

IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT NO. 1, MUMBAI BENCH

MA No.180/2020 and

C.P. (IB) No.1632/MB/2019

(Under Section 7 of the IBC, 2016)

In the matter of

Vistra ITCL (India) Limited

IL & FS Financial Centre, Plot No.  
C 22, G Block, BandraKurla  
Complex, Bandra (East), Mumbai-  
400051

.... Petitioner

v/s.

M/s Satra Properties (India) Limited

Dev Plaza, 2<sup>nd</sup> Floor, Opp. Andheri  
Fire Station, S. V. Road, Andheri  
(West), Mumbai- 400058

.... Corporate Debtor

Order delivered on:03.08.2020

Coram:

Smt Suchitra Kanuparthi, Member (Judicial)

Shri V. Nallasenapathy, Member (Technical)

For the Petitioner: Mr. Pradeep Sanchetti, Senior Counsel a/w.  
Mr. Vyom Shah, Ms. Pallavi Bali, Mr. Aziz Khan,  
Ms. Dimple Majithia, Mr. Anagh Pradhan and Mr.  
Gamanjit Singh Sethi, Advocates i/b. Divya  
Shah Associates

For the Corporate Debtor: Mr. Gaurav Joshi, Senior Counsel a/w.  
Mr. Feroze Patel and Ms. Shaheen  
Moghul, Advocates i/b. Mulla & Mulla  
and CBC

*Per: Suchitra Kanuparthi, Member (J)*

## **ORDER**

1. This Company Petition is filed by Vistra ITCL (India) Limited (formerly known as IL & FS Trust Company) (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Satra Properties (India) Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment of ₹65,24,33,104/- (principal amount of Rs. 43,33,00,000/- plus interest @ 9 % p.a. from the respective date of subscription to till 21<sup>st</sup> April, 2019 amounting to Rs. 21,74,10,733/- and penal interest @ 6% p.a. amounting to Rs. 20,22,371/-) by invoking the provisions of Section 7 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 4 of the Insolvency

& Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**Brief Facts of the Case:**

2. The Counsel for the petitioner submits that the Corporate Debtor is engaged in the business of real estate, constructions, development of residential and commercial properties. The Corporate Debtor was desirous of raising funds for the purpose of its construction project at Borivali, Mumbai, for the project 'Satra Plazaa' at Jodhpar, Rajasthan which entailed construction of commercial building having mixture of retail, commercial, consisting of ground to five floors and hotel from 6<sup>th</sup> floor to 11<sup>th</sup> floor and other general corporate purposes. For the said purpose, the Corporate Debtor proposed to raise finance upto Rs. 56,00,00,000/- by the way of issuing debentures.
  
3. The Petitioners submit that due to their ongoing relationship with the Satra Group, the Debenture Holders/Petitioners agreed to subscribe to 5600 secured redeemable non-convertible debentures issued by the Corporate Debtor having a face value of Rs.1,00,000/- each (hereinafter referred to as "said Debentures") for a total consideration of Rs.56,00,00,000/-. The Debenture Holders were to be secured with first equitable mortgage charge of the Corporate Debtor's leasehold rights in a

commercial plot in Jodhpur ("the said Jodhpur plot") admeasuring 4,141 sq. yards situated at Over Bridge Clock Tower Road Scheme (OBCT Road), NaiSarak, Jodhpur (Rajasthan), a Personal Guarantee of Mr. Praful Satra and deposit of title deeds of the Jodhpur Plot. All monies received from the Jodhpur Project were to be deposited into the Escrow Account. The letter also set out that the Debenture Trustee was to be appointed in this matter.

4. The Corporate Debtor executed the Secured Redeemable Non-Convertible Debenture Subscription Agreement dated 1st March 2014 (hereinafter referred to as the "Debenture Subscription Agreement") in favor of the Petitioner No.2 & 3. Mr. Mayank Shah with Mrs. Shruti Mayank Shah, the Petitioner Nos. 2 and 3 herein, jointly subscribed to 5,400 Debentures and Mr. Shreyans Shah subscribed to 200 Debentures. The consideration of Rs.56,00,00,000/- was paid by the Debenture Holders from time to time through different bank accounts held in the name of Mr. Mayank Shah and Mr. Shreyans Shah towards the 5,400 Debentures and 200 Debentures respectively.
5. The Debenture Amount was to be secured by first equitable mortgage over the leasehold rights in the Jodhpur Plot and Personal Guarantee of Mr. Praful Satra. Under the Debenture Subscription Agreement, the said Debentures were to be redeemed after the end of 12 months with interest in accordance with the

Redemption Schedule annexed to the Debenture Subscription Agreement. The said Debentures were subscribed to by the Debenture Holders in installments and acknowledged by Allotment Intimation letters addressed by the Corporate Debtor between March and November 2014.

6. The Corporate Debtor undertook in the Debenture Subscription Agreement, to promptly notify the Debenture Holders any application for winding up of the Company having been made. All receivables from sale/lease/license of the shops, offices, commercial premises and other receivables arising under the Jodhpur Project were to be accumulated in a dedicated escrow account. The Debenture Trustee was also to be informed of any event likely to have a material adverse effect on the Project, its profit, business, income or financial condition. The Corporate Debtor was liable to report details of such material adverse effect and details of litigation (including winding up proceedings). Article 8 of the Debenture Subscription Agreement sets out the Events of Default and the consequences thereof and in case of an event of default, the Debenture Holders are entitled to *inter alia* call upon the Debenture Amounts to be paid.
7. The Debenture Trustee was appointed pursuant to a Debenture Trust Deed also executed on 1st March 2014 (hereinafter referred to as the "Debenture Trust Deed") by the Corporate Debtor and its promoter Mr. Praful Satra with the Debenture Trustee herein.

The Debenture Trust Deed *inter alia* represents that the Debenture Trustee was appointed to act as trustee for the benefit of the Debenture Holders as well as in respect of the trust created pursuant to Clause 4.2 of the Debenture Trust Deed. The Debenture Trustee is entitled, authorized and empowered to *inter alia* execute and deliver all documents contemplated by the Trust Deed in the interest of the Debenture Holders and is to take whatever action as shall be required to be taken by the Debenture Trustee under the Transaction Documents, including the Debenture Subscription Agreement, to exercise its rights under the agreements. The Debenture Trustee is authorized *inter alia* by the Debenture Trust Deed to take whatever action or exercise any rights or remedies that shall be required to be taken or executed by the Debenture Trustee pursuant to the terms of the Trust Deed and to enforce the rights of the Debenture Holders as necessary. This includes the right and obligation of the Debenture Trustee to initiate proceedings in the event of continuous occurrence of any event that shall constitute an 'Event of Default'. The Petitioner No.1/Debenture Trustee is instituting the captioned petition pursuant to its rights and obligations under the Debenture Trust Deed and the Petitioner Nos. 2 and 3 have been added as parties to the present Petition in their capacity of being the Debenture Holders/ Financial Creditors. A personal guarantee was furnished by Mr. Praful Satra, Promoter of the Corporate Debtor, by executing a Personal Guarantee dated 15<sup>th</sup> March 2014 for the

benefit of the Debenture Trustee and the Debenture Holders.

8. An Escrow Agreement was executed on 2<sup>nd</sup> December 2014 between the Corporate Debtor, the Debenture Holders, Debenture Trustee and Axis Bank Limited as the escrow agent wherein the receivables from the proposed Jodhpur Project were to be routed through/deposited in the escrow account. The Debenture Trustee was to operate the said escrow account on behalf of and for the benefit of the Debenture Holders.
9. As per the terms and conditions of the Debenture Subscription Agreement, the said Debentures were to be redeemed in four tranches of Rs.38.50 crores along with interest accrued on 5<sup>th</sup> March 2015, Rs.6.50 crores along with interest accrued on 5<sup>th</sup> April 2015, Rs.5.50 crores along with interest accrued on 5<sup>th</sup> May 2015 and Rs.5.50 crores along with interest accrued on 5<sup>th</sup> June 2015. Pursuant to further talks and discussions between the parties, the Corporate Debtor company vide their resolution of 12<sup>th</sup> February 2015 revised the date of redemption of the said Debentures in installments between April and December 2016, as per the dates detailed in the said resolution.
10. The Corporate Debtor was unable to arrange for funds to redeem all the said 5600 Debentures by December 2016 and consequently, failed to redeem the said Debentures as per the

schedule set out in its resolution of 12th February 2015. The Debenture Holders did not have any option but to wait till monies were obtained by the Corporate Debtor Company to complete full redemption of the said Debentures. That being said, they called upon the Corporate Debtor to redeem as many Debentures as it could redeem from time to time on the basis of the monies that were brought into the escrow account from the Jodhpur Project. Out of the monies brought into the escrow account, the Corporate Debtor redeemed 1270 Debentures between 31' March 2016 and 1" April 2017, being 200 Debentures held by Mr. Shreyans Shah and 1070 Debentures being jointly held by the Petitioner Nos.2 and 3 i.e. Mr. Mayank Shah and Mrs. Shruti Mayank Shah. The Debenture Holders were paid interest thereon at the rate of 12% between 31" March 2016 and 1" April 2017 and they have received Rs.14,19,25,627/- (net of TDS) in case of Mr. Mayank Shah and Rs.2,59,06,072/- (net of TDS) in case of Mr. Shreyans Shah pursuant to the redemption. The bank statement of Mr. Mayank Shah for the period between 31" March 2016 and 1" April 2017 sets out RTGS transfer of Rs. 14,19,25,627 from the Corporate Debtor and the bank statement of Mr. Shreyans Shah as on 20<sup>th</sup> January 2017 sets out RTGS transfer of Rs.2,59,06,072 from the Corporate Debtor.

11. The Corporate Debtor had also sought that the redemption dates for the said Debentures be extended. Mr. Shreyans Shah's

200 Debentures had been redeemed by the Corporate Debtor but 4330 Debentures subscribed by the Petitioner Nos. 2 and 3 remained to be redeemed. By their letter dated 20th April 2017, they set out the revision in terms and conditions of the said Debentures that were agreeable to the parties. The terms were similar except interest carried on the Debentures was 12% per annum to be compounded every 9 completed calendar months from date of subscription of the respective Debentures. It was stated that in respect of the outstanding 4330 Debentures aggregating to a value of Rs.43.30 crores, redemption date was extended in the following manner:-

Dates	No. of NCD
2 <sup>nd</sup> April 2019	2,780
2 <sup>nd</sup> May 2019	500
1 <sup>st</sup> June 2019	800
1 <sup>st</sup> August 2019	100
2 <sup>nd</sup> December2019	150

12. The escrow account of the Corporate Debtor was frozen by the Maharashtra VAT authorities and on or around November 2017, they deposited monies into current account of Satra Properties India Limited. This was a breach of the Escrow Agreement between the parties and the Debenture Holders

informed the Corporate Debtor and its Promoter accordingly. However, Mr. Praful Satra stated to the Debenture Holder/ Petitioners that there were financial difficulties and the Jodhpur Project has almost come to a standstill. He sought further amounts from Petitioner No.2 and 3 i.e. the Debenture Holders and assured that the Corporate Debtor would complete the Project and redeem the outstanding Debentures by April 2019 as had been agreed by the parties. He assured to Petitioner Nos.2 and 3 that he would be getting funding from other sources as well for the project. In the meanwhile, the Shah Group of companies, promoted by the Debenture Holders, put in an additional amount of Rs.1.5 crores towards expenses in the Jodhpur Project.

13. The Corporate Debtor addressed a letter dated 14<sup>th</sup> February 2018 to Mr. Mayank Shah, Petitioner No.1 stating that there was lower realization of booking monies and subdued demand in the commercial segment in respect of the Satra Plaza project at Jodhpur. It was requested that the interest rate payable on the outstanding Debentures be reduced from 12% to 9% per annum from date of subscription. The Debenture Holders accepted the request for reduction of interest from 12% to 9% compounded every 9 completed calendar months on the outstanding Debentures by their letter dated 26th March 2018.

14. The Petitioner Nos.2 and 3 informed the Debenture Trustee of

its revision of interest and the Debenture Trustee, by its letter dated 27th March 2018 addressed to the Corporate Debtor, accepted the reduction of interest subject to compliance with regulatory requirements and as per the transaction documents. The restructuring of the Debentures and revised date of redemption was further approved by the Debenture Trustee by its letter dated 10<sup>th</sup> May 2018 addressed to the Corporate Debtor.

15. The Jodhpur Project did not recover its operations and on the contrary, even other companies of the Satra Group started facing financial difficulties. On 3<sup>rd</sup> January, 2019, Anchor Leasing Private Limited filed a petition under Section 7 of the Insolvency and Bankruptcy Code 2016 against the Corporate Debtor. Subsequent Petitions have also been filed under Section 7 by Robust Landscape Private Limited, Anchor Leasing Private Limited and India Infoline Finance Limited against a company called Satra Properties Developers Private Limited, which is a group company of the Corporate Debtor. A Petition has also been filed by Indian Infoline Finance Limited under Section 7 of the Insolvency and Bankruptcy Code 2016 against the Corporate Debtor. Mr. Praful Satra subsequently mentioned to the Petitioner Nos.2 and 3/ Debenture Holders that the Petitions had been filed but assured that he would settle the matters and the outstanding debts before admission of the Petitions. He assured the Petitioner Nos.2 and 3 that after settlement of these Petitions,

there would be no impediment to the Corporate Debtor to obtain further funds from other sources and redeeming the outstanding Debentures as per the agreed schedule. Ultimately, none of these matters have been settled and proceedings against the Corporate Debtor are currently pending before this Hon'ble Tribunal. Petitioner Nos.2 and 3 confirms that the Corporate Debtor and its promoter Mr. Praful Satra has also had several without prejudice settlement discussions with the Debenture Holders. However, there has been no positive result to these discussions and it is evident that the Corporate Debtor and Mr. Praful Satra are only suggesting settlement discussions to elongate the matter and to avoid redeeming the outstanding Debentures.

16. It is submitted that the Corporate Debtor is not able to fulfill its obligations and redeem the outstanding Debentures in view of their precarious financial condition. It has failed to redeem the 2,780 Debentures that were to be redeemed on 2nd April 2019. Various events of Default under the Debenture Subscription Agreement and the Debenture Trust Deed have been triggered. Further, it is to be noted that the Corporate Debtor and its Promoter have failed to intimate the Debenture Trustee of the pending proceedings against the Corporate Debtor in the Hon'ble NCLT, Mumbai.

17. The Corporate Debtor addressed to the Bombay Stock

Exchange wherein it has falsely alleged that the Corporate Debtor is not liable to make any payment towards the redemption of the said Debentures on the basis of an alleged 'settlement'. The Petitioners Nos. 2 and 3 state that this statement is patently false and that there has been no settlement between the parties. As per the agreement between parties, the Debentures are to be redeemed between April 2019 and December 2019 in the timeline as set out hereinabove and they continue to be liable to be redeemed.

18. The Petitioner Nos. 2 and 3 were not even informed of the letter of 3<sup>rd</sup> April 2019 by the Corporate Debtor. The Chartered Accountant of the Petitioner Nos. 2 and 3 came across this letter on the BSE Website and it was only then that the Petitioner Nos. 2 and 3 came to know of this letter. The Advocates for the Petitioner Nos. 2 and 3, under their instructions, addressed a letter dated 8th April 2019 to the Bombay Stock Exchange *inter alia* unequivocally denying that there was any settlement arrived as alleged and further asserting that the Corporate Debtor continues to be liable to pay to the Petitioner Nos. 2 and 3 the entire amount of outstanding Debentures together with agreed interest thereon.
19. The Advocates for the Corporate Debtor have vide their letter dated 11<sup>th</sup> April, 2019 addressed to the Bombay Stock

Exchange in response to the aforesaid letter dated 8<sup>th</sup> April, 2019, have once again refuted the existence of any liability of the Corporate Debtor. Thus, the Corporate Debtor has been consistently attempting to evade its liability by misrepresenting the correct facts surfacing the said Debentures.

20. The Petitioner Nos. 2 and 3 have also addressed a letter dated 12<sup>th</sup> April 2019 to the Debenture Trustee setting out the Events of Defaults that have occurred in respect of the outstanding said Debentures. It was also pointed out that there had been events of default under the Debenture Subscription Agreement and further, that the Corporate Debtor had dishonestly rejected its liability in toto to redeem any of the outstanding debentures. As a consequence of these actions, the Petitioner Nos. 2 and 3 directed the Debenture Trustee to call upon the Corporate Debtor and its Promoter to pay the entire debt of Debenture Amounts of Rs.43.30 crores plus interest thereon.

21. The Petitioner Nos. 2 and 3 have finally in view of the consistent breaches committed by the Corporate Debtor under the terms and conditions of the Debenture Subscription Agreement dated 1<sup>st</sup> March 2014 addressed a letter dated 16<sup>th</sup> April 2019 to the Corporate Debtor and thereby called upon the Corporate Debtor to redeem the outstanding 4,330 Debentures for a principal amount of Rs.43.30 13 crores plus

interest thereon @ 9% per annum compounded every 9 completed calendar months from the date of subscription. The Petitioners therefore repeat and reiterate that all amounts payable towards the said Debentures are still outstanding and due and payable under the said Debenture Subscription Agreement and the said Debenture Trust Deed.

22. The petitioner submits that the Rs. 43,33,00,000/- being the amount disbursed towards the subscription of the secured redeemable non- convertible debentures was granted to the Corporate Debtor as under;

Sr. no.	Date of Disbursement	Debentures subscribe (each carrying a face value of Rs. 1 lakh)	Amount (in Rupees)
1.	06.03.2014	430	4,30,00,000
2.	07.03.2014	1500	15,00,00,000
3.	10.03.2014	400	4,00,00,000
4.	20.03.2014	400	4,00,00,000
5.	21.03.2014	50	50,00,000
6.	04.04.2014	200	2,00,00,000

7.	07.04.2014	100	1,00,00,000
8.	15.04.2014	200	2,00,00,000
9.	22.04.2014	100	1,00,00,000
10.	25.04.2014	50	50,00,000
11.	29.04.2014	300	3,00,00,000
12.	05.05.2014	350	3,50,00,000
13.	10.07.2014	100	1,00,00,000
14.	08.11.2014	150	1,50,00,000
	Total	4330	43,30,00,000

### **23. Reply of Corporate debtor:**

- a. At the outset, the Respondent states that the present proceedings appear to have been filed by the petitioner no. 1 being the debenture trustee, at the behest of the MJS Group through the petitioner no. 2 and petitioner no. 3 only as a means to defraud the valuable rights of

the respondent.

- b. The respondent states that the petitioner has not only breached, but also resiled and reneged from the larger understanding and settlement arrived at between the petitioner no. 2 and his group and the Respondent and its group. As is more particularly enumerated upon hereinafter the larger understanding and overall settlement were arrived at by the parties pursuant to prolonged negotiations and the settlement apropos the various facets that were intrinsically connected and to be acted upon by the parties as a whole. The respondent therefore states that the present petition is not maintainable in the present form or otherwise, for various reasons that are more particularly elucidated upon hereinafter and on these grounds alone, the petition deserves to be dismissed in limine with costs.
- c. The Corporate Debtor submits that the petitioner in their petition for obvious reasons suppressed certain relevant and material facts which are necessary for the purpose of the present adjudication. The petitioners are guilty of suppression veri and suggestion falsi and on this ground alone this petition deserves to be dismissed. In view of the larger settlement between the parties, the liability of the Corporate Debtor stands discharged due to novation of contract.

- d. The petitioner no. 2 directly and indirectly owns, controls and manages various entities including companies and partnership firms, severally and / or jointly with his other family members including his wife Shruti Shah, (Petitioner no. 3) and his brother, Shreyans Shah, which inter alia include the following entities and concerns viz. Pratiti Trading Pvt. Ltd., Homosphere Lifestyle LLP (earlier known as MJ Shah Infra LLP) and Gajendra Investment Ltd. amongst others.
- e. The Satra Group is engaged in the business of real estate and is involved in several development projects of immovable properties in the country through various entities. The Satra group is inter alia carrying on development projects in the city Mumbai wherein it has projects located at Kalina, Borivali, Vashi, Juhu, Vile Parle (Prime Mall), Ghatkopar and Jodhpur. Mr. Praful Satra is the promoter, director, shareholder and / or partner of various entities forming part of the Satra Group.
- f. Between the period 2013 and 2018, an array of transactions were entered into between the MJS Group and the Satra Group pertaining to the projects at Ghatkopar, Bandra and Govandi in Mumbai and a project in Jodhpur carried out by the Satra Group. In or around Diwali 2017, the MJS Group and Satra group entered in

to negotiations to amicably settle the liabilities in respect of the various transactions entered into between them. Negotiations were also held by the MJS group and Satra Group inter alia with a third party financial institution in respect of the credit facilities provided by the financial institution in respect of the credit facilities provided by the financial institution to various entities of the Satra Group. During these negotiations, the MJS Group and Satra Group arrived at a novated contract/ agreement for the various transactions entered into between them.

- i. The Satra group had in the ordinary course of business have from time to time, availed several credit facilities from the MJS group and one financial institution including India Infoline Finance Ltd. and its subsidiary IIFL Home Finance Ltd.
- ii. A plethora of meetings held between the Satra Group and MJS Group between the period Diwali 2017 onwards. Similarly, meetings were also held by the Satra Group and MJS Group with the IIFL Group during the aforesaid period.
- iii. In pursuance of detailed deliberations and discussions, a unanimous agreement was finally arrived at between the Satra Group, IIFL Group and MJS Group on or around 31<sup>st</sup> January, 2018 to inter

alia settle all the loans facilities availed by the Satra Group from the IIFL Group on a "full and final basis" as well as the settlement of liabilities to the MJS Group to the extent of Rs. 200,00,00,000/-. It is significant to note that the subject matter of the present petition i.e. the amount of Rs.43.30 crore, payable upon redemption of the 4,330 non-convertible debentures was included within and formed part of the aforesaid amount of Rs. 200,00,00,000/-.

- iv. Therefore, as of end January 2018, the said novated contract/ agreement arrived at between the MJS Group and the Satra Group amongst IIFL Group was inter alia crystallized as;
- The Satra Group would not be liable towards the loans/ finance availed by them from the IIFL Group (in full and final) as well as the MJS Group (to the extent of Rs. 200,00,00,000/-) which included the amount of Rs. 43.30 crores payable upon redemption of the 4,330 non- convertible debentures, being the subject matter of the present petition.
  - The Ghatkopar project would be taken over by the MJS Group and the IIFL group.

- v. Meetings were also held during the period March 2018 and July 2018, between the Satra Group, MJS Group and IIFL Group. The Satra Group was informed that the MJS Group and IIFL Group inter se, decided that 49% of the shareholding in Satra Property Developers Pvt. Ltd. (SPDPL) (which was the entity of the Satra Group through whom the Ghatkopar project was being carried out and the subsidiary company of the respondent herein) would be transferred to the MJS Group and / or its nominee and the remaining 51% would be pledged to the MJS group and/ or its nominee. The MJS group and IIFL Group intimated the Satra Group of the aforesaid and it was in pursuance of the aforesaid that the letter dated 18<sup>th</sup> July, 2018 was addressed by SPDPL to the IIFL Group seeking the IIFL Group's No objection certificate (NOC) as a mere formality for the aforesaid transfer and pledge the shares of SPDPL by the Satra Group. The NOC was granted by the IIFL Group on or around 27<sup>th</sup> September, 2018.
- vi. The MJS Group, the Satra Group and the IIFL Group also held meetings with Mr. Shailesh Bhatiya, Chartered Accountant (appointed by the MJS Group) on or around 17<sup>th</sup> September 2018 and 27<sup>th</sup>

September, 2018. At these meetings inter alia the followings decisions were taken;

- Confirmation by all the parties that based on the valuation report the valuation of SPDPL (in respect of Ghakopar project only) would be Rs.110,00,00,000/-.
  - The MJS Group through its group entity, MJS Infra LLP would initially pay a sum of Rs. 54,00,00,000/- to respondent herein for purchase of 49 % shares of SPDPL, which amount was to be passed over by the respondent to IIFL group.
  - Appointment of Mr. Samir Sanghavi, as the Escrow agent for facilitation of the settlement arrived at between the Satra Group, MJS Group and IIFL group.
  - IIFL group would release all other ancillary securities of the Satra Group, and the same would be kept in Escrow with M/s. Samir Sanghavi and Associates, Chartered accountants.
- vi. In addition to the aforesaid, it was also an accepted position that the balance amount of Rs. 56,00,00,000/- was to be paid by MJS group to the respondent as consideration for the balance 51%

shares. The aforesaid balance amount of Rs. 56,00,00,000/- was also to be passed over by the Respondent to IIFL Group, in full and final settlement of all the IIFL loan facilities. The balance amount of Rs. 56,00,00,000/- was computed on the basis that the valuation of the SPDPL which was Rs. 110,00,00,000/- and after deduction of the amount of Rs. 54,00,00,000 towards 49% of the shares of SPDPL, the balance Rs. 56,00,00,000/- would be towards 51% shares of SPDPL.

- vii. It was therefore understood between MJS Group, the Satra group and the IIFL group that SPDPL is the identified SPV and for that purpose, the assets and the liabilities of SPDPL were to be demerged from SPDPL, and were to belong to the Satra Group. Initially, 49% of the shareholding of SPDPL would be transferred for Rs. 54,00,00,000/- and the balance 51% shareholding of SPDPL would as an interim arrangement be pledged in favour of the MJS group and / or its nominees and subsequently transferred upon completion of all legal and statutory formalities and compliances against the payment of Rs.56,00,00,000/-. Thus, pursuant to the aforesaid understanding and agreement, the liability of the Satra Group to the MJS group upto the extent of Rs.

200,00,00,000/- stood fully and finally settled.

- g. The Respondent states and submits that there was a valid and binding contract between the parties viz. the overall settlement and larger understanding as is embodied in the documents / correspondence, meetings and discussions forming part of the novated settlement. The novated contract/ agreement was valid, subsisting and binding on IIFL Group, MJS group and Satra Group. The petitioners in fact not only failed to comply but has in fact breached the terms of the novated contract/ agreement and has acted contrary to the terms thereof. In light of the aforesaid, it is therefore that the plaintiff is not entitled to any reliefs as prayed and the present proceedings ought to be dismissed.
- h. Respondent submits that in view of the complete settlement arrived at between MJS Group, which includes, Mr. Mayank J Shah jointly with Mrs. Shruti Shah (the holders of all the NCDs) amongst other entities, and Satra Group, which includes the Respondent amongst others, the entire liability of the Respondent, towards redemption of all the 4,330 NCDs payable in various tranches starting from 2<sup>nd</sup> April, 2019 and ending on 2<sup>nd</sup> December, 2019 along with interest, stood extinguished, settled and discharged and the Respondent

is neither responsible nor liable to make any further payments as alleged or otherwise.

**11. Events of Default and Remedies:**

*Upon the occurrence of any of the events specified in Sub-Clause(B) below (each, an "Event of Default"), the Debenture Trustee, upon request in writing of the Debenture Holder or in case of there being more than one Debenture Holder, the Debenture Holders holding Debentures of an amount representing not less than three fourth in value of the nominal amount of the Debentures, for the time being outstanding, or by a special resolution duly passed at a meeting of the Debenture Holders in accordance with the provisions set out in Schedule III hereunder written and after giving an opportunity to rectify the default within 30 days from the date of notice/ intimation, declare the principal amount of the Debentures, interest and all other monies to be due and payable forthwith and the Security created hereunder shall become enforceable, and the Debenture Trustee shall, without prejudice to other rights available to the Debenture Holders and the Debenture Trustee.*

- i. Accordingly, before the issuance of the alleged demand

notice, the Debenture Trustee was required under the aforesaid clause 11 to provide the Respondent with an opportunity, to rectify the alleged default within 30 days of receipt of notice of such default, if any. In spite of setting out the correct position by the letter dated 20<sup>th</sup> April, 2019 addressed by the Advocates for the Respondent, the Debenture Trustees have at the behest of the Petitioner Nos. 2 and 3 conveniently ignored the aforesaid provision and proceeded to threaten to enforce the Respondent's securities without giving any notice of 30 days which is a mandatory requirement under the Agreement under which the Petitioners purports to have filed the present proceedings.

**24. Rejoinder by Petitioners:**

- a. At the outset, it is submitted that the Limited Reply dated 18<sup>th</sup> June 2019 filed by the Corporate Debtor is a frivolous and vexatious defense and unsupported by any record or documents whatsoever. The failure by the Corporate Debtor/Respondent to redeem the outstanding Secured Redeemable Non-Convertible Debentures (hereinafter referred to as "NCDs") as per their terms is a default of a financial debt owed by the Corporate Debtor/Respondent.
- b. The Petitioners also reiterate that the outstanding 4,330

fully redeemable non-convertible debentures issued by the Corporate Debtor/Respondent to the Petitioner Nos.2 and 3 (hereinafter referred to as "the outstanding NCDs") are liable to be redeemed by the Corporate Debtor and amounts payable on redemption to be paid to the Petitioner Nos. 2 and 3 as per the terms set out in the Debenture Subscription Agreement and Debenture Trust Deed along with the letters and/or emails which are annexed to the Company Petition and which (i) set out the revisions in redemption date and interest to be paid and (ii) call upon the Corporate Debtor/ Respondent to redeem the outstanding NCDs. Insofar as the Limited Reply filed by the Corporate Debtor/Respondent is concerned, the same are bald averments without any justification and the Petitioners deny *in toto* the contents thereof. It is further submitted that the allegations of a larger settlement and/or a novated contract/agreement are completely irrelevant to the present proceedings.

- c. The petitioners submit that the Corporate Debtor/Respondent does not deny the existence of the financial debt due from the Corporate Debtor/Respondent to the Petitioner Nos. 1 and 2 insofar as the NCDs are concerned but it is merely alleged that the Petitioner Nos. 2 and 3 have resiled from an alleged novated contract/agreement and that the Corporate Debtor is in

the process of taking steps to file a suit for recovery of damages for breach of contract. Even by the Corporate Debtor own case, the Corporate Debtor is pursuing its remedies in another forum and that has nothing to do with the fact that the financial debt due from the Respondent remains unpaid. It is denied that the outstanding NCDs are subsumed within any proposed settlement and/or novated contract/agreement as alleged by the Corporate Debtor.

- d. The Corporate Debtor admits that a financial debt was payable by the Corporate Debtor to Petitioner Nos. 2 and 3, but also alleges that the same was settled under the proposed Ghatkopar settlement setout in the Minutes of Meeting dated 31<sup>st</sup> January 2018, under which the Petitioner No. 2's Shah Group was to be given certain benefits of the Satra Group's Ghatkopar Project to the extent of Rs.200,00,00,000/ (Rupees Two hundred Crores) worth of loans.
- e. The Corporate debtor placed reliance on the Minutes of Meeting dated 17th September 2018 and 27th September 2018. In any event, it is the Corporate Debtor/ Respondent's own case that the Ghatkopar settlement did not fructify. Obviously, this would mean that the Satra Group still remains liable to pay Shah Group to the extent of monies covered therein i.e. Rs.200,00,00,000/-

(Rupees Two Hundred Crores).

- f. The Corporate Debtor/ Respondent now seems to suggest that despite non-payment of the financial debt and despite non-payment of the loans payable to the Shah Group under the alleged Ghatkopar settlement, the Corporate Debtor/ Respondent is entitled to damages.
- g. Insofar as the allegations of Corporate Debtor/Respondent that its liability to redeem the said NCDs issued by the Corporate Debtor/Respondent was part of an alleged larger understanding/ settlement and novated contract/agreement is concerned, as also all other allegations in relation thereto, the same are denied in *toto*. These allegations are evidently also contrary to the documents on record.
- h. In any event, there is no 'larger settlement' as alleged by the Corporate Debtor/Respondent. Moreover, India Infoline Finance Limited (hereinafter referred to as "IIFL Group") which is allegedly a party to this settlement, has also initiated proceedings before the Hon'ble National Company Law Tribunal, Mumbai against Corporate Debtor/Respondent and another Satra group company viz. Satra Property Developers Private Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016. The Corporate

Debtor/Respondent is trying to mislead this Hon'ble Tribunal by importing and distorting facts that are irrelevant to the captioned Company Petition. Further, the IIFL Group has never been a part of the Jodhpur project and the said NCDs of the Corporate Debtor/Respondent was a simplicitor transaction between the Corporate Debtor/Respondent and the Debenture Holders. It is also evident that neither the Minutes of the Meetings dated 31<sup>st</sup> January 2018 nor 17<sup>th</sup> September 2018 nor 27<sup>th</sup> September 2018 make any reference to the Jodhpur Project and/or the said outstanding NCDs which are the subject matter of the captioned proceedings.

- i. The minutes of the meeting dated 31<sup>st</sup> January 2018 is neither an agreement nor the intentions of parties, it is mere expression of desire of parties which does not have any legal standing at all. No such terms have been contemplated or arrived at as claimed.
- j. It is also pertinent to note that despite the proposed Ghatkopar settlement being allegedly arrived at in January 2018, it is an admitted fact that the Corporate Debtor/Respondent continued to address letters in relation to interest payable on the outstanding NCDs thereafter. Reference may be had to the letters dated 14<sup>th</sup> February 2018 addressed by the Corporate Debtor/Respondent and the letters

dated 27th March 2018 and 10th May 2018 related to restructuring of the outstanding NCDs and revised date of redemption.

- k. The settlement proposed in the minutes of the meeting dated 3<sup>rd</sup> January 2018 admittedly did not go through and is also evident from the numerous letters exchanged between the parties and therefore, in any event the financial debt i.e. redemption of the outstanding NCDs remains payable.

## **25. MA 180/2020:**

This M.A. 180/2020 has been filed by the respondent in CP no.1632/2019 seeking inter alia the reliefs as follows:

- a. dismissal of C.P. no. 1632/2019
- b. Pending final hearing and disposal of the present application impound the documents;
  - i. a secured redeemable non-convertible debenture subscription agreement dated 1<sup>st</sup> March, 2014,
  - ii. a debenture trust deed dated 1<sup>st</sup> March, 2014, as the said documents are in-adequately stamped/unstamped and inter alia therefore do not comply with the provisions of various statues including Maharashtra Stamp Act and Indian Stamp Act.

1. Both the sides were heard in the application and CP, the

matter was reserved for orders on 19.02.2020.

## **2. Brief facts of the M.A.**

- a. The petitioners have filed CP No.1632/2019 initiating corporate Insolvency resolution process against the Respondent under Sec.7 of I& B Code.
- b. The Petitioner No.1 being the Debenture Trustee, at the behest of Petitioner No.2 & 3 has filed this petition only to defraud the rights of the respondent. The respondent claimed that the documents relied upon by the petitioners have been novated by a larger understanding between the parties and therefore the liability of the Respondent stood discharged in view of the overall settlement.
- c. The Respondent thus sought impounding of secured redeemable non-convertible debenture subscription agreement dated 1<sup>st</sup> March, 2014, ii. a debenture trust deed 1<sup>st</sup> March, 2014 under the present MA.
- d. The respondent claimed that the debenture trust deed and debenture subscription agreement are inadequately stamped, unstamped as documents were executed/registered in Delhi and the petitioners are seeking to enforce these documents in Mumbai. The Maharashtra Stamp Act postulates the payment of stamp duty as follows:

### *Chapter II- Stamp Duties*

#### *(A) Of the Liability of Instruments to Duty*

*Section 3 -Instrument chargeable with duty*

*Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in Schedule I as the proper duty therefor respectively, that is to say —*

*(a) every instrument mentioned in Schedule I, which not having been previously executed by any person, is executed out of the State on or after the date of commencement of this Act;*

*(b) every instrument mentioned in Schedule I, which not having been previously executed by any person, is executed out of the State on or after the said date, relates to any property situate, or to any matter or thing done or to be done in this State and is received in this State:*

*[Provided that a copy or extract whether certified to be a true copy or not and whether a facsimile image or otherwise of the original instrument on which stamp duty is chargeable under the provisions of this section, shall be chargeable with full stamp duty indicated in the Schedule I if the proper duty payable on such original instrument is not paid]*

*[Provided further that] no duty shall be chargeable in respect of —*

- (1) any instrument executed by or on behalf of, or in favour of, the Government in cases, where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument or where the Government has undertaken to bear the expenses towards the payment of the duty];*
- (2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Bombay Coasting Vessels Act, 1838, or Merchant Shipping Act, 1958].*

*Section 18- Instrument executed out of State.*

- (1) Every instrument chargeable with duty executed only out of this State may be stamped within three months after it has been first received in this State.*
- (2) Where any such instrument cannot with reference, to the description of stamp prescribed therefore, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as the State Government may by rule*

*prescribe, with stamp of such value as the person so taking such instrument may require and pay for.*

*Section 19- Payment of duty on certain instruments for copies thereof] liable to increased duty in [Maharashtra State]*

*Where any instrument of the nature described in any article in Schedule I and relating to any property situate or to any matter or thing done or to be done in this State is executed out of the State and subsequently [such instrument or a copy of the instrument is] received in the State, -*

- (a) the amount of duty chargeable on such instrument [or a copy of the instrument] shall be the amount of duty chargeable under Schedule I on a document of the like description executed in this State less the amount of duty, if any, already paid under any law in force in India excluding the State of Jammu and Kashmir on such instrument when it was executed;*
- (b) and in addition to the stamps, if any, already affixed thereto such instrument [or a copy of the instrument] shall be stamped with the stamps necessary for the payment of the duty chargeable on it under clause (a) of this section, in the same manner and at the same time and by the same persons as though such*

*instrument for a copy of the instrument] were an instrument received in this State for the first time at the time when it became chargeable with the higher duty; and*

*(c) the provisions contained in clause (b) of the proviso to sub-section (3) of section 32 shall apply to such instrument [or a copy of such instrument] as if such were an instrument executed or first executed out of this State and first received in this State when it became chargeable to the higher duty aforesaid, but the provisions contained in clause (a) of the said proviso shall not apply thereto.*

- e. Therefore as per to the provisions of Maharashtra Stamp Act and in particular Art. 27 of appendix of Maharashtra Stamp Act, an amount of Rs. 2,80,000 would be payable towards stamp duty on the secured redeemable non-convertible subscription agreement dated 01.03.2014 and an amount of Rs. 2,80,000/- would be payable under the debenture trust deed on 01.03.2014. Further the respondent relied upon section 34 of the Maharashtra Stamp Act;

***Section 34 - Instruments not duly stamped inadmissible in evidence, etc.***

*No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive*

*evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped [or if the instrument is written on sheet of paper with impressed stamp [such stamp paper is purchased in the name of one of the parties to the instrument].*

*Provided that, -*

*(a) any such instrument shall, subject to all just exceptions, be admitted in evidence on payment of,*

*-*

*(i) the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, the amount required to make up such duty, and*

*(ii) a penalty at the rate of 2 per cent of the deficient portion of the stamp duty for every month or part thereof, from the date of execution of such instrument:*

*Provided that, in no case, the amount of the penalty shall exceed double the deficient portion of the stamp duty].]*

*(b) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp; the contract or agreement shall be deemed to be duly stamped;*

*(c) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding [under Chapter IX or Part D of Chapter X of the Code of Criminal Procedure 1973;]*

*(d) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the government or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act;*

*(e) nothing herein contained shall prevent the admission of a copy of any instrument or of an oral admission of the contents of any instrument, if the stamp duty or a deficient portion of the stamp duty and penalty as specified in clause (a) is paid.]*

*f. In view of the above provisos of law, the respondent claimed that these documents which were sought to be enforced which are insufficiently stamped/ unstamped and the same cannot be construed as a contract in the eyes of law and therefore seek to impound the document under section 33 of the MAHA Stamp Act,*

***Section 33- Examination and impounding of instruments.***

*1) [Subject to the provisions of sections 32-A, every*

*person] having by law or consent of parties authority to receive evidence and every person in charge of a public office, except an officer of police [or any other officer, empowered by law to investigate **offences** under any law for the time being in force,] before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same [irrespective whether the instrument is or is not valid in law.]*

*2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law for the time being in force in the State when such instrument was executed or first executed:*

*Provided that, -*

*(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do any instrument coming before him in the course of any proceeding other than a proceeding under [Chapter IX or Part D of*

*Chapter X of the Code of Criminal Procedure, 1973];*

- (b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court may appoint in this behalf.*
- 3) For the purpose of this section, in cases of doubt, -*
  - (a) the State Government may determine what offices shall be deemed to be public offices.*
  - (b) the State Government may determine who shall be deemed to be persons in charge of public offices.*

Similarly, Section 33 of the Indian Stamp Act, 1899 which is *parimateria* to the aforesaid Section 34 reads thus:

***Section 33- Examination and impounding of instruments-***

- (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.*
- (2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed:*

*Provided that-*

*(a) Nothing herein contained shall be deemed to require any Magistrate or Judge of Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898)*

*(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.*

*(3) for the purpose of this section, in cases of doubt,-*

*(a) the State Government may determine what offices shall be deemed to be public offices; and*

*(b) the State Government may determine who shall be deemed to be persons in charge of public offices..*

### **3. Reply of the Petitioner in MA 180/2020:**

- a. The petitioners are enforcing Debentures issued by the respondent company and ought to be stamped by the respondent as per the provisions of the Indian Stamp Act, 1899. These instruments do not form part of the company petition. Without admitting even assuming that the said agreement are insufficiently stamped, the

petitioner denied that the hearing of the company petition be stayed or deferred and/or kept in abeyance pending the hearing and final disposal of the respondent application.

- b. The provisions of section 33 to 34 of the Maharashtra Stamp Act, 1958 are not applicable to the issues raised in the company petition. The Company petition in a summary proceedings entered into agreement have not to be admitted in evidence for the purpose of admission. The Hon'ble Tribunal is not tasked with the purpose of receiving evidence in the petition under section 7 of the Insolvency and Bankruptcy Code, 2016.
- c. The debentures have been issued by the respondent and are to be redeemed as per the terms and timelines set out in the letters exchanged between the financial creditors and the respondent from time to time.
- d. Assuming without admitting the agreement are insufficiently stamped, this, insufficiency is attributable only to the respondent and the respondent cannot seek to take advantage of its own wrong.
- e. The petitioner submits that it is not enforcing the agreement in the caption petition and that the proceeding under IBC are not recovering proceedings or proceedings for enforcement of the said agreement the petitioner

rejuvenated that the respondent has defaulted on its financial debt and hence C.P. No. 1632/2019 was filed.

**4. Written submissions filed by the Petitioner no. 1 in main CP No.1632/2019**

- a. The debenture holder subscribed 5600 debentures secured redeemable non-convertible debentures which were secured by mortgage of corporate Debtor this loan was secured inter alia by mortgage of the Corporate Debtor lease hold rights in the plot in Jodhpur. The Corporate Debtor redeemed 1270 debentures and remaining 4330 debentures are yet to be redeemed. The Corporate Debtor requested for revisions to the scheduled redemption dates for redemption and sought reduction of interest rate.
- b. The Corporate Debtor's annual returns shows that the debentures are redeemable and interest was paid, they have further registered the charge on Jodhpur plot as security for the redemption of debentures with ROC, they have registered a mortgage deed.
- c. The allegation that the debenture subscription agreement and debt trust deed have no relevance as the Corporate Debtor has issued debentures in dematerialized form,

and these debentures in dematerialized forms would not have been issued if they were inadequately stamped.

- d. Article 27 of Indian Stamp Act exempts payment of stamp duty when debentures are issued by the company interims registered mortgaged deed.
- e. The Corporate Debtor has registered the mortgage in Jodhpur, the debenture trust deed were executed in Delhi and these agreement are being enforced in Mumbai and therefore short fall in stamp duty must be paid.
- f. The Corporate Debtor has falsely alleged that the redemption of 4330 debentures should extinguish by virtue of minutes of meeting 31.01.2018, the minutes of meeting were never meant to settle the Corporate Debtor debt to the effect of outstanding debentures and is not included in Rs. 200 crores debt considered in the minutes of meeting. These minutes does not acted upon the parties and further the minutes of the meeting dated 31.01.2018 is an unstamped document and cannot be relied upon.
- g. The other parties to the alleged settlement namely ILFS group have also independently filed insolvency petition

vide C.P. No. 1725/2019, the Corporate Debtor has independently settled the matter.

- h. The petitioner no. 2 filed a suit before Bombay High Court vide commercial suit no. 859/2019 against the Corporate Debtor inter alia seeking 51% of shares in the subsidiary of the Corporate Debtor. The Corporate Debtor settled the suit and transferred the shares to petitioner no. 2.
- i. The Corporate Debtor have illegally allotted various commercial properties to individual during the pendency of the present petition.

**5. Written submissions filed by the Petitioner No. 2 and 3 in CP No.1632/2019**

- a. The Corporate Debtor has defaulted in paying the outstanding due under debenture subscription agreement and Debenture Trust Deed, and therefore, an amount of Rs. 65,04,10,734/- is due and payable under the said agreements and deed.
- b. The Corporate Debtor infact sought a reduction of the interest rates and therefore it was agreed between the parties that interest rate of 9% will be applied.

- c. The scheduled redemption dates are admitted by the Corporate Debtor and it has filed a Compliance Report dated 25<sup>th</sup> April 2017 with the Bombay Stock Exchange setting out that the 4330 Debentures are to be redeemed in the following manner.

<b>Date of Redemption</b>	<b>Number of Debentures</b>
2nd April 2019	2780
2nd May 2019	600
1st June 2019	700
1st August 2019	100
2nd December 2019	150
<b>Total</b>	<b>4330</b>

Admittedly, none of these Debentures have been redeemed by the Corporate Debtor and as on date, the company is liable to pay the Debenture Holders the principal amount of the Debentures, i.e. 43.30 Crores plus interest thereon as has been set out in the computation of Petitioners' claim.

- d. The Corporate Debtor, by its letter of 14<sup>th</sup> February 2018 sought a reduction in the rate of interest payable on the Debentures and this reduction was accepted by the Debenture Holders by their letter of 26<sup>th</sup> March 2018.

- e. The Corporate Debtor has admitted that the outstanding 4330 Debentures are liable to be redeemed by it as demonstrable by:
- 1) Corporate Debtor's Balance sheet for the Financial Year ending 2018 which shows not only that the Debentures are redeemable but also interest is to be paid thereon Corporate Debtor's balance sheet for the Financial Year 2019 which also continues to show that loans are repayable by the Corporate Debtor to the Debenture Holders.
  - 2) Corporate Debtor's filing with the ROC of Nov 2019 admits that the Petitioners' charge on the Jodhpur plot as security for redemption of Debentures continues.
  - 3) The Petitioners' security vide a registered mortgage deed continues to be registered with the ROC and till the outstanding 4330 Debentures are redeemed, the charge will remain operative.
- f. Therefore there is a debt and default under section 3(11) of I and B Code and Corporate Debtor has defaulted the payment of the above monies.

**26. FINDING:**

ISSUES:

- A. Whether the Debenture Subscription Agreement and Debenture Trust deed executed and registered in Delhi are insufficiently stamped in the State of Maharashtra in accordance with Maharashtra Stamp Act 1958, where they are sought to be enforced?
  - B. Whether these documents are liable to be impounded under Sec 33 & 34 of Maharashtra Stamp act 1958, in a summary proceedings under IBC?
  - C. Whether there is novation of contract?
  - D. Whether the petitioners are entitled to recover the outstanding sums due to be redeemed under the Debenture Subscription Agreement and Debenture Trust Deed?
- In the backdrop of factual matrix, the issue for consideration is whether the Debenture Subscription Agreement and Debenture Trust Deed are enforceable contracts as they have been executed in Delhi and registered at Delhi and are being brought into the State of Maharashtra for the purpose of enforcement or

realization of outstanding amounts due under the said deeds.

- The court, while admitting a petition under sec.7 of I & B code has the power to examine the contracts between the parties, rights accrued to the parties and has to look into the enforceability of the document in the light of objection raised that these documents are insufficiently stamped. The basic rights of recovery of monies under 4330 Debentures will have to be considered harmonizing the charging section envisaged under Sec 33 & 34 of Maharashtra Stamp Act, which will have to be addressed to ensure revenue recoveries. Sec 33 of Maharashtra Stamp Act is extracted below:

***Section 33- Examination and impounding of instruments.***

- 1) *[Subject to the provisions of sections 32-A, every person] having by law or consent of parties authority to receive evidence and every person in charge of a public office, except an officer of police [or any other officer, empowered by law to investigate offences under any law for the time being in force,] before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same [irrespective whether the instrument is or is not valid in law.]*

2) *For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law for the time being in force in the State when such instrument was executed or first executed:*

*Provided that, -*

*(c) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do any instrument coming before him in the course of any proceeding other than a proceeding under [Chapter IX or Part D of Chapter X of the Code of Criminal Procedure, 1973];*

*(d) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court may appoint in this behalf.*

3) *For the purpose of this section, in cases of doubt, -*

*(c) the State Government may determine what offices shall be deemed to be public offices.*

*(d) the State Government may determine who shall be deemed to be persons in charge of public offices.*

Similarly, Section 33 of the Indian Stamp Act, 1899 which is *parimateriato* the aforesaid Section 34 reads thus:

***Section 33- Examination and impounding of instruments-***

*(1)Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his*

*opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.*

*(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed:*

*Provided that-*

*(a) Nothing herein contained shall be deemed to require any Magistrate or Judge of Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898)*

*(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.*

*(3) for the purpose of this section, in cases of doubt,-*

*(a) the State Government may determine what offices shall be deemed to be public offices; and*

*(b) the State Government may determine who shall be deemed to be persons in charge of public offices.*

- This section cast an obligation on the Court, Adjudicating Authority, Judicial officer, Quasi judicial officer not to

admit any document which is not duly stamped. In view of Sec 19 of Maharashtra Stamp Act 1958, the documents executed in Delhi and sought to be enforced in Mumbai are subject to pay the difference of duty. Sec.19 is extracted as follows:

*Section 19- Payment of duty on certain instruments for copies thereof] liable to increased duty in [Maharashtra State]*

*Where any instrument of the nature described in any article in Schedule I and relating to any property situate or to any matter or thing done or to be done in this State is executed out of the State and subsequently [such instrument or a copy of the instrument is] received in the State, -*

- (a) the amount of duty chargeable on such instrument [or a copy of the instrument] shall be the amount of duty chargeable under Schedule I on a document of the like description executed in this State less the amount of duty, if any, already paid under any law in force in India excluding the State of Jammu and Kashmir on such instrument when it was executed;*
- (b) and in addition to the stamps, if any, already affixed thereto such instrument [or a copy of the instrument] shall be stamped with the stamps necessary for the payment of the duty chargeable on it under clause (a) of this section, in the same manner and at the same*

*time and by the same persons as though such instrument for a copy of the instrument] were an instrument received in this State for the first time at the time when it became chargeable with the higher duty; and*

*(c) the provisions contained in clause (b) of the proviso to sub-section (3) of section 32 shall apply to such instrument [or a copy of such instrument] as if such were an instrument executed or first executed out of this State and first received in this State when it became chargeable to the higher duty aforesaid, but the provisions contained in clause (a) of the said proviso shall not apply thereto.*

- Though the debenture trust deeds and agreements are not admitted or marked as evidence before the Adjudicating Authority, the very basis of admission of any claim is the contractual obligation between the parties and the very basic document is insufficiently stamped and necessarily has to comply with the fiscal measure of the state and in the interest of revenue.
- The Petitioners are enforcing their rights and obligations of the parties as entailed under the Debenture Subscription Agreement and debenture Trust deed. The

Debentures were to be issued in dematerialized form through electronic records as maintained by the Respondent Company. These Debentures under Sec.71 of Companies Act 2013 are mere certificate indicating the indebtedness of the company and the rights of enforcement are thus captured in the Debenture Subscription Agreement and debenture trust deed. The events of default as envisaged in the Debenture Subscription Agreement, gives a right of enforcement of contract and as such the petitioners have filed a petition to initiate CIRP under Sec.7 of I & B Code and the rights attached to Debentures under Companies Act 2013 are not being enforced and hence every document which is insufficiently stamped has to be impounded for payment of stamp duty in the interest of revenue and is a curable defect.

- The Hon'ble Mumbai High Court in Antifriction Bearing Corporation Ltd. Vs, State Of Maharashtra reported in AIR 1999 Bombay page 37., dealt with the similar question of law wherein the petitioner company held in properties in Gujarat and registered in the state of Gujarat, constituency issued debenture trust deed and these documents were also registered in the state of Gujarat. Petitioner-Companies then filed copy of the

instruments under Section 125 of the Companies Act, 1956 with the Registrar of Companies at Bombay, where they are having registered offices. The Companies thereupon obtained the Certificates as envisaged by Section 132 and accordingly at Bombay issued Debentures. The Superintendent of Stamp, Bombay, observed that the Instrument is chargeable under Art. 40(b) and 48(d) of Schedule I of the Act 1958.

*The Court at para 6 & 7 observed as below:*


*"6. Impugned provisions have incorporated a special scheme to prevent the evasion of stamp duty, What is explicit in Section 7, that, on arrival of the copy of the instrument in this State, original instrument becomes chargeable in the same manner as if received in the State in terms of Section 19. This section deals with increased duty on certain documents in State of Maharashtra, Section 19 (as it stood prior to Amendment of 1993) reads thus:—*

*"Payment to duty on certain instruments liable to increased duty where any instrument of the nature described in any article in Schedule I and relating to any property situate or to any matter or thing done or to be done in this State is executed out of the State and subsequently received in the State.—*

*(a) the amount of duty chargeable on such instrument shall be the amount of duty chargeable under Schedule I on a document of the like*

*description executed in this State less the amount of duty, if any, already paid under any law in force in India excluding the State of Jammu and Kashmir on such instrument when it was executed.”*

*(Emphasis supplied)*

 **7.** *These provisions operate when the Scheduled Instrument is registered in some other State, and in relation thereto some matter or things done or to be done in this State and subsequently received in the State. What is significant that these provisions take note of the duty already paid on the instrument in other State and seeks to recover only difference between duty chargeable in this State and duty already paid when registered in some other State. Doing something pursuant to the instrument in this State is a chargeable transaction and what is recoverable is additional duty payable according to rates prevailing in this State. Receipt of the copy could only be a chargeable event. It however, could not be construed that Section 7 attempts simpliciter to levy a stamp duty on the copy of the instrument.”*

The court held that the petitioners are liable to pay stamp duty as directed by Superintendent of Stamp, Maharashtra. The above dictum would categorically demonstrate that documents received in the State of Maharashtra, if insufficiently stamped would be subject to levy of specific stamp duty under sec.19 of

Maharashtra Stamp Act and impounding of the documents under Sec 33 & 34 Maharashtra Stamp act 1958 is a consequential order.

- The Hon'ble Supreme Court in SMS Tea Estate Pvt. Ltd. Vs. Chandmari Tea Company Pvt. Ltd. Reported in (2011 14 SSC pg66) wherein it was held that the insufficiently stamped / unstamped documents cannot be enforced and or acted upon. The Court at para 12 held as follows:

*"12. We may therefore sum up the procedure to be adopted where the arbitration clause is contained in a document which is not registered (but compulsorily registrable) and which is not duly stamped:*

*(i) The court should, before admitting any document into evidence or acting upon such document, examine whether the instrument/document is duly stamped and whether it is an instrument which is compulsorily registrable.*

*(ii) If the document is found to be not duly stamped, Section 35 of Stamp Act bars the said document being acted upon. Consequently, even the arbitration clause therein cannot be acted upon. The court should then proceed to impound the document under Section 33 of the Stamp Act*

*and follow the procedure under Section 35 and 38 of the Stamp Act.*

*(iii) If the document is found to be duly stamped, or if the deficit stamp duty and penalty is paid, either before the Court or before the Collector (as contemplated in Section 35 or 40 of the Stamp Act), and the defect with reference to deficit stamp is cured, the court may treat the document as duly stamped.*

*(iv) Once the document is found to be duly stamped, the court shall proceed to consider whether the document is compulsorily registrable. If the document is found to be not compulsorily registrable, the court can act upon the arbitration agreement, without any impediment.*

*(v) If the document is not registered, but is compulsorily registrable, having regard to Section 16(1)(a) of the Act, the court can de-link the arbitration agreement from the main document, as an agreement independent of the other terms of the document, even if the document itself cannot in any way affect the property or cannot be received as evidence of any transaction affecting such property. The only exception is where the Respondent in the application demonstrates that the arbitration agreement is also void and unenforceable, as pointed out in para 8 above. If the Respondent raises any objection that the*

*arbitration agreement was invalid, the court will consider the said objection before proceeding to appoint an arbitrator.”*

Even in an arbitration matter, the Supreme Court remitted the matter to Chief Justice, Guwahati, to decide the issue of stamp duty and then appoint the arbitrator.

- The petitioner also relied upon the judgment of the Hon’ble Supreme Court in Garware Wall Ropes Ltd. Vs. Coastal Marine Construction and Engineering Ltd. reported in AIR2019 SC 2053, the Hon’ble Supreme court in this matter held that an agreement is not enforceable by law as the documents which is sought to be acted upon has not been registered. The court also held at para 27, 28 & 29 as follows;

*“Para 27: One reasonable way of harmonising the provisions contained in Sections 33 and 34 of the Maharashtra Stamp Act, which is a general statute insofar as it relates to safeguarding revenue, and Section 11(13) of the 1996 Act, which applies specifically to speedy resolution of disputes by appointment of an arbitrator expeditiously, is by declaring that while proceeding with the Section 11 application, the High Court must impound the instrument which has not borne stamp duty and hand it over to*

*the authority under the Maharashtra Stamp Act, who will then decide issues qua payment of stamp duty and penalty (if any) as expeditiously as possible, and preferably within a period of 45 days from the date on which the authority receives the instrument. As soon as stamp duty and penalty (if any) are paid on the instrument, any of the parties can bring the instrument to the notice of the High Court, which will then proceed to expeditiously hear and dispose of the Section 11 application. This will also ensure that once a Section 11 application is allowed and an arbitrator is appointed, the arbitrator can then proceed to decide the dispute within the time frame provided by Section 29A of the 1996 Act.*

*28. Arguments taken of prejudice, namely, that on the facts of this case, the Appellant had to pay the stamp duty and cannot take advantage of his own wrong, are of no avail when it comes to the application of mandatory provisions of law. Even this argument, therefore, must be rejected.*

*29. We, therefore, allow the appeal and set aside the judgment of the Bombay High Court. The matter is remitted to the Bombay High Court to dispose of the same in the light of this judgment.*

In view of the recent decision of the Supreme Court, this bench is of the view that all registered documents which are insufficiently

stamped shall be impounded and sent for payment of adequate stamp duty.

27. Reverting to the series of communication quoted by the Corporate Debtor/Respondent with reference to the larger settlement between the parties namely;

- 1) *Minutes of the meeting dated 31/01/2018 and other meetings, which captured the proposal to settle the loans of MJS group and others to a tune of INR 200 crore, with a specific rider that "the benefit under existing security package in relation to all loans of IIFL & MJS shall continue in the new SPV",*
- 2) *The communication letter dated 18/07/2018 addressed to IIFL issue of NOC,*
- 3) *Minutes of Meeting dated 17/09/2018, MOM dated 27/09/2018,*
- 4) *Letter from escrow agent dated 1/10/2018,*
- 5) *Supplemental letter agreement and*
- 6) *Final letter dated 1/11/2018 from petitioners has cancelled of entire understanding between the parties, demonstrate that the larger understanding between parties did not work out and was eventually cancelled by the petitioners.*
- 7) *Letter dated 3/04/2019 addressed by Corporate Debtor to BSE.*
- 8) *Letter dated 8/04/2019 addressed by Petitioner's counsel to BSE.*
- 9) *Letter dated 16/04/2019 seeking redemption of NCD by Petitioner No.2 & 3 to the Corporate Debtor."*

28. I have no hesitation to take the view that there is no Novation of contract as the larger understanding was revoked by the petitioner vide letter dated 1/11/2018 and thus it clearly demonstrates that the so called larger understanding was not acted upon, and therefore the earlier liability of payment of the outstanding dues were never subsumed in the overall settlement as claimed by the Corporate Debtor/Respondent, hence the liability of the Corporate Debtor is not discharged. I therefore conclude that there was no consensus arrived between the parties and the settlement was revoked by the petitioners. Therefore, it can be said that all the rights accrued to the Petitioners no.2 & 3 under the Debenture Trust Deed and Agreements are enforceable subject to the payment of difference of stamp duty.
29. The Corporate Debtor/respondent never disputed the execution of the above documents nor the liability arising there under. The entire endeavor to settle the claims between the parties was on the basis of outstanding dues under the Debenture Subscription Agreement and Debenture trust deeds, the same did not work out and acted upon by the parties. Infact, the Corporate Debtor admitted its liability and sought to revise the dates of redemption vide letters dated 14<sup>th</sup> February 2018, 27<sup>th</sup> March 2018 and 10<sup>th</sup> May 2018 related to restructuring of the outstanding NCDs and revised date of redemption. It is not the

case of the Corporate Debtor that the Debenture Subscription Agreement and Debenture trust deeds were revoked and Debentures issued by the Corporate Debtor were cancelled, in view of the larger settlement between parties.

30. In view of the above observation, it can be said that the Corporate Debtor has defaulted in paying the outstanding sum due under the Secured Redeemable Non-Convertible Debenture Subscription Agreement dated 1st March 2014 and Debenture Trust Deed dated 1st March 2014 and that there is no novation of contract as claimed by the Corporate Debtor/Respondent.
31. Both the Debenture Trust Deed dated 1st March 2014 and Debenture Subscription Agreement dated 1st March 2014 demonstrate that the stamp duty upon the same has been paid in Delhi for an amount of Rs. 300/- (Rupees Three Hundred Only) for the Debenture Trust Deed and for the Secured Redeemable Non-Convertible Debenture Subscription Agreement and it can be said are grossly insufficient and the only object of impounding would be to pay penalty and requisite stamp duty to render these documents enforceable in the eyes of law.
32. In view of the Maharashtra Stamp Act, 1958 and in particular Article 27 of Appendix 8 of the Maharashtra Stamp Act, 1958, an

amount of Rs.2,80,000/- (Rupees Two Lakhs Eighty Thousand Only) would be payable towards stamp duty on the Secured Redeemable Non-Convertible Debenture Subscription Agreement dated 1st March 2014. Similarly, under the same provisions, an amount of Rs.2, 80,000/- (Rupees Two Lakhs Eighty Thousand Only) would be payable towards stamp duty on the Debenture Trust Deed dated 1st March 2014.

33. In view of the above discussion, I am of the view that corporate debtor is liable to pay the sums outstanding amounting to ₹65,24,33,104/- (principal amount of Rs. 43,33,00,000/- plus interest @ 9 % p.a. from the respective date of subscription to till 21<sup>st</sup> April, 2019 amounting to Rs. 21,74,10,733/- and penal interest @ 6% p.a. amounting to Rs. 20,22,371/-) to the petitioner No.2 & 3. The petition is complete and deserves admission. The Adjudicating Authority in the light of Innoventive judgement while admitting a petition under Sec.7 has to examine whether there is a debt and default.

34. The petition is admitted and the documents namely Debenture Trust Deed dated 1<sup>st</sup> March, 2014 and Redeemable Non-convertible Debenture Subscription Agreement dated 1 March, 2014, are impounded for adequate stamping are being sent to the Sub Registrar of Assurance, Mumbai. The Interim

Resolution Professional shall consider the above documents upon payment of requisite stamp duty.

35. M.A.180/2020 is partly allowed to the extent that the Debenture Trust Deed dated 1<sup>st</sup> March, 2014 and Redeemable Non-convertible Debenture Subscription Agreement dated 1 March, 2014, shall be impounded and be sent for payment of requisite stamp duty in accordance with the Maharashtra Stamp Act 1958.
36. This Bench having been satisfied with the application filed by the Petitioner which is in compliance of provisions of Section 7 of the Insolvency & Bankruptcy Code admits this application declaring Moratorium with the directions as mentioned below:
  - a. that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or

lessor where such property is occupied by or in the possession of the Corporate Debtor.

- b. that the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- c. that the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- d. that the order of moratorium shall have effect from this date till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under section 33, as the case may be.
- e. That the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.
- f. That this Bench hereby appoints Mr. Devarajan Raman, having Registration No. IBBI/IPA-02/IP-N00323/2017-18/10928 as an Interim Resolution Professional to carry out the functions as mentioned under the Code.

g. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

-SD-  
Suchitra Kanuparthi  
Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT NO. 1, MUMBAI BENCH

M.A. No. 180/2020  
and  
C.P. (IB) No. 1632/MB/2019

In the matter of  
Vistra ITCL (India) Limited &Ors.  
.... Applicant

v/s.

Satra Properties (India) Limited  
.... Respondent

Order Delivered on: 03.08.2020

Per: *V. Nallasenapathy, Member (T)*

ORDER

37. I have gone through the order of my learned sister. I agree with the finding that the Petition deserves admission for which I would also like to adduce reasons separately. However, I

respectfully disagree with the decision of my learned sister in MA No.180 of 2020 which is partially allowed to the effect that the Debenture Trust Deed ("Deed") dated 1<sup>st</sup> March, 2014 and Redeemable Non-convertible Debenture Subscription Agreement ("Agreement") dated 1<sup>st</sup> March, 2014, shall be impounded and be sent for payment of requisite stamp duty in accordance with the Maharashtra Stamp Act, before the Interim Resolution Professional considers the above documents for claim purpose, for the following reasons:

- a. Subsequent to the execution of the abovesaid deed and agreement, the Corporate Debtor issued debentures to the Petitioners and the same has been shown in the Balance Sheet of the Corporate Debtor for several years. Some of the debentures were redeemed by the Corporate Debtor. The claim in the Petition is based on the debentures which are remaining unredeemed.
- b. It is beneficial to refer Form-1 filed by the petitioner wherein apart from the above said deed and agreement the following documents are enclosed in proof of the debt:
  - i) The copy of agreement for a deposit of the title deeds of the immovable property dated 3 March 2014.

ii) Debenture allotment intimation by the corporate debtor to the Petitioner nos. 2 and 3 dated 21/03/14, 19/04/14, 06/05/14, 18/07/14 and 12/11/14.

c. One of the above debenture allotment intimation dated 12/11/14 is extracted below for ready reference.

d. A copy of the standalone financial statements of the Corporate Debtor annexed to the annual report 2018 – 19, produced during the hearing, is extracted below to show that the debenture borrowings were reflected in the financial statements.

*Hum  
23/11/14*

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Exhibit 'Q'



**SATRA  
GROUP**  
ISO 9001 : 2008 Company

**Satra Properties (India) Limited**

Dev Plaza, 2nd floor, Opp. Andheri Fire Station, S. V. Road, Andheri (West), Mumbai - 400 058.  
Tel: +91 - 22 - 2671 9999 · Fax: +91 - 22 - 2620 3999 · E-mail: info@satraproperties.in

**ALLOTMENT INTIMATION**

Date: 12<sup>th</sup> November, 2014

To,  
Mayank J. Shah and Shruti M. Shah  
8<sup>th</sup> Floor, Sudharmaa, N.S. Road No. 5,  
JVPD Scheme, Vile Parle (West),  
Mumbai - 400 056

**Sub.: Private Placement of 5,600 Nos. of 18% Secured Redeemable Non-Convertible Debentures**

**Ref.: Your application for subscription of Debentures**

Dear Sir / Madam,

With reference to the above and receipt of Rs. 1,50,00,000/- (Rupees One Crores Fifty Lakhs only) towards the last part of fourth tranche of subscription of 150 Nos. of 18% Secured Redeemable Non-Convertible Debentures (Face Value Rs. 1,00,000/- each) (hereinafter referred to as 'Debentures') out of total 5,600 Debentures, we have immense pleasure in informing you that the Board of Directors of the Company in its meeting held on 12<sup>th</sup> November, 2014 has approved the allotment of the following on a private placement basis:

1	Name of the Security	18% Secured Redeemable Non-Convertible Debentures
2	Face Value	Rs. 1,00,000/- each
3	No. of Debentures allotted	150

The above Debentures in demat form would be credited to your Demat Account, as per the details provided by you as mentioned hereunder:

Depository Name	Kotak Securities Limited
Depository Participant name	National Securities Depository Limited
DP-ID and Client ID	IN300214 - 17360442

Also, we are in process of making necessary application to National Securities Depository Limited with respect to the same.

We thank you for your participation in the issue.  
Kindly accept and acknowledge receipt of the same.  
Thanking you.

Yours truly,  
For Satra Properties (India) Limited  
*Manan Y. Udani*  
Manan Y. Udani  
Company Secretary



*MS*  
*Manan Y. Udani*

TRUE COPY

*[Signature]*  
DIVYA SHAH ASSOCIATES  
ADVOCATES, SOLICITORS & NOTARIES  
PARTNER/ASSISTANT



**Standalone Notes to Financial Statements (Contd.)** for the year ended March 31, 2019

15. **BORROWINGS** (Amount in INR Lakhs)

Particulars	March 31, 2019	March 31, 2018
<b>Current borrowings</b>		
<b>Secured</b>		
(a) 4,330 Redeemable non-convertible debentures of INR 100,000 each (March 31, 2018 : 4,330) "	4,330.00	4,330.00
(b) Term loans		
From banks	21.95	18.73
From others	10,453.92	10,427.51
<b>Unsecured</b>		
(c) Term loan from others	1,276.52	1,304.31
(d) Loans from other parties	4,179.40	4,449.10
(e) Bank overdraft	198.45	210.32
<b>Total</b>	<b>20,460.24</b>	<b>20,739.98</b>

**Note : Borrowings**

Particulars	March 31, 2019	March 31, 2018
<b>Secured</b>		
(a) 4,330, 9% Redeemable non-convertible debentures of INR 100,000 each (March 31, 2018 : 4,330 ) (Refer Note 1)	4,330.00	4,330.00

**9% Redeemable non-convertible debentures of INR 1 Lakh each**

**Note 1 :** Non convertible debentures (NCD) are secured against first equitable mortgage over the leasehold rights on plot at Jodhpur and charge over escrow account on receivables from the project situated at Jodhpur. The interest on NCD was 9% p.a. with 9 months compounding, payable at the time of redemption. The NCDs were redeemable from April 2019 to December 2019. However according to the company the same has been settled on account of agreed understanding recorded in minutes of meeting dated 31<sup>st</sup> January, 2018 (And various subsequent meetings & events ) between Satra Group, IIFL Group & MJS Group. The matter is in dispute & subjudice.

Particulars	March 31, 2019	March 31, 2018
<b>Secured</b>		
(b) Term loans		
From banks (Refer Note 2)	21.95	18.73
From other parties (Refer note 3 to 6 and 7)	10,453.92	10,427.51

**Note 2:** Term Loan of INR 21.95 lakhs (March 31, 2018: 18.73 lakhs) Commercial equipment loans (2 nos.) are secured by hypothecation of the respective equipment purchased. The loans are repayable in equated monthly installments of Rs. 0.60 lakhs approx. for each loan beginning from the month subsequent to the taking of the loan. The last installment for the loans are due in August 2019.

**Note 3:** Term loan of INR 6,000 Lakhs (March 31, 2018: 6,000 Lakhs) is secured by way of first and exclusive charge on unsold units/flats in project situated at Borivali along with receivables, pari passu charge on land and receivables from project at Kalina. Also over specific unsold units and receivables from specific sold/unsold units in the project at Vashi. The loan carried an interest rate of 22% p.a. and was repayable in 4 equal quarterly installments of INR 1,825 Lakhs .However according to the company the same has been settled on account of agreed understanding recorded in minutes of meeting dated 31<sup>st</sup> January, 2018 (And various subsequent meetings & events ) between Satra Group, IIFL Group & MJS Group. The matter is in dispute & subjudice.

**Note 4:** Term Loan of INR 4,000 lakhs (March 31, 2018: 4,000 lakhs) is secured by way of first and exclusive charge on unsold units/flats in project situated at Borivali along with receivables, pari passu charge on land and receivables from project at Kalina. Also over specific unsold units and receivables from specific sold/unsold units in the project at Vashi. The loan carried an interest rate of 20% p.a. and was repayable in 8 equal quarterly installments Rs.597.59 lakh ..However according to the company the same has been settled on account of agreed understanding recorded in minutes of meeting dated 31<sup>st</sup> January, 2018 (And various subsequent meetings & events ) between Satra Group, IIFL Group & MJS Group. The matter is in dispute & subjudice.

e. In my view, the abovesaid documents are sufficient to adjudicate the main Petition, without going into the details whether the debenture trust deed and redeemable non-convertible debenture

subscription agreement both dated 01.03.2014 were unstamped or insufficiently stamped. In fact the same has rightly happened and the petition is admitted.

- f. The deed and the agreement are only ancillary/ collateral / incidental documents which need not be given any weightage at this point of time for deciding a petition under section 7 especially where debentures were issued, part of which were redeemed and remaining part is complained as defaulted. The debenture holders in their capacity as secured creditors are also petitioners before us apart from the debenture trustee.
- g. It is to be noted that as far as the Petition under section 7 of the Code is concerned, the mandate of the Hon'ble Supreme Court, as held in the case of *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited MANU/SC/1196/2017*, is that the adjudicating authority is to see whether debt and default is proved and nothing else. The relevant portion of the judgement is extracted below:

**"30.** *On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at*

*some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”*

h. The following judgements were quoted by the Corporate Debtor in support of their contention that the deed and agreement have to be impounded.

- i) *Antifriction Bearing Corporation Ltd. Vs. State Of Maharashtra* 1998 Scc Online Bom 409, wherein the Hon'ble Bombay High Court, accepting the stand of the Superintendent of Stamps at Bombay held that, when the petitioner company having registered office at Bombay, filed Debenture Trust Deed (instrument) executed at Gujarat with Registrar of Companies, Mumbai under section 125 of the Companies Act, 1956 for obtaining a certificate under section 132 of the said Act, have to be stamped as provided under Maharashtra stamp Act, 1958.
- ii) *SMS Tea estate Pvt. Ltd. Vs. Chandmari Tea Company Pvt. Ltd.* (2011) 14 Supreme Court Cases 66, wherein it was held that the court before appointing an arbitrator under section 11 of the Arbitration and conciliation Act, 1996, on the basis of an unstamped arbitration agreement, which requires compulsory registration, has

to impound the agreement as required under the provisions of Stamp Act,1899 and ensure that stamp duty and penalty is paid before appointing an arbitrator.

iii) *Garware Wall Ropes Limited v.s Coastal Marine Constructions and Engineering Limited (2019) 9 Supreme Court Cases 209*, wherein it was held that section 11(6-A), which has been introduced by way of the Arbitration and conciliation(Amendment) Act,2015, has not removed the basis of the judgement in the case of *SMS Tea estate Pvt. Ltd. Vs. Chandmari Tea Company Pvt. Ltd.* and the unstamped arbitration agreement has to be impounded for payment of stamp duty and penalty, and thereafter the High Court can proceed to appoint an arbitrator under section 11 of the said Act.

i. In the *Antifriction Bearing Corporation Ltd's.* case, supra, it relates to registration of a charge. In the cases of *SMS Tea estate Pvt. Ltd. and Garware Wall Ropes Limited*, the issue is regarding the enforceability of a compulsorily registerable Arbitration Agreement which was not registered. The above said judgements are distinguishable from the facts of the case on hand and will not apply to the proceedings under the Code especially when the debentures were already issued and a part of them were also redeemed. That apart, it is not the case here that the agreement and deed were not at all stamped as in the

case of arbitration agreements which was not at all stamped. Stamp duty was paid on those documents at Delhi at the time of execution. Further, the arbitration agreement is a compulsorily registrable document by paying required stamp duty but debentures issued does not require any registration. Hence the reliance of the applicant on these judgements is of no avail.

- j. It is not the case of the Corporate Debtor that the debentures were to be stamped. In fact, debentures are exempted from payment of stamp duty under Article 27 of Appendix 8 of the Maharashtra Stamp Act,1958.
- k. The issue relating to the unstamped/ insufficiently stamped documents was raised before NCLT Benches in the following cases and a similar plea, as in this case, by the corporate debtor was rejected.
  - i. *Srikanta Sarda vs. Transway Marketing Private Limited 2017 SCC Online NCLT 12964*
  - ii. *Bank of India vs. Gupta Infrastructure (India) Private Limited 2018 SCC Online NCLT 9916*
- l. The issue relating to impounding on account of non payment of stamp duty was raised before a coordinate bench of NCLT, Mumbai Bench in the case of *Bennett Property Holdings Company Limited Vs. Brick Eagle Affordable Housing Advisory LLP MANU/NC/1083/2020*,whereina similar contention as in this

case, raised by the Corporate debtor was rejected and it was held:

*"28. The next contention raised by the counsel appearing on behalf of the Corporate Debtor that the Stamp Duty is not duly paid on the Deed of Guarantee and hence, the same cannot be relied upon and also that the Deed of Guarantee was not executed in Maharashtra and should have been stamped within three months after it has been first received in this State for which the Corporate Debtor relied upon the recent judgment of the Hon'ble Supreme Court of India in the matter of Garware Walls Ropes Ltd. v. Coastal Marine Constructions & Engineering Ltd. was relied, wherein the Court reversed the judgment of the Bombay High Court and reiterated the principles laid down by it in the matter of SMS Tea v. Chandmari Tea Estate and held that "an arbitration clause is an instrument, which is not stamped as per law, cannot be given effect if and until the instrument is duly stamped i.e. full stamp duty in respect of such instrument as provided by law has been paid. If an unstamped instrument is brought before a person authorised to receive evidence or holding a public office, such person is required to impound the instrument." Here, in this present matter, it is pertinent to note that the Deed of*

*Guarantee was executed at New Delhi and sufficient stamp duty of Rs. 400/- has been paid on it as is also reflected on the said document. Also, the Deed of Guarantee is silent on whom the obligation lies to pay the stamp duty. Therefore, according to Section 29 of The Indian Stamp Act, 1899 wherein it is mentioned that it is for the one executing the instrument to pay the stamp duty, and here, in this matter, it was the Corporate Debtor who was to pay the Stamp Duty because he had executed the said Deed of Guarantee which is in question before this Bench. Moreover, the judgment of the Hon'ble Supreme Court cannot be relied upon here in this present matter because the order was passed in arbitration proceeding and not while considering petition under IBC, 2016. It is also observed that the Corporate Debtor on one hand relies on the said Deed of Guarantee and on the other hand denies its evidentiary value and therefore, this contention raised has no credibility and therefore cannot be relied upon".*

- m. It is to be noted that this is not a recovery proceeding but it is only a summary proceeding.
- n. In view of the above discussion, the MA No. 180 of 2020 filed by the Corporate Debtor is dismissed.

## **COMPANY PETITION NO.1632/2019**

38. The corporate debtor in the pleadings raised the following contentions and the same are dealt with as below:

### Novation:

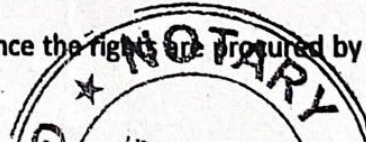
- a. It is submitted that the Petitioner Nos. 2 and 3 and their associate firms, forms part of MJS Group and the said MJS Group is controlled by P2 and P3 along with their family members. It is stated that there is one more IIFL group. The Corporate Debtor side group is known as Satra Group. It is stated that there were many transactions between these groups interse. During Diwali 2017, these groups entered into settlement in respect of various transactions between them. Negotiations were held between MJS Group, IIFL group and Satra Group in respect of credit facilities received by Satra group. During the negotiation, MJS and Satra Group arrived at a novated contract/agreement for the various transactions entered into between them consequent to the deliberations and discussion, an unanimous agreement was finally arrived between Satra group, IIFL group and MJS Group on or around 31.1.2018 interalia to settle all the loan facilities availed by Satra group from IIFL group on full and final basis as well as settlement of liabilities to the MJS Group to the extent of Rs.200 crores. Copy of the minutes of meeting (MoM dated 31.1.2018) is annexed to the petition as Exhibit A and the same is extracted below:

Minutes of the meeting held on January 31, 2018 between representatives of Satra Group, MJS Group and IIFL Group, at IIFL Office.

1. Satra Property Developers Private Limited ("SPDPL") is managed by Mr. Praful Satra. Mr. Praful Satra and/or his different entities have availed finance from MJS Group across several entities out of which only INR 200 crore will be adjusted against the Ghatkopar project. Similarly, Mr. Praful Satra and/or his entities also availed certain Credit Facilities from IIFL detailed below:

Borrower entity	Aggregate Sanctioned Amounts
Satra Property Developers Private Limited	INR 65 Crores
Satra Properties (India) Limited	1)INR 60 Crores 2)INR 40 Crores 3)INR 20 Crores. Total of INR 120 Crores
M/s Prime Developers	INR 30 Crores
collectively referred to as IIFL Loans	

2. The following is proposed to settle the loans of MJS group upto the extent of INR 200cr and IIFL group on a full and final basis. A new SPV will be formed with equity in proportion of the loans of IIFL Group and MJS Group.
3. SPDPL is developing SRA Project bearing CTS No.1(Part), lying and situated at Ghatkopar. As per revised LOI dated 10.1.2017 in respect of plot of land admeasuring 1,01,143 sq.mtrs ("Project Satra Hills").
4. A new SPV shall acquire the development rights of the Project Satra Hills mentioned above on an as is where is basis and assume liabilities under the aforesaid IIFL Loans and due repayment thereof in accordance with the definitive agreement sought to be executed between the parties. The benefit under the existing security package in relation to all loans of IIFL and MJS shall continue in the new SPV. The new SPV recognises the agreement dated 2<sup>nd</sup> March 2012 executed between SPDPL and Robust Landscapes Private Ltd and Satra will offer them a share of the new SPV to settle the same on a pro rata basis.
5. IIFL will propose to the investment committee to finance all the project expenses as per terms mutually agreed between the new SPV and IIFL without a personal guarantee from MJS group
6. Satra Group shall ensure transfer of the development rights of the Project Satra Hills to the new SPV is effected at the earliest in accordance with the provisions of law in a form and manner acceptable and shall ensure that the decisions and operations with respect to Project Satra Hills is undertaken by Satra Group in accordance with the new SPV until effective transfer is achieved within 15 days at the cost of the new SPV
7. Satra groups shall procure a No Objection Certificate(NOC) from Airport Authority of India(AAI) to construct upto a height of 103 meters (Phase A) and upto a height of 150 meters (Phase B). An advisory fee of INR 10cr will be payable to Satra for procuring the same. INR 2cr for Phase A and INR 8cr for Phase B by the new SPV
8. Once above NOC towards Phase A have been procured by Satra Group, release of security over the entire [Kalina Project] admeasuring approx. 8300 sq mtrs will be released
9. Once above NOC towards Phase B have been procured by Satra Group, security over [Borivall and Vashi Project receivables along with all funds received after 1<sup>st</sup> January 2018] will be released
10. Other ancillary securities shall be released once the rights are procured by the new SPV and Phase B is complete



11. In case Phase B is complete and the transfer of the project is delayed beyond 12 months all ancillary securities will be released by IIFL
12. SPDPL shall provide certified copy of all statutory records within seven days to enable satisfactory completion of the due diligence of the company. Satra Group shall ensure closure of definitive documents as customary of transactions of such nature, fulfillment of all the conditions in such documents and agreements including completion of satisfactory due diligence within 90 days and ensuring that there are no encumbrances on any of the collaterals or any litigation having material impact on this arrangement.
13. IIFL shall withdraw all notices including notices issued under SARFEASI on Satra group and its promoters

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for MJS GROUP

for SATRA

Tambawala  
ised Signatory

M. J. Shah  
Director

31.01  
Dir  
Pratish

Mayank Shah

- si:
1. Chandrasant Gandhi . A. Gandhi.
  2. Anil Mehta.
  3. Bhawant Sanghvi . A. B. Mehta

A. B. Mehta  
Sanghvi



- b. The Corporate Debtor submits that Section 62 of the Contract Act provides that if the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed. It is submitted that the abovesaid MoM is a contract between the petitioner and the Corporate Debtor and accordingly, the parties have agreed to settle the dues in the manner decided in the MoM and hence, there is no liability as per the original contract.
- c. Per contra, the petitioner submits that the debenture liability of Rs.43.33 crores is not included in the alleged settlement covered in the MoM as claimed by the Petitioner. The Petitioner further submits that the Corporate Debtor subsequent to the MoM requested for reduction of interest rate for debentures from 12% to 9%. When a settlement is arrived at, including these debentures, there is no occasion for the Corporate Debtor to request for reduction of interest rate. Even subsequent to the said MoM, this debenture liability is shown in the balance sheet of the Corporate Debtor for the year 2017-18 as well as for the year 2018-19 and hence the submission of the Petitioner that this debt is not covered by the MoM cannot be ignored. In view of the above finding, the contention of the Corporate Debtor that there is novation of contract and hence, there is no liability is rejected. Further, the reliance of the Corporate Debtor on the decision of the Hon'ble Supreme Court in the case of *Union of India vs. Kishorilal Gupta and*

*Bros.*, AIR 1959 Supreme Court 1362 and the judgement of Hon'ble Madras High Court in the matter of *The Indian Bank, Madras vs. S. Krishnaswamy and others* (AIR 1990 Madras 115), is of no avail to the Corporate Debtor. Further it is noticed that the IIFL Group independently filed an insolvency petition before this Tribunal against the Corporate Debtor for realization of their debt in Company Petition No.175/2019 and that claim was independently settled by the Corporate Debtor, (despite the MoM) by an order of this tribunal dated 13.9.2019. This shows that even another party to this MoM have not acted upon this alleged settlement.

d. The Petitioner further submits that the alleged settlement in any event is incapable of being acted upon because the shares of Satra Properties Developers Pvt Ltd which were contemplated to be transferred to the Petitioners in the alleged settlement were ultimately sold to Mid-city Bhoomi Developers Pvt Ltd and the same has not been controverted by the Corporate Debtor. The Corporate Debtor further submitted that when the Petitioner 2 herein had filed a commercial suit no.859 of 2019 against the Corporate Debtor on the file of Hon'ble Bombay High Court, seeking interalia, transfer of 51% shares in the subsidiary of the corporate Debtor, the Corporate Debtor had opposed the reliefs sought by the Petitioner on the basis of MoM dated 31.1.2018 but the Corporate Debtor ultimately settled the suit and

transferred the shares to Petitioner 2. The consent terms filed therein has been brought on record, which negates the false stand taken by the Corporate Debtor.

39. In view of the above stated position, the Corporate Debtor claim of novation of contract is rejected.

39. Debt and Default.

It is not the case of the Corporate Debtor that they have not received funds from the Petitioner by issuing debentures and the debentures were shown in the balance sheet of the Corporate Debtor till date. The request of the Corporate Debtor for reduction of interest rate is a clear proof that the Corporate Debtor had not even paid the interest and the debentures were not redeemed even after the extension of time granted by the petitioners for redemption of debentures. All these things clearly proves the debt and default. The petitioners have complied with the provisions of Section 7 of the Code. Hence the petition deserves admission and accordingly the petition is admitted and the Corporate debtor is put under CIRP.

#### 40. Project Insolvency:

The Ld. Sr. Counsel appearing for the Corporate Debtor submitted that in case the petition is admitted, all the projects of the Corporate Debtor shall not be put under CIRP. Only the Jaipur project shall be put into CIRP. For this argument the judgement of Hon'ble NCLAT in the case of "*Flat Buyers Association vs. M/s. Umang Real Tech Pvt Ltd through IRP and Others*" (MANU/NL/0077/2020), is relied on, wherein it was held as below:

*"21. In Corporate Insolvency Resolution Process against a real estate, if allottees (Financial Creditors) or Financial Institutions/Banks (Other Financial Creditors) or Operational Creditors of one project initiated Corporate Insolvency Resolution Process against the Corporate Debtor (real estate company), it is confined to the particular project, it cannot affect any other project(s) of the same real estate company (Corporate Debtor) in other places where separate plan(s) are approved by different authorities, land and its owner may be different and mainly the allottees (financial creditors), financial institutions (financial creditors, operational creditors are different for such separate project. Therefore, all the asset of the company (Corporate Debtor) are not to be maximized. The asset of the company (Corporate Debtor - real estate) of that particular project is to be maximized for balancing the creditors such as allottees, financial institutions and operational creditors of that particular project. Corporate Insolvency Resolution Process should be project basis, as per approved plan by the Competent Authority. Any other allottees (financial creditors) or financial institutions/banks (other financial creditors) or operational creditors of other project cannot file a claim*

*before the Interim Resolution Professional of other project and such claim cannot be entertained.*

*So, we hold that Corporate Insolvency Resolution Process against a real estate company (Corporate Debtor) is limited to a project as per approved plan by the Competent Authority and not other projects which are separate at other places for which separate plans approved. For example - in this case the Winter Hill - 77 Gurgaon Project of the 'Corporate Debtor' has been place of Corporate Insolvency Resolution Process. If the same real estate company (Corporate Debtor herein) has any other project in another town such as Delhi or Kerala or Mumbai, they cannot be clubbed together nor the asset of the Corporate Debtor (Company) for such other projects can be maximized".*

41. I am unable to accept the submissions of the Ld. Sr. Counsel for the reason that the amount raised by the Corporate Debtor by issue of these debentures were not exclusively invested in the Jodhpur project alone but only the property of the jodhpur project was given as security by creation of mortgage. The record shows that the money raised by these debentures were utilized for general purpose and other projects also. Hence the submission of the Ld. Sr. Counsel is rejected.

Sd/-

V. Nallasenapathy  
Member (T)

IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT NO. 1, MUMBAI BENCH

M.A. No. 180/2020  
and  
C.P. (IB) No. 1632/MB/2019

In the matter of  
Vistra ITCL (India) Limited &Ors.  
.... Applicant

v/s.

Satra Properties (India) Limited  
.... Respondent

Order Delivered on: 03.08.2020

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri. V. Nallasenapathy, Member (Technical)

42. After the conclusion of arguments on 19.2.2020, this application and Petition was reserved for orders. Today, the orders were pronounced. The lead judgement has been delivered by Smt. Suchitra Kanuparthi, Member (Judicial) and the dissenting judgement in MA 180/2020 is delivered by Mr. V. Nallasenapathy, Member (Technical). However, both the

members have admitted the company petition and initiated CIRP against the Corporate Debtor. The members are divided on the issue - whether the Debenture Subscription Agreement and Debenture Trust Deed are required to be impounded and sent for payment of requisite stamp duty.

43. The question of law framed is as below - whether the Debenture Trust Deed dated 1<sup>st</sup> March, 2014 and Redeemable Non-convertible Debenture Subscription Agreement dated 1<sup>st</sup> March, 2014, shall be impounded and be sent for payment of requisite stamp duty in accordance with the Maharashtra Stamp Act.
44. The Registry is directed to immediately place the record before the Hon'ble President for constituting appropriate bench/3<sup>rd</sup> Member for his opinion, so that the order in MA is rendered in accordance with the opinion of majority.

-sd-

V. Nallasenapathy  
Member (Technical)

-sd-

Suchitra Kanuparthi  
Member (Judicial)