plaintiff that the transactions between himself, Auto Finance and the defendants were a "sham," it is, I think, necessary to consider what, if any, legal concept is involved in the use of this popular and pejorative word. I apprehend that, if it has any meaning in law, it means acts done or documents executed by the parties to the "sham" which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create."

49. Diplock, L.J. also stated: (*Snook case* [*Snook v. London & West Riding Investments Ltd.*, (1967) 2 QB 786: (1967) 2 WLR 1020 (CA)], QB p. 802)

*"But one thing, I think, is clear in legal principle, morality and the authorities (see *Yorkshire Railway Wagon Co. v. Maclure* [*Yorkshire Railway Wagon Co. v. Maclure*, (1882) LR 21 Ch D 309 (CA)] and *Stoneleigh Finance Ltd. v.**

Phillips [Stoneleigh Finance Ltd. v. Phillips, (1965) 2 QB 537: (1965) 2 WLR 508 (CA)]), that for acts or documents to be a "sham", with whatever legal consequences follow from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating. No unexpressed intentions of a "shammer" affect the rights of a party whom he deceived."

(Emphasis Supplied)"

It is therefore the case of the Appellant that those transactions which are collusive in nature, or are a sham in nature, i.e., where the illusion is created that a "loan" is satisfying the elements of financial debt, these transactions can not be seen as legally valid financial debts under the Code.

26. The Appellant alleged that the Respondent Shankar Khandelwal is attempting to recover tainted money from the Corporate Debtor, which is forming a part of the proceeds of crime. Even if the alleged loan is found to not be a part of the proceeds of crime, any attempts towards recovery of the amount would have to be adjudicated by a civil court under a recovery suit. The intent of IBC is not to facilitate recovery for creditors.

27. The Appellant stated that the date when debt became due is unknown and the Respondent Shankar Khandelwal has taken the debt becoming due from the date of filing of an FIR against Corporate Debtor i.e. 17.04.2017 which is not admissible particularly in absence of any written contract.

28. The Appellant stated that as there was no agreement between the parties, there is no agreed interest rate which is to be charged on the transferred amount, or if the transfer was interest free advance. As there was no interest component decided between the parties, it can be safely assumed that there was no "time value of money" attached with the transaction. Therefore, the transfer cannot be considered as "Financial Debt"

29. It is the case of the Appellant that the Financial Creditor has for the first time in the Application under Section 7 before the Adjudicating Authority claimed 18% interest on the amount, which is without any basis and Respondent No. 1 has failed to establish any understanding between the parties regarding rate of interest.

30. The Appellant stated that Shri Pankaj Khandelwal, one of the Partners in the Corporate Debtor A. Gangwal Real Estate LLP challenged the impugned order dated 13.10.2021 before this Appellate Tribunal in CA (AT) (Ins.) No. 879/2021 and this Appellate Tribunal vide order dated 28.10.2021 granted stay on the constitution of Committee of Creditors in Company Appeal (AT) No. 879 of 2021, which is still in operation.

31. It is the case of the Appellant that the Appellant/ RIICO is the sole secured creditor of M/s. A. Gangwal Real Estate LLP, the Appellant filed an IA for impleadment in the pending application of the Respondent Shankar Khandelwal before the Adjudicating Authority but the Adjudicating Authority dismissed the impleadment application IA No. 52/JPR/2020 as non-maintainable.

32. The Appellant submitted that the IRP published the public announcement inviting claims against the Corporate Debtor and the IRP wrote letter to the Appellant – RIICO seeking possession of the mortgaged property. Appellant RIICO vide its letter dated 26.10.2021 informed the IRP regarding orders of status quo passed by the Hon'ble High Court of Jaipur and submitted that in light of the said orders possession cannot be granted to the IRP. The Appellant further filed its claim before the IRP without prejudice to its rights to file an appeal against the Impugned Order and accordingly aggrieved by the impugned order dated 13.10.2021, the Appellant RIICO has filed the present Appeal.

33. The Appellant submitted that the Appellant RIICO is government Financial Institute and has nothing to do with crime committed by the borrowers and the mortgage properties legally belong to the Appellant RIICO as financial security for loan agreement to the Corporate Debtor. The Appellant submitted that the said property has been attached only to the extent of Rs. 7.37 Crores whereas the valuation of the property was Rs. 79.16 Crores in year 2014. It is the case of Appellant that the Appellant without prejudice to its submissions, undertook to pay a sum of Rs. 7.37 Crores to the Directorate of Enforcement out of the surplus of the sale proceeds of the said property which is duly recorded in the order dated 17.06.2019. As a result of this attachment, the Appellant has been unable to liquidate the same and satisfy its dues. The Appellant reiterated being Government Company and attachment of these properties would deprive the

Appellant from recovering the due amount, which in turn would be a loss of public money.

34. Per contra, the Respondent Shankar Khandelwal stated that there is no place for any third party other than the concerned financial creditor and the Corporate Debtor under Section 7 of the Code. The Respondent No. 1 cited the judgment of **Vekas Kumar Garg vs. DMI Finance Pvt. Ltd., CA(AT)(Ins) No. 113 of 2021**, wherein this Appellate Tribunal has categorically held that in an application under Section 7, the Financial Creditor and the Corporate Debtor alone are the necessary party at the pre-admission stage. It is the case of the Respondent Shankar Khandelwal that if the application filed by any financial creditor against the corporate debtor has already been admitted, no further application by any other financial is maintainable and the only remedy available to other financial creditors is to submit their claims to the IRP/RP appointed by the Adjudicating Authority in an admitted application in respect of the said corporate debtor. The Respondent Shankar Khandelwal, therefore, pleaded that the Appellant-RIICO does not have locus to file the instant appeal initiating CIRP against the Corporate Debtor as it is not a person aggrieved in terms of Section 61 of the Code, although, the Appellant-RIICO, being a Secured Financial Creditor would have priority over distribution of proceeds under the CIRP.

35. It is further submitted by the Respondent Shankar Khandelwal that subsequent to the initiation of CIRP, RIICO has already participated in the process by filing a claim before the RP which came to be admitted pursuant to which RIICO became a Secured Financial Creditor. Hence, RIICO having

already participated in the process cannot be allowed to challenge such process.

36. The Respondent Shankar Khandelwal alleged that he was eligible to receive outstanding dues of Rs. 33,80,22,172/- from the Corporate Debtor. The Respondent No. 1 assailed the conduct of the Corporate Debtor for taking stand that earlier payments were made to Guman Builders & Developers Pvt. Ltd. and further balance sheet of the Corporate Debtor for financial year 2015-16 showed only Rs. 5,16,55,842/- as outstanding dues of the Respondent Shankar Khandelwal, which the Appellant claimed to have repaid.

37. The Respondent No. 1 pleaded that the mortgaged land lawfully belongs to the Corporate Debtor and CIRP has been initiated, the asset is to be handed over to the RP and the Appellant RIICO in order to defeat the CIRP has filed this frivolous appeal while simultaneously filing a claim before the RP and submitting itself to the CIRP.

38. The Respondent Shankar Khandelwal submitted that the FIR and Chargesheet filed by the Enforcement Directorate are pending for adjudication before the competent court of law and it is trite of law that investigation is not a conclusive proof of guilt until and unless adjudicated by a competent court of law. Even otherwise, such proceedings do not create legal bar upon the Respondent Shankar Khandelwal to initiate CIRP of the Corporate Debtor/ LLP. The Respondent Shankar Khandelwal further submitted that the investigation concerning proceeds of crime falls under the ambit of Prevent of Money Laundering Act, 2002 while the present

appeal challenges the admission order passed by the Adjudicating Authority on an application filed under Section 7 of the Code and hence, the same cannot be clubbed. The Respondent Shankar Khandelwal, concluded his arguments with request to dismiss both these appeals.

39. As regards contentions of the Appellant that there was no written agreement so there is no Financial Debt, we note that the Code nowhere prescribes the compulsory existence of an express agreement to prove the loan and its disbursement to be treated as a 'financial debt. Where there are acknowledgements by corporate debtor and where the statement of accounts produced proves the disbursement of a loan and payment of interest, the lack of an express loan agreement would not bar financial creditor from initiating CIRP. In the present appeals, we have seen Balance Sheet prepared clearly acknowledged debts dues towards the Respondent Shankar Khandelwal, hence we do not agree on this point with the Appellant.

40. We have noted the contentions of the Respondent Shankar Khandelwal about alleged fabricated LLP dated 31.12.2015, which according to the Respondent Shankar Khandelwal, were got signed by him under duress and against which some FIR has been filed. The contention of the Appellant was also noted denying all these averments of the Respondent Shankar Khandelwal and giving contrary facts. Shorn of unnecessary details, this Appellate Tribunal consider LLP Agreement dated 31.12.2015 as the basis for settlement which is duly signed by all concerned including the Respondent Shankar Khandelwal and all formalities were completed,

therefore, we do not agree to the contention of the Respondent Shankar Khandelwal on this point.

41. We have noted that the Respondent Shankar Khandelwal has referred to this Appellate Tribunal earlier decision in **Vekas Kumar Garg vs. DMI Finance Pvt. Ltd.**, CA(AT)(Ins) No. 113 of 2021. The relevant portion reads as under :-

“3. After hearing learned counsel for the Appellant and going through the record, we are of the view that the ground projected by the Appellant in his capacity as Resolution Professional of NDL for seeking impleadment in CP IB- 2115 / ND / 2019 pending consideration before the Adjudicating Authority does not warrant impleadment of Appellant as party Respondent. In an application under Section 7, the Financial Creditor and the Corporate Debtor alone are the necessary party and the Adjudicating Authority is, at the pre-admission stage only required to satisfy itself that there is a financial debt in respect whereof the Corporate Debtor has committed a default warranting triggering of CIRP The Adjudicating Authority is required to satisfy itself in regard to there being a financial debt and default thereof on the part of the Corporate Debtor besides the application being complete as mandated under Section 7(5) of the I&B Code and then pass an order of admission or rejection on merit as mandated under sub-section (4) of Section 7 within 14 days. No third party intervention is contemplated at that stage.”

(Emphasis Supplied)

Thus, we tend to agree at the pre stage for admission or other wise of any application filed under Section 7 of the Code, it is only the Financial Creditor or Corporate Debtor who are essential party. However, any person aggrieved by same can make an appeal under Section 61 of the Code, and both the Appellants have filed the present appeals aggrieved by the Impugned Order. The Section 61 of the Code reads as under :-

“61. Appeals and Appellate Authority. –

*(1) Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal. ****

(Emphasis Supplied)

42. Since both the parties have relied heavily on LLP Agreement dated 31.12.2015, it will be desirable for us to refer and take a note of the same. The said LLP Agreement dated 31.12.2015 reads as under :-



राजस्थान RAJASTHAN

LLP AGREEMENT

(As per section 23(4) of LLP Act, 2008)



C 229477

This Agreement of LLP made and executed at Jaipur in the State of Rajasthan on this 31st day of December, 2015 and will replace the LLP Agreement made and executed at Jaipur on 12th Day of August, 2014, Supplementary LLP Agreement made and executed at Jaipur on 25th Day of September, 2014 and Supplementary LLP Agreement made and executed at Jaipur on 31st Day of January, 2015.

BY AND BETWEEN

1. PARTIES TO THE AGREEMENT:

- 1.1 Mr. Nawal Kishore Dangayach, S/o Shri Jugal Kishore Dangayach, I/o A-34 A Ram Nagar, Shastri Nagar, Jaipur Rajasthan having DPIN 00455094 which expression shall, unless it is repugnant to the subject or context thereof, includes his legal heirs, successors, nominees and permitted assignees and hereinafter called the "FIRST PARTY" (hereinafter referred as 'Continuing Partner').



Nawal Kishore Dangayach

Vijay Tripathi

Signature
Surr-Narain Khutoria

Pradip Dangayach

Guman Khundelwal

Shankar Lal Khundelwal

ATTESTED

NOTARY JAIPUR
Rajasthan (INDIA)

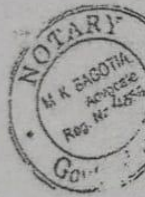
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1.2 Mr. Vinay Tambi, S/o Shri Avadh Behari Tambi, R/o D-701, Somdatts Landmark, Hawa Sadak, Civil Lines, Jaipur - 302006 Rajasthan having DPIN : 02135334 which expression shall, unless it is repugnant to the subject or context thereof, includes his legal heirs, successors, nominees and permitted assignees and hereinafter called the "SECOND PARTY" (hereinafter referred as 'Continuing Partner').

1.3 Mr. Suraj Narain Khatorla, S/o Lt. Shri Sri Narain Khatorla, R/o B-13(I), Shiv Marg, Bani Park, Jaipur - 302016 Rajasthan having DPIN : 00440622 which expression shall, unless it is repugnant to the subject or context thereof, includes his legal heirs, successors, nominees and permitted assignees and hereinafter called the "THIRD PARTY" (hereinafter referred as 'Continuing Partner').

1.4 Mr. Mudit Dangayach, S/o Shri Ramesh Dangayach, R/o B-5, Sain Colony, Power House, Road, Jaipur - 302001 Rajasthan having DPIN : 06609933 which expression shall, unless it is repugnant to the subject or context thereof, includes his legal heirs, successors, nominees and permitted assignees and hereinafter called the "FOURTH PARTY" (hereinafter referred as 'Continuing Partner').

1.5 Mrs. Guman Khandelwal, W/o Shri Shankar Lal Khandelwal, R/o A-2, Rana Paratap Nagar, Kalwar Road, Jhotwara, Jaipur Rajasthan having DPIN: 01328188 which expression shall, unless it is repugnant to the subject or context thereof, includes her legal heirs, successors, nominees and permitted assignees and hereinafter called the "FIFTH PARTY" (hereinafter referred as 'Continuing Partner').



Mr. Shankar Lal Khandelwal, S/o Shri Mohan Lal Khandelwal, R/o A-2, Rana Paratap Nagar, Near Buij Bai School, Kalwar Road, Jhotwara, Jaipur - 302012 Rajasthan having DPIN: 01328225 which expression shall, unless it is repugnant to the subject or context thereof, includes his legal heirs, successors, nominees and permitted assignees and hereinafter called the "SIXTH PARTY" (hereinafter referred as 'Retiring Partner').

2. WHEREAS ..

2.1 The first, second, third, fourth, fifth and sixth party have been jointly carrying on business of builders, real estate agents, property developers etc. in partnership in the name & style of M/s. A. GANGWAL REAL ESTATE LLP hereinafter called as "AGRE LLP" vide LLP Identification number: AAC-5469 under the Supplementary Deed of Partnership dated 01st January, 2015 entered into by and between the party first, second, third, fourth, fifth and sixth under the Limited Liability Partnership Act, 2008;

2.2 The LLP was incorporated on 05th August, 2014 under the name and style of A. Gangwal Real Estate LLP under the provisions of Limited Liability Partnership Act, 2008 with Shri Ajay Gangwal and Mrs. Rakhi Gangwal as its designated partners.

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Thereafter, vide a supplementary LLP Agreement dated 25/09/2014, Shri Shankar Lal Khandelwal (Sixth Part) and Smt. Guman Khandelwal (Fifth Part) were admitted

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Vinay Tambi

Suman Narain Khatorla

as designated partners in the LLP and Shri Ajay Gangwal and Smt Rakhi Gangwal retired from the LLP.

2.4 Subsequently, the name of the LLP was changed from A. Gangwal Real Estate LLP to Sanwariyaji Ventures LLP w.e.f 08th October, 2014 after obtaining consent from the designated partners.

2.5 The aforesaid LLP again changed its name to A. Gangwal Real Estate LLP w.e.f. 24th December, 2014 after obtaining consent from the designated partners;

2.6 Thereafter, vide Supplementary LLP Agreement dated 01/01/2015, Shri Nawal Kishore Dangayach, Shri Vinay Tambi, Shri Suraj Narain Khatoria and Shri Mudit Dangayach were admitted as Designated Partners to the LLP.

3. Now, the sixth Party to the agreement has given notice to the first, second, third, fourth and the Fifth party of his desire to retire voluntary from the said LLP as from the 1st April 2016;

4. The party first, second, third, fourth and Fifth part have agreed on the retirement of the Sixth party and accepted his written resignation letter in form 13 of Limited Liability Partnership Act., 2008;

The outgoing partner being the Sixth Party wish to retire on the following terms and conditions:

The Outgoing Partner shall retire from the said LLP on the 1st April 2016 (hereinafter referred to as the "Retirement Date"). The retirement of the Outgoing Partner shall not dissolve the said LLP and it shall be continued by the continuing partners.

The outgoing partner shall keep, protect the interest of the LLP and shall not have any rights, privileges and interest in respect of the goodwill, assets and customers of the LLP and shall protect the continuing partners in smooth running of the business.

(iii) The outgoing partner has further agreed not to do any act or deed which will harm the continuing partners in any way in the smooth running of the business.

(iv) The continuing partners hereto are desirous to release the outgoing partner from all future claims and demands whatsoever in respect of the business of the LLP.

(v) The profit sharing ratios of the outgoing partner, in the said LLP, as per the Supplementary Agreement dated 01/01/2015 stands surrendered from the date of retirement as mentioned above. The Outgoing Partner shall have no share, right, title, interest or claim, of any nature whatsoever, to or in the said LLP or business or assets of its name or its properties, whether tangible or intangible, including the outstanding etc. whatsoever.

(vi) The parties hereto will prepare the Balance Sheet of the said LLP prior to the retirement of the outgoing partner, being relevant for the retirement and reflecting all assets and liabilities of the LLP and will determine the amounts payable to the Outgoing Partner. In determining the amount payable to outgoing partner, the balances if any, with the name of Guman Builders & Developers Pvt. Ltd. & Guman Furniture & Services Pvt. Ltd. or any of his Sister Concern shall be adjusted to the account of Outgoing Partner.

(vii) The Continuing Partners are jointly and severally liable to the Outgoing Partner for the payment of the settlement amount but as between themselves they will contribute as mutually agreed.

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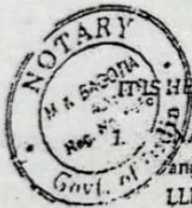
Suraj Narain Khatoria

Mudit Dangayach

Guman Khandelwal

Shankar Lal Khandelwal

6. Registered office of AGRE LLP will be changed to F-13, 6th Floor, Mahima Trinit Tower, Swej Farm, New Sanganer Road, Sodala, Jaipur, Rajasthan from present address at 4th Floor, K.J. City Tower E-2, Ashok Marg, C Scheme, Jaipur, Rajasthan with effect from 1st April 2016;
7. All the correspondence in future with the AGRE LLP shall be made at F-13, 6th Floor, Mahima Trinit Tower, Swej Farm, New Sanganer Road, Sodala, Jaipur, Rajasthan;
8. It is agreed to enter into this agreement to give effect to the said transaction with effect from 1st April 2016.
9. The said Partnership between the first, second, third, fourth and Fifth party will continue hereafter on the same terms and conditions as are contained in the said Deed of Partnership and it supersedes all the deeds/ agreements made before the said deed.
10. AND FURTHER WHEREAS that notwithstanding anything contained in any of the Agreements subsisting between the parties to this Agreement the terms and conditions agreed by and between the parties to this deed shall be final and binding on the parties to this Agreement. The parties to this Agreement have mutually agreed hereto to reduce and record the terms and conditions of settlement of the said property underneath:



HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS

- NAME & STYLE: The Limited Liability Partnership shall be continued in the name and style of M/s A. GANGWAL REAL ESTATE LLP and hereinafter allied as "AGRE LLP".
2. DATE OF CONSTITUTION: The LLP as constituted on 05th day of August, 2014 shall stand reconstituted under this deed w.e.f. 01st April, 2016.
 3. REGISTERED OFFICE: The LLP shall have its registered office : F-13, 6th Floor, Mahima Trinit Tower, Swej Farm, New Sanganer Road, Sodala, Jaipur, Rajasthan with effect from 1st April 2016 and/or at such other place or places, as shall be agreed to by the majority of the partners from time to time.
 4. CAPITAL CONTRIBUTION: The fixed capital Contribution of the LLP shall be Rs. 1,00,000/- (Rupees one lacs) which shall be contributed by the Partners in the following proportion.

First Party	-	37.50 % i.e. Rs. 37,500/-
Second Party	-	15 % i.e. Rs. 15,000/-
Third Party	-	10 % i.e. Rs. 10,000/-

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Gurnani Khundelwal

Shankar Lal Khundelwal

Fourth Party - 15 % i.e. Rs. 15,000/-

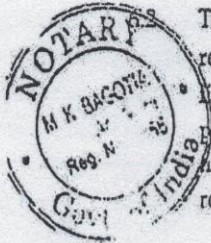
Fifth Party- 22.50 % i.e. Rs. 22,500/-

The further fixed capital Contribution if any required by the LLP shall be brought in by the partners in their profit sharing ratio.

5. The sixth party releases all its rights and claims to and in the said LLP and its assets of all kinds.

6. **BUSINESS OBJECTS:** The business of the LLP shall be:

6.1 To purchase, acquire, get, convert, develop, improve, hold with absolute, or limited rights or on lease, or otherwise and to erect, construct, build, demolish, re-erect, alter, repair, furnish and maintain land, including agriculture land, buildings, houses, farm houses, residential flats, commercial complexes, industrial land, colonies, markets, shops, factories, mills, godowns and building for hotels, restaurants and cinema houses, roads, bridges, dams, canals and wells in India or abroad and to sell, exchange, lease, sub-lease, barter, or otherwise deal in land including agriculture land, building and other properties and to collect rents and income and to supply and provide tenants, occupiers and others refreshments, attendance, waiting rooms, reading rooms, meeting rooms, laboratories, water, electric and all other conveniences including inter communication equipments.



To carry on the business as estate developers, agents and managers and to collect rents, arrange, repairs, look after and manage immovable properties of persons, firms and companies, Government and others, to give, take, sublet lease out any property, to carry out, undertakes or supervise any building construction, altering, improving, demolishing and repairing structure and other works and operations relating to townships, colonies and other.

7. **PROFIT SHARING RATIO:** The net profits of LLP arrived at after providing for payment of remuneration to the working partners and interest to partners on the loan given by them shall be divided in the following proportions :

Partners	Ratio
Party of the First Party	37.50
Party of the Second Party	15.00
Party to the Third Party	10.00
Party to the Fourth Party	15.00
Party to the Fifth Party	22.50
TOTAL	100%

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The losses of the LLP including loss of Capital, if any, shall be borne and paid by the partners in the following proportions:

Partners	Ratio
Party of the First Party	37.50
Party of the Second Party	15.00
Party to the Third Party	10.00
Party to the Fourth Party	15.00
Party to the Fifth Party	22.50
TOTAL	100%

8. **BANK ACCOUNTS:** That the LLP shall have its Bank Account(s) in any bank, whosoever and whenever opened, as may be mutually agreed and consented to, from time to time, shall be in the LLP's name. The LLP may use / operate the old accounts also, if all the continuing partners agree. The aforesaid bank accounts shall be operated jointly by any two partners, for which the partners have duly consented.

9. **GENERAL TERMS AND CONDITIONS:**

9.1 **ADMISSION OF NEW PARTNER**

9.1.1 The New partner may not be introduced without the consent of all the existing partners. Such incoming partner shall give his prior written consent to act as Partner of the LLP.

The fixed capital Contribution of the partner may be in form of tangible, intangible assets, movable or immovable property and the incoming partner shall bring minimum contribution as mutually decided by all the existing partners.

9.1.2 Existing partners alongwith the newly inducted partner shall execute a deed/supplementary agreement mentioning changes to take place in the terms and conditions mentioned in this deed. Such changes may be in the profit sharing ratio, duties and rights of the partners, contribution to be made by new partner or any other term.

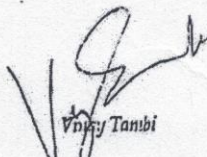
9.1.4 The Profit sharing ratio of the incoming partner will be in proportion to his contribution towards fixed capital of LLP.

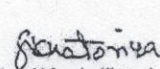
9.2 **Expulsion:** That it is expressly agreed between the partners that on account of fraud, collusion, misconduct, misappropriation of funds, embezzlement of funds, secret profits, breach of trust or any other such conduct, being derogatory or against the partnership LLP or any other partner, then the other partners by the rule of majority of number of partner, would be entitled to expel such partner and further take any civil/ criminal recourse as required.

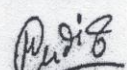
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Rule of Majority: That all the decisions in the interest of the business of the LLP and its functioning shall be taken by the majority of the partners. The majority shall be construed in terms of the number of partners and not by their share in the LLP.

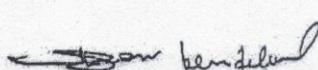

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Vinay Tambi


Suraj Narain Khatoria


Mudit Dangayach


Guman Khandewal


Shankar Lal Khandewal

10. RIGHTS OF PARTNERS

- 10.1 All the partners hereto shall have the rights, title and interest in all the assets and properties in the said LLP in the proportion of their fixed capital Contribution.
- 10.2 Every Partner has a right to have access to and to inspect and copy the books of the AGRE LLP.
- 10.3 Each of the partners hereto shall be entitled to carry on their own, separate and independent business as thereto they might be doing or they may hereafter do as they deem fit and proper and other partners and the LLP shall have no objection thereto provided that the said partner has intimated the said fact to the AGRE LLP before the start of the independent business and moreover he shall not use the name of the LLP to carry on the said business.

11. INTEREST ON CAPITAL: If any partner shall advance any sum of money to LLP over and above his due fixed capital contribution, the same shall be a debt due from the LLP to the partner advancing the same and shall carry simple interest at the rate of 12 % per annum or any other rate decided by majority of Partners.

12. GOING CONCERN: The AGRE LLP shall have perpetual succession. So, death, retirement or insolvency of any partner shall not dissolve the LLP.

13. RESIGNATION/ RETIREMENT: Any partner may retire or resign from the LLP by giving minimum one month clear notice, to the other partners, in writing, stating his intention of doing so. On resignation/ retirement of a partner, the retiring partner shall be entitled to full payment in respect of all his rights, title and interest in the Partnership as herein provided. However, upon insolvency of a partner his or her rights, title and interest in the LLP shall come to an end. In case of death of any of the partners herein any one of his / her legal heirs shall be admitted as a partner of the LLP in place of such deceased partner. The heirs, executors and administrators of such deceased partner shall be entitled to same or equivalent rights, title and interest of such deceased partner.

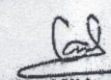
14. ON DEATH OF A PARTNER: That on the death of any continuing partners, the partnership shall not be deemed to, have dissolved but shall continue to subsist amongst the surviving partners along with legal heir of the deceased who may carry on the same terms and conditions as may be mutually decided by and between them. It is hereby further classified that it shall be deemed as change in constitution and not succession. On the death of any partner, if his or her legal heir opts not to become the partner, the surviving partners shall have the option to purchase the fixed capital contribution of the deceased partner in the LLP.

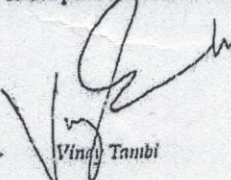
15. DUTIES OF PARTNERS:

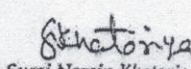
- 15.1 That the Partners shall be just and faithful to each other in all matters and transactions relating to the said LLP. The stock in trade, capital and property of the said partnership as well as of the partner shall in no way be liable for personal debts of other partner(s).

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Vinay Tambi


Suraj Narain Khatoriya

- 15.2 Each partner shall render true accounts and full information of all things affecting the AGRE LLP to other partner (s) or his legal representatives.
- 15.3 Every partner shall account to the LLP for any benefit derived by him without the consent of other partners of the LLP from any transaction concerning the LLP, or from any use by him of the property, name or any business connection of the LLP.
- 15.4 Every partner shall indemnify the LLP and the other existing partner for any loss caused to it by his fraud in the conduct of the business of the LLP.
- 15.5 In case any of the Partners of the LLP desires to transfer or assign his interest or shares in the LLP he can transfer the same only with the prior written consent of all the Partners.
- 15.6 All notices required to be given to any partner shall be deemed to have been served, if sent to such partner at the office of the LLP or at his residential address by registered post.
- 15.7 None of the Partners shall sell or mortgage his share and interest in this Partnership business to any third party, without the consent of the other partners.

16. No Partner shall without the written consent of other Partners :-

- 16.1 Employ any money, goods or effects of the partnership or pledge the assets thereof except in the ordinary course of business and upon the account or benefit of the AGRE LLP.
- 16.2 Enter into any bond or become sureties or security with or for any person or do knowingly cause or suffer to be done anything whereby the partnership property or any part thereof may be seized.
- 16.3 Assign mortgage or charge his / her share in the partnership or any asset or property thereof or make any other person a partner therein.
- 16.4 Engage directly or indirectly in any business competing with that of the AGRE LLP.
- 16.5 Lend money or give credit on behalf of the LLP or to have any dealings with any persons, company or LLP whom the other partner previously in writing have forbidden it to trust or deal with. Any loss incurred through any breach of provisions shall be made good with the LLP by the partner incurring the same.
- 16.6 Compromise or compound or (except upon payment in full) release or discharge any debt due to the LLP except upon the written consent given by the other partner.



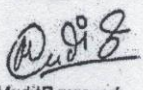
17. MEETINGS: That it is agreed that the majority of partners of the said LLP shall meet from time to time as decided. Further, any partner shall not absent himself, without any reasonable cause, from such meetings. In case any partner absents himself from 3 consecutive meetings, without any reasonable cause, then the same shall amount to misconduct.

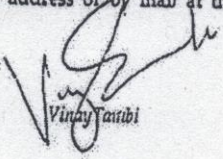
17.1 The meeting of designated partners may be called by giving 7 days clear notice. In case if any urgent meeting is called the notice requirement is to be rectified by all the Partners.

17.2 The matter discussed in the LLP meeting shall be decided by a resolution passed by consent of all the partners, and for this purpose, each partner shall have one vote.

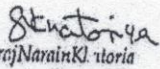
17.3 The meeting of the Partners may be called by sending 7 days prior notice to all the partners at their registered address or by mail at the Email ids provided by the

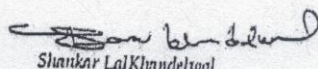

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individual partners or in case of urgent meeting the same can be called by the telephonic conversation but the notice requirement is to be rectified by all the Partners.

- 17.4 With the written consent of all the partners, a meeting of the partners may be conducted through Teleconferencing.
- 17.5 The meeting of Partners shall ordinarily be held at the registered office of the LLP or at any other place as per the convenience of partners.
- 17.6 The LLP shall ensure that decisions taken by it are recorded in the minutes within 30 days of taking such decisions and are kept and maintained at the registered office of the LLP.

18. Each partner shall -

- 18.1 Punctually pay and discharge the separate debts and engagement and indemnify the other partners and the AGRE LLP assets against the same and all proceedings, cost, claims and demands in respect thereof.
- 18.2 Each of the partners shall give time and attention as may be required for the fulfillment of the objectives of the AGRE LLP business and they all shall be the working partners.

19. DUTIES OF DESIGNATED PARTNERS:

19.1 First, Second, Third, Fourth and Fifth Party shall act as the Designated Partner of the LLP in terms of the requirement of the Limited Liability Partnership Act, 2008.

19.2 The Designated Partners shall be responsible for the doing of all acts, matters and things as are required to be done by the LLP in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of Limited Liability Partnership Act, 2008.

The designated partners shall be responsible for the doing of all acts arising out of this agreement.

The LLP shall pay such remuneration to the designated partner as may be decided by the majority of the partners, for rendering his services as such.

19.3 To open and operate account(s) with any Bank(s) and to secure and arrange overdraft from any Bank(s) against security of goods and stock in trade or otherwise on such terms and conditions as they may think fit and sign all papers and documents in connection therewith.

19.6 To borrow money and raise loans from any person, state or Central Government, financial corporation or any other public or private body; to sign, draw, accept, negotiate, pay, satisfy or receive any bills of exchange, hundies, promissory notes, cheques, order for payment or delivery of money, security or bills of lading or other negotiable or mercantile instruments for and on behalf of the LLP in the usual course of business.

19.7 To ask, demand, sue for recovery and receive whether in cash, cheque or any other mode from any Government department, private establishment or Local Authority all monies, dues, articles and things which shall become due, owing and payable to the LLP and to give any effectual receipt or discharge for the same.



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19.8 To apply for all kind of licenses and to secure them and also to apply for quota rights and for the purpose to appear before the authorities appointed for the same and to sign all papers in this connection.

19.9 To appear before the authorities concerned and to sign all papers in connection therewith.

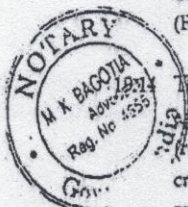
19.10 To appear and represent the LLP on behalf of the other partners before the Authorities which may be necessary from time to time. All acts, deeds and things done by a partner in bonafide interest of the business of the LLP shall be binding upon all the partners.

19.11 To sign and conduct all correspondence relating to the said partnership LLP.

- (a) Generally to act in relation to matters aforesaid and all other matters in which LLP will be interested or concerned and to execute and do all deeds, acts or things relating to any department.
- (b) To submit dispute in relation to business of the LLP to arbitration.
- (c) To compromise or relinquish any claim or portion of claim
- (d) To withdraw a suit or proceedings.
- (e) To admit any liability in a suit or proceedings against the LLP.

19.12 Borrowings: That the designated partners shall be entitled to raise any finances, loan(s) on and for behalf of the said LLP only after consent of majority of partners by numbers.

19.13 Loans and Advances: Any partner may, with the consent of the other partners, advance any amount of money, as may be required for carrying on the business of the LLP, by way of loan which may bear interest at the rate not more than 18% (Eighteen percent) p.a.



The AGRE LLP shall indemnify and defend its partners and other officers from and against any and all liability in connection with claims, actions and proceedings (regardless of the outcome), judgment, loss or settlement thereof, whether civil or criminal, arising out of or resulting from their respective performances as partners and officers of the LLP, except for the gross negligence or willful misconduct of the partner or officer seeking indemnification.

20. DISSOLUTION OF LLP: The AGRE LLP can be wound up with the consent of all the partners subject to the provisions of Limited Liability Partnership Act, 2008.

21. EXTENT OF LIABILITY OF LLP: The LLP is not bound by anything done by a partner in dealing with a person if:-

21.1 The partner in fact has no authority to act for the AGRE LLP is doing a particular act;

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21.2 The person known that he has no authority or does not know or believes him to be NOTARY JAIPUR a partner of the AGRE LLP.
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Mudil Dangayach

Gunan Khundelwal

Suraj Narain Khuntoria

Shankar Lal Khundelwal

22. MISCELLANEOUS PROVISIONS

22.1 The AGRE LLP shall indemnify each partner in respect of payments made and personal liabilities incurred by him

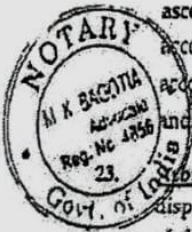
22.1.1 In the ordinary and proper conduct of the business of the LLP; or

22.1.2 In or about anything necessarily done for the preservation of the business or property of the limited liability partnership.

22.2 Accounts: The books of accounts of the LLP shall be kept at the registered office of the LLP for the reference of all the partners.

22.2.1 That the continuing partners shall be responsible to keep or cause to be kept proper books of accounts, wherein, full and complete accounts of business of the partnership shall be entered and maintained.

22.3 Accounting year: That during the continuance of the partnership business, on 31st March every year, the final accounts of the LLP for the year shall be made out and the yearly profit and loss account and balance sheet drawn up. The profits ascertained for the year shall be credited to or distributed among the partner according to their respective shares. In case of loss, they shall bear the same according to their respective shares. Every year income tax return shall be prepared and submitted to the Income Tax Department.



23. Arbitration: Subject to the provisions contained hereinabove, if at any time any dispute, doubt or question shall arise between the partners either on the construction of these presents or respecting the accounts, transactions, profits or losses of the business or otherwise in relation to the partnership then any such dispute, doubt or question shall be referred to Sole Arbitrator, appointed with the mutual consent of all the parties. The decision of the Sole Arbitrator shall be final and binding on all the parties. The matter shall be settled in accordance with the provisions contained in the Arbitration & Conciliation Act, 1996. The courts in Jaipur shall have Jurisdiction over any and all the matters related to the partnership business/ LLP.

24. That all or any of the terms and conditions of this deed may be MODIFIED ALTERED OR VARIED AND ANY NEW TERMS AND CONDITIONS MAY BE ADDED TO by the mutual consent of the parties hereto, to be expressed either in writing or implied from the conduct of the parties hereto.

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Nand Kishore Dangayach

Vinod Tambi

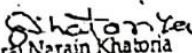
Sunita Nandan

IN WITNESS WHEREOF the parties have put their respective hands the day and year first hereinabove written.

Signed and delivered by the

For and on behalf of A. GANGWAL REAL ESTATE LLP


Naival Kishore Dangayach
(Existing partner)


Suraj Narain Khatoria
(Existing partner)


Guman Khandelwal
(Existing Partner)


Vinay Tambi
(Existing partner)


Mudit Dangayach
(Existing partner)

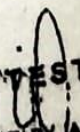



Shankar Lal Khandelwal
(Retiring Partner)

IDENTIFIED BY

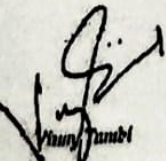
Witness: 
Signature: TIKAN KHANDLWAL
Name: _____
Add: 171, SPACERS CAMPUS
SIRSI ROAD, JAIPUR

Witness: _____
Signature: 
Name: Ramesh Dangayach
Add: h-5, Saini Colony, Power House Road,
Railway Station, Jaipur

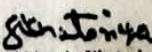
ATTESTED.

NOTARY JAIPUR
(Goleenhan (INP) 1)

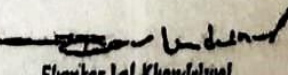

Naival Kishore Dangayach


Mudit Dangayach


Vinay Tambi

Guman Khandelwal


Suraj Narain Khatoria


Shankar Lal Khandelwal

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43. From the above LLP Agreement dated 31.12.2015 following salient points emerges :-

- (i) The terms of the Resignation of Mr. Shankar Khandelwal was mentioned in Clause 5.
- (ii) The Outgoing Partner Shankar Khandelwal retirement was w.e.f 01.04.2016.
- (iii) The Outgoing Partner Shankar Khandelwal did not continue for any right over share, right, title, interest or claim, of any nature whatsoever, to or in the said LLP or business or assets of its name or its properties, whether tangible or intangible, including the outstanding etc. whatsoever.
- (iv) The parties agreed to prepare the Balance sheet of the Corporate Debtor prior to the retirement of the outgoing partner Shankar Khandelwal, reflecting all assets and liabilities of the Corporate Debtor to determine the amounts payable to the Outgoing Partner Shankar Khandelwal.
- (v) In determining the amount payable to outgoing partner Shankar Khandelwal, the balances if any, with the name of Guman Builders & Developers Pvt. Ltd.& Guman Furniture & Services Pvt. Ltd. or any of his Sister Concern were to be adjusted to the account of Outgoing Partner
- (vi) The sixth Party i.e., Respondent Shankar Khandelwal released all its rights and claims to and in the said LLP and its assets of all kinds.

44. From the above LLP Agreement dated 31.12.2015, it becomes clear that the Respondent Shankar Khandelwal resigned on 31.12.2015 to be effective from 01.04.2016 and the balance sheet of Corporate Debtor LLP was necessary to be drawn accordingly to settle his dues. It is also noteworthy that all outstanding of Guman Builders and Developers Pvt. Ltd and Guman Furniture & Services Pvt. Ltd., was agreed to be adjusted to the account of outstanding partner i.e., the Respondent Shankar Khandelwal.

45. We note that as per clause 5 (vi) of the LLP agreement dated 31.12.2015, vide which Shankar Khandelwal retired, mentioned that the parties to the agreement were supposed to prepare a balance sheet prior to the retirement of the Shankar Khandelwal, with a view to determine the amounts payable to him. Thus, the Balance Sheet becomes the basis for determining and settling outstanding dues of the Respondent Shankar Khandelwal in the manner specified herein in clause 5 (vi) which apparently has been done here.

46. Here we will like to refer to the Balance Sheet as on 31.03.2016 prepared in accordance with the LLP Agreement dated 31.12.2015. The Balance Sheet reads as under :-

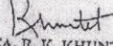
A. GANGWAL REAL ESTATE LLP
 Regd. Office: F-13, 6TH Floor, Mahima Trinit Tower, Swej Farm, New Sanganer Road, Sodala, Jaipur
 LLPIN: AAC-5469
 Email Id: info@vilasgroup.com
 Phone No. 0141-5109971

BALANCE SHEET AS AT MARCH 31, 2016

Particulars	Note No.	As at March 31, 2016	As at March 31, 2015
I. CONTRIBUTION AND LIABILITIES			
(1) Partner's Funds			
(a) Contribution	1	100,000	100,000
(b) Partner's Current A/c	2	(534,359)	
(2) Non - Current Liabilities			
(a) Long Term Borrowings	3	1,007,200,923	893,459,185
(3) Current Liabilities			
(a) Other Current Liabilities	4	2,444,270	268,439
TOTAL		1,009,210,834	893,827,624
II. APPLICATION OF FUNDS			
(1) Non - Current Assets			
(2) Current Assets			
(a) Inventories	5	993,229,655	892,014,750
(b) Cash and Cash Equivalents	6	1,099,764	1,626,239
(c) Other Current Assets	7	14,881,414	186,636
TOTAL		1,009,210,834	893,827,624

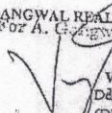
Significant Accounting Policies and Notes to Accounts
 The notes attached form an integral part of the Balance Sheet

1 to 12

FOR KHUNTETA & CO.
 Chartered Accountants
 FRN- 019922C

 CA. R. K. KHUNTETA
 Partner
 M. No. 073686



Place: Jaipur
 Date: Sep. 14, 2016

For A. GANGWAL REAL ESTATE LLP
 For A. GANGWAL REAL ESTATE LLP

 VINAY TAMBHI
 Designated Partner
 (DPIN: 021353334)
 For A. GANGWAL REAL ESTATE LLP

 GUMAN KHADELWAL
 Designated Partner
 (DPIN: 01328188)

TRUE COPY

A. GANGWAL REAL ESTATE LLP
LLPIN: AAC-5469
NOTES TO BALANCE SHEET AS AT MARCH 31, 2016

NOTE 1 (In Rs.)

Contribution	As at March 31, 2016	As at March 31, 2015
a) Guman Khandelwal	22,500	22,500
b) Mudit Dangayach	10,000	10,000
c) Nawal Kishore Dangayach	22,500	22,500
d) Shankar Lal Khandelwal	25,000	25,000
e) Suraj Narain Khatoria	10,000	10,000
f) Vinay Tambi (Amarnath Enterprises)	10,000	10,000
Total	100,000	100,000

NOTE 2 (In Rs.)

Partner's Current A/c	As at March 31, 2016	As at March 31, 2015
a) Guman Khandelwal	(120,231)	-
b) Mudit Dangayach	(53,436)	-
c) Nawal Kishore Dangayach	(120,231)	-
d) Shankar Lal Khandelwal	(133,590)	-
e) Suraj Narain Khatoria	(53,436)	-
f) Vinay Tambi (Amarnath Enterprises)	(53,436)	-
Total	(534,359)	-

NOTE 3 (In Rs.)

Long Term Borrowings	As at March 31, 2016	As at March 31, 2015
<u>Secured Loans</u>		
Rico	400,000,000	-
<u>Unsecured Loans</u>		
Royal Trading Company	-	12,000,000
Tirupati Ware House Pvt. Ltd.	100,633,709	90,82,647
Guman Khandelwal	6,746	55,130
Mudit Dangayach	99,991,361	89,278,001
Nawal Kishore Dangayach	175,729,841	108,000,000
Shankar Lal Khandelwal	51,655,842	409,278,232
Suraj Narain Khatoria	12,063,504	92,065,504
Vinay Tambi (Amarnath Enterprises)	114,563,720	91,957,671
Padmawati Enterprises	40,000,000	-
Sanjay B Surana	2,500,000	-
Shrinavayan Mundra	2,500,000	-
Vinod Duggar	5,000,000	-
Tarachaya Colonizers LLP	2,500,000	-
Total	1,007,200,923	893,459,185

NOTE 4 (In Rs.)

Other Current Liabilities	As at March 31, 2016	As at March 31, 2015
Creditors for Expenses		
Tikam Khandelwal	-	562
R K Khuntia	21,000	21,000
Harikripa Infra developers LLP	990,000	-
TDS Payble	1,422,270	246,877
Provision For Audit Fees	11,000	-
Total	2,444,270	268,439



For A. Gangwal Real Estate LLP
Designated Partner

Guman
Designated Partner

47. The important point to be noted from the above Balance Sheet duly signed by partners of the Corporate Debtor including wife of Respondent Shankar Khandelwal Guman Khandelwal and Statutory Auditors is regarding “Non current liabilities” which has been elaborated vide Note 3 to the Balance Sheet dated 31.03.2016. As per this note, the outstanding debt to Respondent Shankar Khandelwal was Rs. 5,16,55,842/-. This implies that earlier outstanding balances as claimed by the Respondent Shankar Khandelwal have been paid as per instructions of the Respondent Shankar Khandelwal and now at this stage, such plea of the Respondent for payment to other entity and not to him, can not be accepted. Thus, we hold that crystalised final outstanding debt by the Corporate Debtor to Respondent Shankar Khandelwal was Rs. 5,16,55,842/- and not other inflated outstanding claims as made out during averments by the Respondent Shankar Khandelwal.

48. Here, we will also like to refer to Ledger Accounts of the Corporate Debtor A. Gangwal Real Estate LLP with reference to accounts of Respondent Shankar Khandelwal. The relevant Ledger Accounts are reproduced for ready reference as under :-

A.GANGWAL REAL ESTATE LLP IT - (From 1-Apr-2014)

Shankar Lal Khandelwal
Ledger Account

Annex - R-1

1-Apr-2015 to 31-Mar-2016

Date	Particulars	Vch Type	Vch No.	Debit	Credit
1-4-2015	By Opening Balance				40,92,78,232.00
8-5-2015	To DCB Bank-11122450110416	Payment		60,00,000.00	
	By Land at Airport Enclave-A 5	Journal			80,98,940.00
12-5-2015	By Syndicate Bank-83771010000841	Receipt			1,00,000.00
13-5-2015	By Syndicate Bank-83771010000841	Receipt			3,00,000.00
16-5-2015	By Syndicate Bank-83771010000841	Receipt			1,00,000.00
19-5-2015	By Syndicate Bank-83771010000841	Receipt			2,00,000.00
2-6-2015	By Syndicate Bank-83771010000841	Receipt			1,50,000.00
11-6-2015	By Syndicate Bank-83771010000841	Receipt			1,00,000.00
15-6-2015	To Syndicate Bank-83771010000841	Payment		30,00,000.00	
16-6-2015	To Syndicate Bank-83771010000841	Payment		40,00,000.00	
	To Syndicate Bank-83771010000841	Payment		1,30,00,000.00	
17-6-2015	To Syndicate Bank-83771010000841	Payment		2,20,00,000.00	
18-6-2015	To Syndicate Bank-83771010000841	Payment		5,00,000.00	
	To Syndicate Bank-83771010000841	Payment		20,00,000.00	
20-6-2015	To Syndicate Bank-83771010000841	Payment		40,00,000.00	
30-6-2015	By Syndicate Bank-83771010000841	Receipt			75,00,000.00
1-7-2015	To Syndicate Bank-83771010000841	Payment		5,00,000.00	
	To GUMAN FURNITURE & SERVICES PVT.LTD.	Journal		30,00,000.00	
2-7-2015	To Syndicate Bank-83771010000841	Payment		60,00,000.00	
10-7-2015	By Syndicate Bank-83771010000841	Receipt			2,00,000.00
16-7-2015	By Syndicate Bank-83771010000841	Receipt			1,00,000.00
25-7-2015	By Syndicate Bank-83771010000841	Receipt			10,000.00
30-7-2015	By Syndicate Bank-83771010000841	Receipt			2,00,000.00
31-7-2015	By Syndicate Bank-83771010000841	Receipt			25,000.00
6-8-2015	By Syndicate Bank-83771010000841	Receipt			1,00,000.00
7-8-2015	By Syndicate Bank-83771010000841	Receipt			1,00,000.00
11-8-2015	By Syndicate Bank-83771010000841	Receipt			1,00,000.00
12-8-2015	By Syndicate Bank-83771010000841	Receipt			3,00,000.00
22-8-2015	By Syndicate Bank-83771010000841	Receipt			1,00,000.00
26-8-2015	By Syndicate Bank-83771010000841	Receipt			1,00,000.00
26-8-2015	By Syndicate Bank-83771010000841	Receipt			6,00,000.00
18-9-2015	To DCB Bank-11122450110416	Payment		20,00,000.00	
	By DCB Bank-11122450110416	Receipt			20,00,000.00
10-9-2015	By DCB Bank-11122450110416	Receipt			21,00,000.00
21-9-2015	By Syndicate Bank-83771010000841	Receipt			7,00,000.00
15-10-2015	By Syndicate Bank-83771010000841	Receipt			1,00,00,000.00
	To Syndicate Bank-83771010000841	Payment	3	50,00,000.00	
	To Syndicate Bank-83771010000841	Payment	3	50,00,000.00	
28-10-2015	By Syndicate Bank-83771010000841	Receipt			10,000.00
30-10-2015	To Syndicate Bank-83771010000841	Payment		1,00,000.00	
2-11-2015	By Syndicate Bank-83771010000841	Receipt			1,00,000.00
20-11-2015	By Syndicate Bank-83771010000841	Receipt			50,000.00
24-11-2015	To Syndicate Bank-83771010000841	Payment		2,00,00,000.00	
	To Syndicate Bank-83771010000841	Payment		50,00,000.00	
	To Syndicate Bank-83771010000841	Payment		1,00,00,000.00	
	Carried Over			11,11,00,000.00	44,27,22,172.00

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Continued

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A.GANGWAL REAL ESTATE LLP IT - (From 1-Apr-2014)

Shankar Lal Khandelwal Ledger Account 1-Apr-2015 to 31-Mar-2016

Page 2

Date	Particulars	Vch Type	Vch No.	Debit	Credit
	Brought Forward			11,11,00,000.00	44,27,22,172.00
24-11-2015	To Syndicate Bank-83771010000841	Payment	3	50,00,000.00	
26-11-2015	To Syndicate Bank-83771010000841	Payment		30,00,00,000.00	
	To Syndicate Bank-83771010000841	Payment		2,00,00,000.00	
	To Syndicate Bank-83771010000841	Payment		1,00,00,000.00	
	To Syndicate Bank-83771010000841	Payment		2,50,00,000.00	
27-11-2015	By Syndicate Bank-83771010000841	Receipt			1,50,00,000.00
	By Syndicate Bank-83771010000841	Receipt			3,00,00,000.00
30-11-2015	By Syndicate Bank-83771010000841	Receipt			20,000.00
7-12-2015	By DCB Bank-11122450110416	Receipt			20,25,000.00
9-12-2015	To Syndicate Bank-83771010000841	Payment		5,00,000.00	
16-12-2015	By Syndicate Bank-83771010000841	Receipt			9,00,000.00
19-1-2016	By Syndicate Bank-83771010000841	Receipt			10,00,000.00
22-3-2016	To HDFC Bank-50200010761840	Payment		45,000.00	
31-3-2016	By Interest Paid on Unsecured Loan	Journal			3,16,93,670.00
				47,16,45,000.00	52,33,00,842.00
	To Closing Balance			5,16,55,842.00	
				52,33,00,842.00	52,33,00,842.00

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A.GANGWAL REAL ESTATE LLP IT - (From 1-Apr-2014)

Shankar Lal Khandelwal
Ledger Account

1-Apr-2016 to 31-Mar-2017

Page 1

Date	Particulars	Vch Type	Vch No.	Debit	Credit
1-4-2016	By Opening Balance				5,16,55,842.00
1-4-2016	To Shankar Lal Khandelwal Current A/c	Journal		1,08,589.87	
30-6-2016	To HDFC Bank-50200010761840	Payment		2,50,000.00	
18-7-2016	By HDFC Bank-50200010761840	Receipt			1,00,00,000.00
	By HDFC Bank-50200010761840	Receipt			1,00,00,000.00
	To HDFC Bank-50200010761840	Payment	rtgs	1,00,00,000.00	
	To HDFC Bank-50200010761840	Payment	rtgs	1,00,00,000.00	
19-7-2016	To HDFC Bank-50200010761840	Payment	rtgs	1,00,00,000.00	
11-8-2016	By HDFC Bank-50200010761840	Receipt	rtgs		1,00,00,000.00
	To HDFC Bank-50200010761840	Payment	rtgs	1,00,00,000.00	
	To HDFC Bank-50200010761840	Payment	rtgs	1,00,00,000.00	
	To HDFC Bank-50200010761840	Payment	rtgs	1,00,00,000.00	
16-8-2016	By HDFC Bank-50200010761840	Receipt	TRF		2,00,00,000.00
28-10-2016	To MUC Bank A/c (237)	Payment		4,12,72,252.00	
	To MUC Bank A/c (237)	Payment		25,000.00	
	To Office Expenses	Journal		0.13	
				10,16,55,842.00	10,16,55,842.00

49. The Respondent Shankar Khandelwal has pleaded not to take into account the Ledger Accounts; although with rider he has acknowledged the Balance Sheet while accepting outstanding Rs. 5,16,55,842/- as financial debt owed by Corporate Debtor to him. Hence, let us examine relationship between the Balance Sheet accepted by the Respondent Shankar Khandelwal and Ledger Account refuted by the Respondent Shankar Khandelwal in order to examine point raised by the Respondent Shankar Khandelwal. On the one hand, balance sheet is the financial statement that summarizes company's financial position on the specified date giving a snapshot of a company's assets and liabilities and provide stakeholders clear picture of the company's financial health. The ledgers on the other hand, are books or records that contain complete records of all financial transactions of Company and therefore ledgers are used to track individual transactions. The balance sheet and ledger are both essential financial statements, the Balance Sheet is summary of a company's financial position while the ledger contains a detailed record of all financial transaction based on which the Balance sheet is prepared.

Thus, we consider that since Ledger accounts are details of all transactions based on which the Balance Sheet has been prepared, the same ledger need to be looked into especially in such cases where dispute are raised about existence or settlement of the Financial Debt based on the balance sheet.

50. We have already noted that the Respondent Shankar Khandelwal filed an application under Section 7 of Code alleging non-payment of financial

debt of Rs. 38,73,94,501/- which has been disputed by the Appellant stating this to be highly inflated amount due from the Corporate Debtor whereas the only Rs. 5,16,55,842/- was due and payable to the Respondent Shankar Khandelwal by the Corporate Debtor at the time of his retirement from the LLP. We note the averments of the Corporate Debtor relying on record to demonstrated the amounts paid to the Respondent Shankar Khandelwal and its sister concerns including Rs. 30 Crores to Guman Builder and Developer Private Limited. The Respondent Shankar Khandelwal has also admitted that a sum of Rs. 30,00,00,000/- out of his alleged outstanding financial debt, was paid to his sister concern company Guman Builder and Developer Private Limited which depicts that the payment was made to the Respondent Shankar Khandelwal Financial Creditor. The clause 5 (vi) of the LLP agreement dated 31.12.2015, factors into payment to tother entity as mentioned therein and Guman Builder and Developer Private Limited is one of them.

The net result of the transactions in the Ledger shows Rs. 4,12,72,252/-, remained outstanding which was paid to the Respondent Shankar Khandelwal by the Corporate Debtor on 28.10.2016 by way of two drafts bearing nos. 725194 and 725195 amounts to Rs. 4,12,72,252 and Rs. 25,000/- respectively, towards the full and final discharge of its liabilities. The purported date of default, 17.04.2017, has been taken on account of a First Information Report (FIR) which the Respondent Shankar Khandelwal failed to place on record with Application under Section 7 of the Code and filed it subsequently only with his additional affidavit on 20.07.2021.

51. In this context, we also note from the averments of the Respondent Shankar that (a) Bank Statement cannot be valid proof for discharge of its debt and (b) payment to third independent entity cannot be regarded as valid discharge of debts. As regards the first argument of the Respondent, we consider that bank payment, primarily, is valid proof, of course, which need to be co-related with other relevant information as and if needed. As regard, Second issue raised by the Respondent Shankar Khandelwal about payment to third Independent entity, generally speaking, the transactions are required to be made inter-se between concerned parties. If the loan has been given by the Financial Creditor to the Corporate Debtor, the repayment can be made by the Corporate Debtor only to the Financial Creditor. However, if Financial Creditor desires and make agreement to settle his outstanding dues by making payments to someone else specified by him, in commercial world this need to be reckoned with towards satisfaction of outstanding debt of the Financial Creditor. Here, we take cognizance of fact that LLP Agreement dated 31.12.2015 was signed by the Respondent Shankar Khandelwal and Respondent Shankar Khandelwal as Financial Creditor signed specific Clause No. 5 (vi) i.e., *“The parties here will prepare the Balanced Sheet of the said LLP prior to the retirement of the outgoing partner, being relevant for the retirement and reflecting all assets and liabilities of the LLP and will determine the amounts payable to the Outgoing Partner. In determining the amount payable to outgoing partner, the balances if any, with the name of Guman Builders & Developers Pvt. Ltd. or any of his Sister Concern shall be adjusted to be account of Outgoing Partner.”*

This clearly implies that it was conscious and deliberate decisions of parties especially of the Respondent Shankar Khandelwal to make payment to Guman Builders and Developers Pvt. Ltd and Guman Furniture & Services Pvt. Ltd. After written LLP Agreement under which the Respondent Shankar Khandelwal resigned from the Corporate Debtor, now the issue raised by Respondent Shankar Khandelwal, therefore, is not tenable and cannot be accepted.

52. The bank statements of the Corporate Debtor are clear evidence of repayment of the amount due to the Respondent Shankar Khandelwal and the LLP Agreement dated 31.12.2015 described procedures to set off outstanding amount on the behalf of Respondent Shankar Khandelwal through named entity for the said repayment. The total amount due to the Respondent Shankar Khandelwal was Rs. 5,16,55,842/- which has completely been repaid firstly to the tune of Rs. 1,03,58,590/- which has been repaid in tranches between 01.04.2016 to 16.08.2016 and the same has been reflected through the Ledgers and bank account statements of the Corporate Debtor Rs. 4,12,72, 252/- has been repaid by way of Demand Draft No. 725194 dated 28.10.2016 and Rs. 25,000/- has been repaid vide Demand Draft No. 725195 dated 28.10.2016. Thus, we tend to accept the pleadings of the Appellant that based on combined examination of Ledger and balance sheet it is proven that all dues towards the Respondent Shankar Khandelwal stand settled.

53. We also note the allegations of the Appellants that the Respondent Shankar Khandelwal is allegedly attempting to recover tainted money from

Corporate Debtor, which is forming a part of the proceeds of crime. Even if the alleged loan is found to not be a part of the proceeds of crime, any attempts towards recovery of the amount would have to be adjudicated by a civil court under a recovery suit. The intent of IBC is not to facilitate recovery for creditors. We tend to agree that once all outstanding dues have been paid by the Corporate Debtor to the Respondent Shankar Khandelwal, disputed claims if any, can be raised in suitable other legal forum and IBC can not be used for such recovery proceeding.

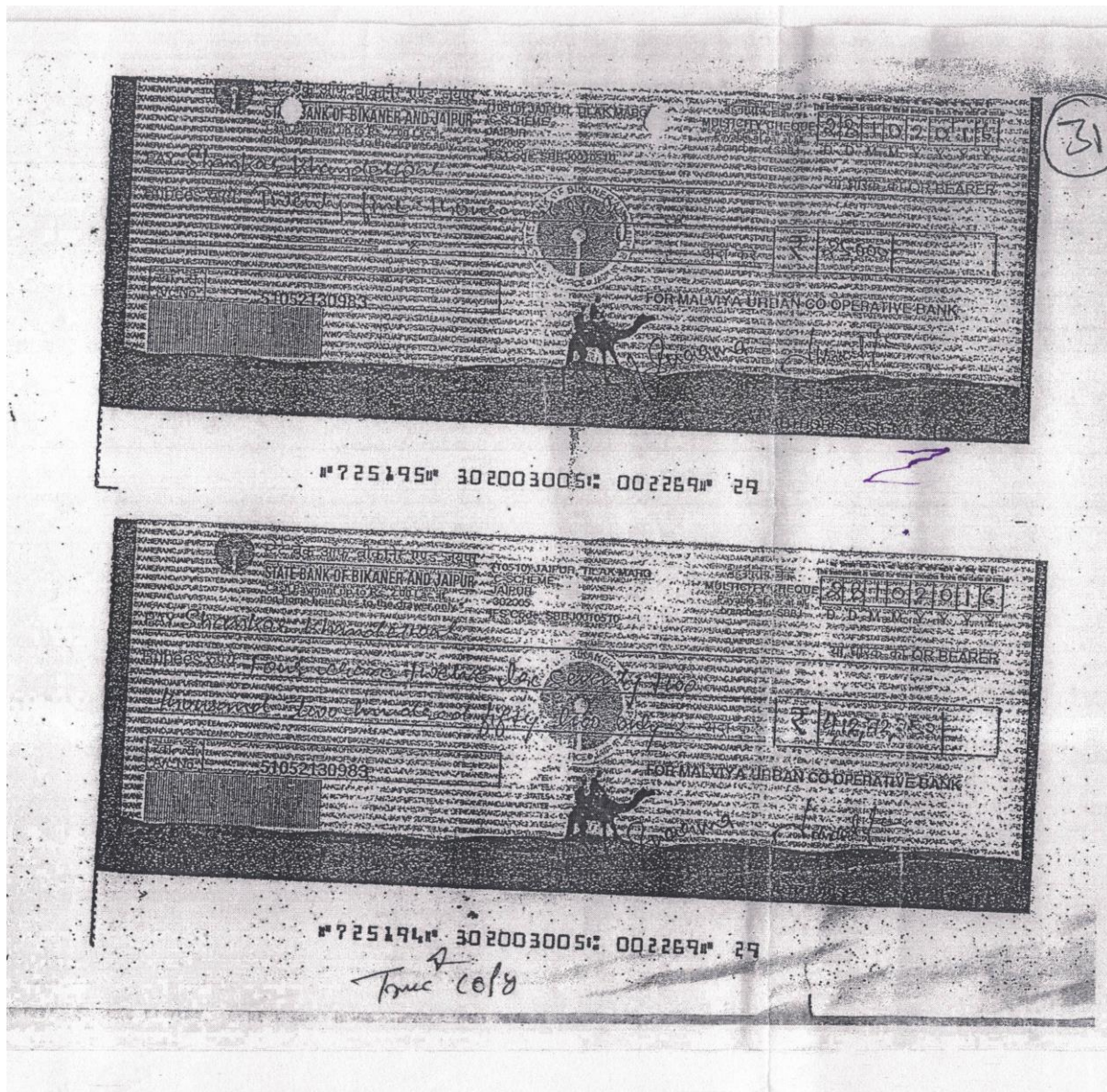
In this connection, we note the judgment of the Hon'ble Supreme Court in ***Swiss Ribbons (P) Ltd. v. Union of India***, [(2019) 4 SCC 17] [Page 39, Paragraph 28] states:

"28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also

protects all its creditors and workers by seeing that the resolution process goes.”

(Emphasis Supplied)

54. We also note that payment made vide two demand draft are undisputed which can be seen from the following :-



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STATE OF BIKANER AND JAIPUR	ILLEGIBLE, TILAK MARG C-SCHEME JAIPUR, 302005 IFS CODE: SBBJ10510	MULTICITY CHEQUE 28.10.2016
Shankar Khandelwal		OR BEARER
Twenty five Thousand Only		Rs. 25,000/-
51052130983		FOR MALVIYA URBAN CO OPERATIVE BANK
		s/d s/d
II 725195II	302003005II 002269 29	

STATE OF BIKANER AND JAIPUR	ILLEGIBLE, TILAK MARG C-SCHEME JAIPUR, 302005 IFS CODE: SBBJ10510	MULTICITY CHEQUE 28.10.2016
Shankar Khandelwal		OR BEARER
Four Crore Twelve Lac Seventy Two Thousand Two Hundred Fifty Two Only		Rs. 4,12,72,252/-
51052130983		FOR MALVIYA URBAN CO OPERATIVE BANK
		s/d s/d
II 725194II	302003005 02269 29	

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55. Now we would like to take into account the relevant portion of the Impugned Order which reads :-

“8. It is the case of the respondent-corporate debtor that as per its balance sheet of the Financial Year 2015-16 the balance due and payable to the applicant was only ₹5,16,55,842/-. It is the further case of the respondent-corporate debtor that the same was repaid to M/s Guman Builders and Developers Private Limited wherein the petitioner and his wife are the shareholders and thereby there is no debt due and payable as on date by the corporate debtor to the petitioner. On the other hand, it is the case of the petitioner that the claimed amount was given as a loan by him in his individual capacity to the respondent-corporate debtor and even as per the

respondent-corporate debtor itself an amount of ₹5, 16,55,842/- was due and payable by it to the petitioner, in his personal capacity and that the respondent-corporate debtor failed to show any proof of payment of the said amount to him even after permitting him to file an additional affidavit along with the proofs, if any. Even according to the respondent-corporate debtor the amount of ₹30 crores has been paid only to M/s Guman Builders and Developers Private Limited, but not to the petitioner. He further submits that if any amount paid to any company or to any individual other than the petitioner cannot be treated as the due discharge of the debt payable to the petitioner.

9. We find force in the submissions made on behalf of the petitioner, since the respondent-corporate debtor failed to show any valid proof that the debt due and payable to the petitioner in his individual capacity is paid to him in his individual capacity.”

(Emphasis Supplied)

56. Thus, the main basis contained in the Impugned Order for admission of the Application under Section 7 of the Code is that the Corporate Debtor failed to show any valid proof that debt due and payment to the Respondent Shankar Khandelwal was paid in his individual capacity. In this regard, we have already examined in details that in normal circumstances the payment is to be made to the party from whom money was taken, however, the significant point in present appeal is to note about specific written instruction/ advise/ agreement, whereby the Lender (the Respondent Shankar Khandelwal) asked borrower (the Corporate Debtor) to pay to third

party (M/s Guman Builders and Developers Private Limited) as settlement of such dues. In term Clause 5(vi) of LLP Agreement dated 31.12.2015, all payments were settled as discussed in detail in pre-paras. The same has not been properly appraised in the Impugned Order and therefore the Impugned Order is not considered valid.

57. No amount of financial debt was due to the Respondent Shankar Khandelwal on the date of filing of the Application under Section 7 of the Code before the Adjudicating Authority. Therefore, the Adjudicating Authority has patently erred in admitting the Application filed by the Respondent Shankar Khandelwal vide its Impugned Order dated 13.10.2021.

58. Based on above discussion, we hold that the Adjudicating Authority erred in passing the Impugned Order dated 13.10.2021 admitting application under Section 7 of the Code and therefore Impugned Order deserves to be set aside accordingly.

59. In fine, the Appeals succeed and the Impugned Order is set aside. No Costs. Interlocutory Application(s), if any, are Closed.

[Justice Anant Bijay Singh]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

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