NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1217 of 2026
&
I.A. No. 4705 of 2026

IN THE MATTER OF:

Naresh Chand, Suspended Director of Ashiana Ispat Pvt Ltd. ...**Appellant(s)**

Versus

Mani Mahesh Ispat Pvt. Ltd. & Ors. ...**Respondent(s)**

Present:

For Appellant	:	Mr. Krishnendu Datta, Sr. Advocate with Mr. Ankur Sadan, Mr. Hemant Kothari, Mr. Aryan Pathak, Ms. Parneet Kaur, Mr. Rishi Kapoor, Mr. Yash Tandon, Ms. Vidhi Jain & Mr. Sachin Kaushik, Advocates.
For Respondents	:	Mr. Gaurav Mitra, Sr. Advocate with, Mr. Anurag Bhatt, Mr. Lokesh Pathak, Mr. Vaibhav Vijayvargiya, Mr. Yash Shahi, Ms. Arpita Goyal Advocates for R-1.

O R D E R
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

The instant appeal has been filed by the Appellant who is a Suspended Director of Corporate Debtor Ashiana Ispat Pvt. Ltd. (CD) against the judgment dated 03.07.2026 (impugned judgment) passed by the National Company Law Tribunal, Jaipur Bench (Adjudicating Authority) in CP IB No. 25/9/JPR/2025 whereby the application filed by the Operational Creditor (Respondent No. 1) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) has been admitted.

2. Brief facts necessary for the disposal of this appeal are that the Respondent No. 1 Mani Mahesh Ispat private Ltd. (operational creditor), filed an application under Section 9 of the Code against Ashiana Ispat Limited (CD)

with the contention that the operational creditor is engaged in the business of sale of steel products and the corporate debtor used to regularly purchase mild steel ingots and mild steel billets from the operational creditor and the operational creditor used to raise invoices to the corporate debtor and the corporate debtor had cleared the payment with respect to the invoices raised prior to 29 April 2023, however, the corporate debtor has failed to make the payment towards the last 27 invoices and two debit notes raised by the Operational Creditor, the details of which has been given in the petition. It is further contended that the CD has duly acknowledged the confirmation of the ledger accounts from 1st April 2023 to 31st October 2023 as per which the CD was liable to pay the outstanding amount of Rs. 5,73,65,819/- towards the above stated 27 invoices and two debit notes.

3. It is further submitted that the operational creditor had duly delivered the goods as stipulated in the invoices and the corporate debtor has never disputed the quality or quantity of the goods sold. The operational creditor has also deposited the GST on the said invoices during the relevant period and is therefore entitled to recover the same from the corporate debtor. The corporate debtor has also deducted the TDS amount on the unpaid invoices and the same is duly reflected in Form 26 AS.

4. It is further stated that on account of non-payment of the invoices an FIR was filed by the operational creditor against the CD under Section 420 and 406 of the IPC on 13th December 2023 and thereafter the corporate debtor has issued cheques against the outstanding amount of Rs. 5,73,65,819/- on 21-10-2024, 22-10-2024 and on 23-10-2024 of ₹2,00,00,000/- bearing no.

635252, of Rs. 2,00,00,000/- bearing no 635253 and of Rs. 1,73,65,819/- bearing no 635254, respectively. The above stated cheques on being presented to the Bank were dishonoured on 10th January 2025.

5. It is further contended that a demand notice under section 8 (1) of the IBC was sent to the corporate debtor on 10th January 2025 at their registered address and other address through speed post, however, the notice sent on the registered address was returned with the remark of item delivered. The notices were also sent through email which were delivered, but the corporate debtor has not given any reply nor has disputed the goods supplied by the Operational Creditor and there after the petition under Section 9 of the Court was filed before Ld. Adjudicating Authority.

6. As per part IV of the petition filed by the Respondent Operational Curator, the default in payment of Rs. 5,73,65,819/- has been shown with respect to invoices from 29th April 2023 to 12th September 2023 and two debit notes dated 23rd September 2023 which were raised by the Operational Creditor.

7. The details of these 27 invoices and 2 debit notes have been given in Part IV of the petition. The date of default has been shown as from 29/04/2023 to 12/09/ 2023. It is stated that on 30th September 2023 the corporate debtor has made a lump sum payment of Rs. 45 lakhs towards its outstanding liability which was accordingly adjusted by the operational creditor and as on 30.09.2023 total amount of Rs. 5,73,65,819/- was outstanding and payable by the corporate debtor to the operational creditor.

8. The Appellant Corporate Debtor appeared before the Ld. Adjudicating Authority and contended that the petition is not maintainable because of the existence of prior dispute as Mr. Navnitya Prakash Goyal, who has instituted the proceedings before the Ld. Adjudicating Authority on behalf of the operational creditor in his capacity as the director and authorised representative, has also instituted Civil Suit (OS) No. 320 of 2025 before the Hon'ble High Court of Delhi in his individual capacity and in the same civil suit he has averred that he had entered into an agreement to sell dated 14 February 2024 with Smt. Swati Jain, who has been arrayed as defendant, in respect of certain immovable property described in the said Agreement for a total sale consideration of Rs. 8 crores.

9. It is further contended that in the civil suit it is admitted that out of total sales consideration of Rs. 8 crore Rs. 7,80,00,000/- stood paid by way of adjustment of the outstanding dues pertaining to the business transactions and a breakup of this amount has been given which includes Rs. 5,73,65,819/- being claimed by the operational creditor in this petition and it is admitted to the operational creditor in that civil suit that the amount which was due to the corporate debtor has been adjusted in the amount of sale consideration which was paid under the agreement to sell dated 14.02.2024.

10. It is further contended by the corporate debtor that in view of the original civil suit filed by the operational creditor, the operational creditor is estopped from making any claim for any debt whatsoever when the said debt is claimed to have been adjusted by the operational creditor against the part of the sale consideration under the agreement filed dated 14/2/2024. It is

also contended that the pendency of the civil suit demonstrates that there is existence of dispute between the parties in relation to the dues prior to the institution of the petition.

11. Learned adjudicating authority by passing the impugned judgement and order admitted the corporate debtor Ashiana Ispat Limited into the CIRP and Mr. Prashant Agarwal was appointed as the IRP. The relevant part of the impugned judgement is reproduced as under;

> ***12.*** *On the other hand, the Ld. Counsel for the Corporate Debtor has vehemently argued that an original Civil Suit (OS) No. 320/2025 is pending before the Hon'ble Delhi High Court filed by Mr. Navnitya Prakash Goyal which constitutes a pre-existing dispute between the parties.*
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> ***13.*** *The aforementioned suit bearing original Civil Suit (OS) No. 320/2025 was filed seeking specific performance of the agreement to sell dated 14.02.2024 for sale of certain properties described therein at a consideration of Rs. 8 Crore against the total outstanding amount of Rs. 7.80 Crore.*
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> ***14.*** *At this juncture, it is relevant to appreciate the terms of the agreement dated 14.02.2024. The said agreement was entered into between Shri Puneet Jain (Director of Ashiana Ispat Limited) and his wife Smt. Swati Jain, as first party and confirming party respectively; and Shri Navnitya Prakash Goyal (Director of Mani Mahesh Ispat Pvt. Ltd.), as second party. In the said agreement, it was stated that second party has supplied material to first party and amount of Rs. 5,73,65,819/- was outstanding against M/s Mani Mahesh Ispat Pvt. Ltd.; amount of Rs. 1,50,83,395/- was outstanding against M/s Shree Balaji Rolling Mills and other outstanding amount was Rs. 55,51,786/-. To settle the said liability, it was agreed upon in condition no. 3 of the said agreement that "the first party hereby confirm and accept that out of sale amount Rs. 8,00,00,000/-, at first second party will adjust his outstanding dues for Rs. 7,80,00,000/- and balance Rs. 20,00,000/- after deduction of TDS shall be payable after execution of registration of sale documents." It was further agreed that if the entire outstanding dues of Rs. 7.80 Crore were repaid by Ashiana Ispat Limited by 30.04.2024, the Agreement to Sell would stand terminated.*

> ***16.*** *Upon careful perusal of the deed of agreement dated 14.02.2024, it transpires that terms of said agreement not only emphasize the outstanding debt but also adjusts the outstanding amount against consideration of sale of property.*
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> ***18.*** *At this stage, it is of paramount importance to note that Corporate Debtor never disputed the quality of goods/services, the quantum of debt or the liability itself. On the contrary, the very terms of the Agreement dated 14.02.2024 unambiguously acknowledge the existence of the debt and merely prescribe the mode (i.e., conditional sale of property against outstanding dues) and timeline for its discharge. If the operational debt stood finally adjusted/extinguished on 14.02.2024, then there should have been no need for the Corporate Debtor to issue three cheques dated 21.10.2024, 22.10.2024 and 23.10.2024 aggregating to Rs. 5,73,65,819/- being the precise amount claimed in the Petition. The subsequent issue of cheques also shows continuance of the debt and this is inconsistent with the plea taken by the Corporate Debtor that the liability had already been discharged. Further, Corporate Debtor had also not shown any journal entry, ledger reversal entry, settlement account or Board Resolution reflecting discharge of the operational debt. Hence, in the absence of contemporaneous accounting record, plea of the Corporate Debtor cannot be accepted".*

12. Aggrieved by the impugned order, the corporate debtor has preferred this Appeal.

13. Heard Shri Krishnendu Datta, Ld. Sr. Counsel appearing for the Appellant and Shri Gaurav Mitra, Ld. Sr. Counsel appearing for the Respondent No.1 as well as the IRP Mr. Prashant Agarwal in person.

14. We, at the outset, notice that the appellant as well as the respondent have filed IA Nos. 5738 of 2026 and 5762 of 2026 requesting to keep on record certain additional evidence/documents and we, by passing an order, had taken the view that, if required for the purpose of just adjudication of the case, this appellate tribunal may look into these documents. As we are now

dictating judgment, we have taken a decision to look into the documents which have been filed by the parties with the aforesaid applications.

15. Learned Senior Counsel appearing for the appellant submits that the Learned Adjudicating Authority has committed manifest illegality in admitting the application of the operational creditor under Section 9 of the Code, as it was evident on the face of the record that no debt is due to the appellant, which may be termed as operational debt and also that the nature of the debt had changed by executing two agreements subsequently.

16. It is further submitted that earlier some dispute had arisen between the appellant and the operational creditor, pertaining to which an FIR was lodged by the operational creditor on 13th December 2023. In order to amicably resolve the dispute between the parties, the director of the corporate debtor Puneet Jain and his wife, namely Mrs. Swati Jain, and the director of the respondent operational creditor, Nav Nitya Goel, had entered into a settlement agreement dated 14th February 2024.

17. It is further submitted that in the settlement agreement, it was agreed that the claim of the respondent No.2/operational creditor, aggregating to ₹7 crore 80 lakhs (including a sum of ₹5,73,65,819/- allegedly payable to the respondent operational creditor by the CD), was adjusted towards the sale consideration of an immovable property owned by Shrimati Swati Jain, which is agreed to be purchased by the Respondent's director for a total consideration of ₹8 crore and this settlement agreement further contemplated execution of a separate agreement to sell in respect of the said property and that it is expressly provided therein that, in the event the said amount was

paid by 30th April 2024, the agreement to sell would stand cancelled and in case of non-payment of the outstanding dues within the time stipulated, the agreement to sell would continue and may be executed by filing a suit for specific performance.

18. It is further submitted that the two agreements (i.e., settlement agreement and agreement to sell) both were executed on 14 February 2024, therefore, it is evident that, by the execution of these documents, the character and nature of the debt, which was allegedly due to the appellant, has changed and instead of operational debt, it has now become an advance sale consideration under the agreement to sell dated 14th February 2024, and therefore no application under Section 9 of the Code was maintainable.

19. It is further submitted that the conversion of the operational debt into the advance sale consideration is also admitted to the operational creditor, as he, in pursuance of the agreement to sell, had filed an original suit before the Hon'ble Delhi High Court for execution of specific performance of contract wherein it is admitted that advance consideration of Rs. 7.8 crore has been paid by the operational creditor to Mrs. Swati Jain.

20. It is further submitted that perusal of these two agreements would reveal that these agreements have been signed by the parties in their capacity as directors of their respective companies, and therefore the agreements were binding on the companies, as well.

21. It is also submitted that the appellant had also issued three cheques aggregating to ₹5,73,65,819/- in October 2024 to the operational creditors.

However, these cheques were presented by the operational creditor in the bank on 10th January 2025, whereon these cheques were dishonoured.

22. It is further submitted that in the proceedings before the Delhi High Court, the director of the operational creditor, Mr. Nav Nitya Prakash Goyal, has specifically pleaded that out of the total sale consideration of Rs. 8 crores, a sum of Rs. 7.8 crores already stood paid and adjusted in the advance consideration paid pertaining to the agreement to sell.

23. It is vehemently submitted that when the operational creditor has chosen to file the suit for specific performance of contract on the basis of the agreement to sell executed on 14 February 2024, he was precluded from filing any application under Section 9 of the Code.

24. It is further submitted that the respondent/operational creditor has not disclosed the existence of the settlement agreement or the agreement to sell executed between the parties on 14thFebruary 2024 to the learned adjudicating authority and it was only the appellant which had brought these facts to the notice of the learned adjudicating authority.

25. It is further submitted that the Learned Adjudicating Authority has committed a mistake by not considering the fact that the dispute was existing between the parties much prior to the issuance of the Section 8 notice (as the civil suit has been filed by the operational creditor in the Delhi High Court, wherein the two agreements stated above were admitted).

26. It is further submitted that the prior dispute in cases under Section 9 of the Code is not required to be proved, as in civil cases, by the standard of preponderance of probabilities. It is sufficient that the CD may show that he

has a plausible defence, and the same is sufficient and for this purpose, the Learned Adjudicating Authority is not required to appreciate the evidence and material available on record like a civil court.

27. It is further submitted that by writing of the two agreements (i.e., settlement agreement and agreement to sell dated 14th February 2024), a new contract has emerged, therefore, in view of Section 62 of the Indian Contract Act, the old contract cannot be implemented or executed, and this aspect of the matter has not been considered by the learned adjudicating authority.

28. It is also submitted that in the pleadings filed before the Hon'ble Delhi High Court, the operational creditor has conspicuously admitted to have received/set-off of the debt with the advance consideration of the agreement to sell. Therefore, the Section 9 application moved by the operational creditor was not maintainable, and the impugned order is liable to be Set Aside.

29. Ld. Sr. Counsel for the appellant has relied on ***Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd. (2018) Vol 1 SCC 353 and Rajratan Babulal Agarwal vs. Solar Tex India Pvt. Ltd. & Ors., (2023) 1 SCC 115.*** in order to show that with regard to the issue of prior dispute the court does not need to satisfy itself that the defence is likely to succeed and the court also is not obliged at this stage to examine the merits of the dispute. Reliance is also placed on ***Talbot and Company vs. Austin Distributors Pvt. Ltd., CA (AT) (Ins) No. 1470 of 2022*** wherein the same principle has been followed by the co-ordinate Bench of this Appellate Tribunal.

30. Reliance is also placed on ***Trafigura India Pvt. Ltd. vs. TDT Copper Ltd., CA (AT) (Ins) No. 742 of 2020*** wherein it is opined that the default of

instalment of a settlement agreement does not falls within the definition of operational debt and also on ***Permali Wallac Pvt. LTd. vs. Narbada Forest Industries Pvt. Ltd.*** in order to show that proceeding under the IBC is not a recovery tool.

31. Learned Sr. Counsel appearing for the operational creditor, however, submits that no illegality or, to say, any irregularity has been committed by the learned Adjudicating Authority in accepting the application moved by the respondent operational creditor, as the debt and default was clearly established.

32. While referring to the settlement agreement dated 14th February 2024, it is submitted that debt and default have been acknowledged by the appellant in this document clearly. The application under Section 9 of the Code was filed within limitation. Therefore, the Ld. Adjudicating Authority was obliged to admit the same.

33. It is vehemently submitted that the nature of the debt could not be changed by writing of settlement agreement or an agreement to sell. In the settlement agreement, it has been clearly narrated that, in case the amount in default is not paid by 30th April 2024, the agreement to sell would stand cancelled. In this regard, there is no applicability of Section 62 of the Indian Contract Act as well. To apply Section 62 of the Indian Contract Act, the new contract must eclipse the old contract, and by the execution of the new contract, the old contract must become inconsistent with the new contract.

34. It is further submitted that there were three modes adopted by the corporate debtor for discharge of its debt i.e. By writing settlement agreement

dated 14th February 2024 wherein it was stated that the outstanding debt would be paid by 30th April 2024 and when this was not paid, by a writing addendum to the agreement to sell, the stipulated date for the execution of the sale deed was extended from 12th August 2024 to 12th October 2024 and when, within this extended period, the outstanding debt was not paid the appellant issued three cheques in the month of October 2024, totalling ₹5,73,65,819/-.However, these cheques were also dishonoured. Therefore, none of the modes adopted by the appellant satisfies the outstanding debt of the operational creditor.

35. It is further submitted that the section 9 application was filed before the Ld. Adjudicating Authority much before the institution of the Civil Suit filed before Hon'ble Delhi High Court for specific performance and therefore the defence of the appellant that pendency of the civil suit would bar the proceedings of section 9 is a fallacy and could not be accepted.

36. It is also submitted that before this appellate tribunal and also before the Ld. Adjudicating Authority, the defence has been taken by the appellant that pendency of the original suit before the Hon'ble Delhi High Court for specific performance would bar these proceedings. While before the Honourable Delhi High Court, Swati Jain had taken the defence that she has not received any consideration and also that an independent liability of the CD could not be discharged by her property. Therefore, the intention of the appellant is not to pay the outstanding debt to the appellant.

37. It is further submitted that Section 62 of the Indian Contract Act is not applicable to the facts and circumstances of this case, as the old contract was kept alive even by the execution of the subsequent contracts and agreements.

38. It is vehemently submitted that it is a case where the debt and default are admitted by the appellant, and he cleverly had defrauded the operational creditor by executing a settlement agreement and an agreement to sell. However, neither the outstanding amount has been paid to the operational creditor, nor has the property been transferred.

39. It is further submitted that, at the most, the settlement agreement entered into between the parties may only be termed as a security for ensuring the payment of the outstanding debt to the operational creditor, which is also evident by the fact that in the addendum, it has been written that the possession of the property has been given to the operational creditor, while the same was never given and the efforts which gas been made by the Operational; creditor by writing these agreements is only to secure/ ensure payment of its outstanding debt. Therefore, there is no ground exists for interference in the impugned judgment

40. Ld. Senior Counsel appearing for the operational creditor, has relied on the law laid down by this Appellate Tribunal in ***Ahluwalia Contracts (India) Ltd. vs Logix Infra Tech Pvt. Ltd. (2022) SCC Online, NCLAT 3797, Yusuf Malubhaiwala vs. Mr. Anuj Maheshwari and Anr., CA (AT) (Ins) No. 916 of 2025, Ahluwalia Contracts (India) Ltd. vs. Raheja Developers Ltd., (2019) SCC Online NCLAT, 942*** and submits that a moonshine defence cannot be termed as prior dispute and the Ld. Adjudicating Authority is only required to see the debt, default and limitation along with the fact that application is complete in all respect.

41. IRP in person however, submits that he will abide by whatever decision would be taken by this Appellate Tribunal.

42. Having heard Ld. Counsels for the parties and having perused the record we at the outset submits that the debt and default has not been disputed before us and the case of the appellant is that the parties had long-standing commercial dealings, pursuant to which the respondent operational creditor supplied iron ingots and billets to the CD in the ordinary course of business and certain dispute arose between the parties regarding the alleged outstanding payables by the CD to the OC. On 13 December 2023, an FIR bearing number 331 of 2023 was filed by the OC under Section 420 and 406 of the IPC and on 14 February 2024, in order to resolve the dispute, the director of the CD and his wife, Mrs. Swati Jain, entered into a deed of agreement (settlement agreement) dated 14 February 2024 and the claim of the OC, aggregating to ₹7,80,00,000/- including a sum of ₹5,73,65,819 allegedly payable to the respondent No. 1 by the CD, were adjusted towards the sale consideration of an immovable property owned by Mrs. Swati Jain, wife of the appellant. This settlement agreement further contemplated execution of a separate agreement to sell in respect of the said property. It was provided therein that, in the event the amount is paid by the appellant, the agreement to sell would stand cancelled. If the amount is not paid by the said date, the agreement to sell would continue until execution of the sale deed and for this purpose, the OC has already filed a civil suit at the Hon'ble

Delhi High Court, and therefore these proceedings are not maintainable, as the debt has been discharged in consideration of the agreement to sell. It is also the case of the appellant that the nature of the debt, by writing of two subsequent contracts/ agreements, has changed, and now it is no more remained an operational debt.

43. Ld. Counsel for the appellant has also highlighted Section 62 of the Contract Act in order to show that the new contract has substituted the old contract. Lastly, the defence of the existence of a prior dispute has been pleaded, and it is submitted that institution of a civil suit is itself sufficient to show that there is prior dispute existing between the parties. In view of settled law, only a plausible case is required to be shown to show that some dispute is existing between the parties and therefore the impugned order is required to be set aside.

44. The case of the defendant, on the other hand, is that there is a clear admission of the debt and default in the settlement agreement dated 14 February 2024 and it is also admitted therein that the outstanding amount, as shown in Part IV, is owed by the CD to the operational creditor. It is also the case of the OC that the two agreements i.e., settlement agreement and agreement to sell the property of Mrs. Swati Jain were only executed as a security to pay the debt of the OC by the CD. However, the debt has not been paid by the Appellant, nor has the property been transferred. It is also stated that Section 62 of the Indian Contract Act is not applicable to the facts of this case, as the original contract was kept alive and is not eclipsed by the new contract. It is the further case of the OC that the CD also issued three cheques

in October 2024 aggregating to ₹5,73,65,819/-, however, these cheques were dishonoured on presentation before the bank. Thus, neither mode of discharge of debt has materialized. It is emphasized that there were three modes which were adopted by the CD to pay the debt of the OC i.e. To pay the debt up to 30th April 2024, as mentioned in settlement agreement which was not paid, ii. The transfer of property in lieu of agreement to sell, which was not transferred and iii. By issuance of three cheques in October 2024, which were also dishonoured. Therefore, the intention of the CD is not to pay the debt to the OC.

45. It is further highlighted by the OC that the sequence of events would show that the agreement to sell was executed on 14 February 2024, along with the settlement agreement wherein 12/8/2024 was set as the date by which the sale deed was to be executed by the director of the CD. However, by executing an addendum dated 12/9/2024, the date of execution of the sale deed was extended till 12/10/2024, and thereafter, three cheques were issued by the CD in October 2024. These events would clearly show that the underlying object of all these efforts was to pay the debt of the OC by the CD, and the two agreements were written only as security to pay the debt.

46. It is further the case of the OC that the application under Section 9 of the Code was filed by the OC on 25/02/2025, and the suit for specific performance was filed on 14/5/2025 before the Hon'ble Delhi High Court. Therefore, the suit for specific performance cannot be a bar to the institution of these proceedings. The conduct of the appellant is such that, in these proceedings pending before the appellate tribunal, they are taking the defence

of the pendency of the suit for specific performance before the Hon'ble Delhi High Court and in the suit for specific performance, they are taking the defence of the pendency of the instant proceedings.

47. We notice that it would be the two agreements ie. the settlement agreement and the agreement to sell, executed on 14 February 2024 which are important for adjudication of dispute between the parties in order to assess as to whether, by execution of these agreements, the debt has been discharged? Ld. counsels for both the parties have relied on various clauses of these two agreements executed on 14 February 2024. Thus, for the sake of convenience, we are reproducing the relevant clauses of the two agreements herein below;

Non Judicial

Indian-Non Judicial Stamp
Haryana Government

Date : 14/02/2024

Certificate No.	G0N2024B2972	Stamp Duty Paid	₹ 101
GRN No.	112746894	Penalty	₹ 0

Seller / First Party Detail

Name	Puneet jain And Swati jain				
H.No/Floor	E13/11	Sector/Ward	Na	LandMark	Na
City/Village	Vasant vihar	District	New delhi	State	Delhi
Phone	93******44	Others	M s ashiana ispat ltd		

Buyer / Second Party Detail

Name	Navnitya parkash goyal				
H.No/Floor	F268	Sector/Ward	57	LandMark	Sushant lok phase 2
City/Village	Gurugram	District	Gurugram	State	Haryana
Phone	93******44	Others	M s mani mahesh ispat pvt ltd		

Purpose Deed of agreement

The authenticity of this document can be verified by scanning this QrCode Through smart phone or on the website https://egrashry.nic.in

This Deed of agreement is executed at New Delhi on this 14th day of Feb. 2024, by & between:

MR. PUNEET JAIN S/o Sh. Naresh Chand resident of E-13/11, First Floor, Vasant Vihar, New Delhi – 110057 (AADHAR No- 439257467015 , PAN No AAKPJ4342C **Director M/s Ashiana Ispat Ltd, Regd office at Netaji Subash Place, Delhi** hereinafter called as '**FIRST PARTY**'. (Which expression shall mean and include its legal heirs, Successors, representatives, administrators, executors, nominees and assigns).

MRS. SWATI JAIN W/o Sh. PUNEET JAIN resident of E-13/11, First Floor, Vasant Vihar, New Delhi – 110057 (AADHAR No 755950624279 PAN No ADLPJ4079J hereinafter called as 'CONFIRMING PARTY', (Which expression shall mean and include its legal heirs, Successors, representatives, administrators, executors, nominees and assigns).

IN FAVOUR OF

MR NAVNITYA PARKASH GOYAL S/0 SH. KUNDAN LAL resident of F-268, Ground Floor, Sushant Lok-II, Sector-57, Near Hongkong Bazar, Gurgaon-122011, **Director M/s Mani Mahesh Ispat Pvt Ltd, Regd Office Shalimar Bagh, New Delhi,** hereinafter called as 'SECOND PARTY'

Aadhar No: 771562921757 PAN: AFOPG7446F

... Ispat Pvt. Ltd.
Director

NOTARY

& Partner of Shree Balaji Rolling Mill, Bhiwadi,
(which expression shall mean and include their legal heirs, successors, representatives, administrators, executors, nominees and assigns).
Whereas the Second Party supplied material to First Party and following amount is outstanding:

M/s Mani Mahesh Ispat Pvt Ltd :	Rs.5,73,65,819/-
Shree Balaji Rolling Mills:	Rs.1,50,83,395/-
Other outstanding amount	Rs. 55,51,786/-
Total Amount:	**Rs.7,80,00,000/-**

Whereas the FIRST PARTY having purchased and absolute owner of Entire First Floor covered area 204.60 Sq. meters, as 30% share in the residential property E-13/11, having plot area 407.50 Sq. Yards (340.72 Sq. Meters approx.) by way of Document no.3867 Book no.1 Vol no.767 Pages 181-191 dt.02.8.2018 duly registered in the office of Sub-Registrar Sarojini Nagar New Delhi in favour of his wife Mrs. Swati Jain (Confirming Party). FIRST PARTY has full right, absolute authority to sell, dispose-off and transfer the same in whole or in parts and none else except the FIRST PARTY has any right title or interest in the same.

AND WHEREAS NOW, the FIRST PARTY has agreed to sell, convey, transfer and assign, to the SECOND PARTY in settlement of his outstanding due, and the SECOND PARTY has agreed to purchase the Entire First Floor consisting of Four Bedrooms, Five Bathrooms, One Kitchen, One Drawing and One Dining Room, One Servant Quarter on Top Floor consisting of One Room and a Pantry along with a common toilet, space for one car parking in common driveway and common submersible pump also right to access to terrace for Installation and maintenance of T.V. Antenna along-with proportionate 30% (Thirty Percent) undivided share in the plot of land beneath the said building bearing no. 11, Street No. E-13, measuring 407.50 square yards situated in the layout plan of Government Servants Cooperative House Building Society at Vasant Vihar New Delhi – 110057 for a total consideration of Rs. 8,00,00,000/- (Rs. Eight Crore Only) on the following terms & conditions:

1. That it is clarified that the consideration herein stated is true and genuine sale price/sale consideration as mutually agreed between the parties and is fair market value of the said portion of the said property.
2. That the said property is registered in name of Mrs Swati Jain (Confirming Party) w/o First Party Mr Puneet Jain, who has owed debt of Rs.7,80,00,000/- (Rs. Seven Crore Eighty Lac only) from Second Party. As settlement of her husband's debt, she agreed to transfer the said property in favour of the Second party.

NOTARY

For Ashiana Ispat Limited

3. That First party hereby confirm and accept that out of sale amount Rs.8,00,00,000/-, at first, second party will adjust his outstanding dues Rs.7,80,00,000/- and balance Rs.20,00,000/- after deduction of TDS, shall be payable after execution of registration of sale documents.
4. That First party informed to second party that there is a housing loan over this said property from Tata Capital Housing Finance Ltd and sought time period of 6 month from the execution of this agreement, to repay the said housing loan and N.D.C from Tata Capital Housing Finance Ltd.
5. That after mutual understanding, the First party agrees to execute the sale deed registration of the said property in favour of Second party as on 12th August,2024.
6. That a separate agreement to sell of the said property shall be prepared between the parties.
7. That First party state that he is expected to receive funds shortly till 30th April,2024 in Ashiana Ispat Ltd and after receiving fund, first First Party would clear the above stated outstanding dues of Rs.7,80,00,000/- to second party. After repayment of outstanding due till 30th April,2024, the separate agreement to sell as mentioned on Sr. No.06 shall be treated as cancelled.
8. That if First party doesn't clear the outstanding dues of Second party by 30th April,2024, in such case, the separate agreement to sell as mentioned on Sr. No.06 shall be in force until execution of sale deed registration.
9. That Second party has full right to nominate or assign this agreement to sell in favour of any person or persons, be it a firm, body corporate or association of person and the first party shall have no objection to register the sale deed documents in favour of Third Party directly.
10. That in the case, the first party refused to execute the sale deed registration of the said property in favor of the second party / Third party on stipulated date, for whatsoever reason, the Second party has legal right to register the said property is his name, nominee name or any third-party name through court of law by specific performance of contract at cost and expense of the First Party.
11. That all expenses in respect of registration of sale deed documents, stamp duty and other miscellaneous expenses shall be borne by the second party or by third party.
12. That all the previous original sale deeds and other relevant papers concerning to the said property will be handed over by the first party to second party/ third party at the time execution of the sale deed.
13. That First party assure that prior to the date of sale deed registration, First Party would repay the housing loan as mentioned at Sr. No.04 and the said property under this agreement shall be free from all encumbrances, Housing loan, financial institutional lien, any type of dispute & litigation etc as on date of sale deed registration and First party shall give peaceful vacant physical possession of the said property to Second Party at the time of registration of sale deed documents. All the outstanding dues up to the date as on sale document registration of the said property i.e maintenance charges, property tax, electricity & water charges, municipal corporation charges or any other outstanding charges shall be paid/cleared by First Party. In case of legal defect in ownership of property, [illegible] first party will be liable and responsible to make good the loss suffered by the second party and keep the second party saved, harmless and indemnified against all such losses and damages suffer by second party.
14. That First party has not entered into agreement with any other parties for sale of the said property. First party represent and warrants that she has not granted or assigned the right to any third party that would conflict with the interest of Second Party.
15. That in case First party fails to execute sale deed registration on stipulated date 12th August,2024 due to whatsoever reason, second party can move to court of law for judicial relief and remedy at the cost & expense of First party.
16. That Second party co-operate to first party in quashing the F.I.R in High Court. F.I.R No. [illegible] PS [illegible] and Second Party shall make [illegible] statement before [illegible] PS / office / Court etc.

In witness whereof, both the First party and Second Party have signed this deed of agreement at New Delhi on the date first mentioned above, in token of their accepting the terms herein above given in the presence of following witnesses:

Mahesh Ispat

Non Judicial

Indian-Non Judicial Stamp
Haryana Government

Date : 14/02/2024

Certificate No. G0N2024B2989

GRN No. 112746694

Stamp Duty Paid : ₹ 101

Penalty : ₹ 0

Seller / First Party Detail

Name: Swati jain

H.No/Floor: E13/11 Sector/Ward: Na LandMark: Na

City/Village: Vasant vihar District: New delhi State: Delhi

Phone: 93******44

Buyer / Second Party Detail

Name: Navnitya parkash goyal

H.No/Floor: F268 Sector/Ward: 57 LandMark: Sushant lok phase 2

City/Village: Gurugram District: Gurugram State: Haryana

Phone: 93******44

Purpose: agreement to sell

The authenticity of this document can be verified by scanning the QrCode Through smart phone or on the website https://egrashry.nic.in

This Deed of agreement to sell is executed at New Delhi on this 14th day of Feb. 2024, by & between:

MRS. SWATI JAIN W/O SH. PUNEET JAIN, resident of E-13/11, First Floor, Vasant Vihar, New Delhi - 110057 (AADHAR No. 7559 5062 4279 PAN No. ADLPJ4079J hereinafter called as **'FIRST PARTY'**. (Which expression shall mean and include its legal heirs, Successors, representatives, administrators, executors, nominees and assigns).

IN FAVOUR OF

MR NAVNITYA PARKASH GOYAL S/O SH. KUNDAN LAL resident of F-268, Ground Floor, Sushant Lok-II, Sector-57, Near Hongkong Bazar, Gurgaon-122011, hereinafter called as **'SECOND PARTY'** (which expression shall mean and include their legal heirs, successors, representatives, administrators, executors, nominees and assigns). Aadhar No. 971562421757 PAN NO: AFOPZ7446P

and Whereas the FIRST PARTY having purchased and absolute owner by way of sale deed no.3867 Book no.1 Vol no.767 Pages 181-191 dt.02.8.2018 duly registered in the office of Sub Registrar Sarojini Nagar New Delhi and the first party for his bona-fide need and requirements

have agreed to sell, convey, transfer and assign to the Second party and Second party has agreed to purchase the Entire First Floor consisting of Four Bedrooms, Five Bathrooms, One Kitchen, One Drawing and One Dining Room, One Servant Quarter on Top Floor consisting of One Room and a Pantry along with a common toilet, space for one car parking in common driveway and common submersible pump also right to access to terrace for Installation and maintenance of T.V. Antenna along-with proportionate 30% (Thirty Percent) undivided share in the plot of land beneath the said building bearing no. 11, Street No. E-13, measuring 407.50 square yards situated in the layout plan of Government Servants Cooperative House Building Society at Vasant Vihar New Delhi – 110057 for a total consideration of Rs. 8,00,00,000/- (Rupees Eight Crore Only) on the following terms & conditions:

1. That it is clarified that the consideration herein stated is true and genuine sale price/sale consideration as mutually agreed between the parties and is fair market value of the said portion of the said property.

2. That First party hereby confirm and accept that she has already received Rs.7,80,00,000/- (Rs. Seven Crore Eighty Lac only) from Second party in her husband company M/s Ashiana Ispat Ltd. New Delhi, and the remaining balance sum of Rs.20,00,000/- (Rs. Twenty Lac only) will be received by the first party from the second party, at the time of registration of sale deed documents after deduction of T.D.S as applicable.
3. That after mutual understanding, the First party agrees to execute the sale deed registration of the said property in favour of Second party or his nominee as on 12th August,2024.
4. That Second party has full right to nominate or assign this agreement to sell in favour of any person or persons, be it a firm, body corporate or association of person and the first party shall have no objection to register the sale deed documents in favour of Third Party directly.
5. That in the case, the first party has unable to execute the sale deed registration of the said property in favor of the second party / Third party on stipulated date, for whatsoever reason, the Second party has legal right to register the said property is his or nominee name or any third-party name through court of law by specific performance of the contract at the cost and expense of First Party.
6. That all expenses in respect of registration of sale deed documents, stamp duty and other miscellaneous expenses shall be borne by the second party or by his nominee.
7. That photocopy of all relevant documents in respect of the said property shall be delivered by first party to second party at the sign of this agreement to sell and all the previous original sale deeds and other relevant papers concerning to the said property will be handed over by the first party to second party/ third party at the time execution of the sale deed.
8. That First party assure that prior to the date of sale deed registration, First Party would repay the housing loan or any other dues, if any and the said property under this agreement shall be free from

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all encumbrances, Housing loan, financial institutional lien, any type of dispute & litigation etc as on date of sale deed registration and First party shall give peaceful vacant physical possession of the said property to Second Party at the time of registration of sale deed documents. All the outstanding dues up to the date as on sale document registration of the said property i.e maintenance charges, property tax, electricity & water charges, municipal corporation charges or any other outstanding charges shall be paid/cleared by First Party. In case of legal defect in ownership of property, then the first party will be liable and responsible to make good the loss suffered by the second party and keep the second party saved, harmless and indemnified against all such losses and damages suffer by second party.

9. That the proportionate common maintenance charges will be paid by all the occupants/ owners of the said building in proportion of the area occupied by them.
10. That First party has not entered into agreement with any other parties to sell of the said property. First party represent and warrants that she has not granted or assigned the right to any third party that would conflict with the interest of Second Party.
11. That in case First party fails to execute sale deed registration on stipulated date 12th August,2024 due to whatsoever reason, second party can move to court of law for judicial relief and remedy at the cost & expense of First party.
12. That asper Government notification the Second party shall deduct TDS as applicable on the total sale consideration which shall be paid by second party to the central government account and second party shall issue TDS challan in favour of First Party.

In witness whereof, both the First party and Second Party have signed this agreement to sell, at New Delhi on the date first mentioned above, in token of their accepting the terms herein above given in the presence of following witnesses:

Deed of Agreement

Indian-Non Judicial Stamp
Haryana Government

Date 14/02/2024

Certificate No. GDN2024B2972

GRN No. 112746894

Stamp Duty Paid ₹ 101

Penalty ₹ 0

Seller / First Party Detail

Name: Puneet jain And Swati jain
H.No/Floor: E13/11 Sector/Ward: Na LandMark: Na
City/Village: Vasant vihar District: New delhi State: Delhi
Phone: 93*****44 Others: M s ashiana ispat ltd

Buyer / Second Party Detail

Name: Navnitya parkash goyal
H.No/Floor: F268 Sector/Ward: 57 LandMark: Sushant lok phase 2
City/Village: Gurugram District: Gurugram State: Haryana
Phone: 93*****44 Others: M s mani mahesh ispat pvt ltd

Purpose: Deed of agreement

This Deed of agreement is executed at New Delhi on this 14th day of Feb. 2024, by & between:

MR. PUNEET JAIN S/o Sh. Naresh Chand resident of E-13/11, First Floor, Vasant Vihar, New Delhi - 110057 (AADHAR No- 439257467015 PAN No. AAKPJ4342C **Director M/s Ashiana Ispat Ltd. Regd office at Netaji Subash Place, Delhi** hereinafter called as "FIRST PARTY". (Which expression shall mean and include its legal heirs, Successors, representatives, administrators, executors, nominees and assigns).

MRS. SWATI JAIN W/o Sh. PUNEET JAIN resident of E-13/11, First Floor, Vasant Vihar, New Delhi - 110057 (AADHAR No 735950624279 PAN No ADLPJ4079J hereinafter called as "CONFIRMING PARTY". (Which expression shall mean and include its legal heirs, Successors, representatives, administrators, executors, nominees and assigns).

IN FAVOUR OF

MR NAVNITYA PARKASH GOYAL S/o SH. KUNDAN LAL resident of F-268, Ground Floor, Sushant Lok-II, Sector-57, Near Hongkong Bazar, Gurgaon-122011, **Director M/s Mani Mahesh Ispat Pvt Ltd, Regd Office Shalimar Bagh, New Delhi**, hereinafter called as "SECOND PARTY"
Aadhar No: 731562121753 PAN: AFCPG7946F

For Mani Mahesh Ispat Pvt. Ltd. For Ashiana Ispat Limited

For

Director

& Partners of Shree Balaji Rolling Mills, Bhiwandi,
(which expression shall mean and include their legal heirs, successors, representatives administrators, executors, nominees and assigns).
Whereas the Second Party supplied material to First Party and following amount is outstanding:

M/s Mani Mahesh Ispat Pvt Ltd :	Rs.5,73,65,819/-
Shree Balaji Rolling Mills:	Rs.1,50,83,395/-
Other outstanding amount	Rs. 55,51,786/-
Total Amount:	**Rs.7,80,00,000/-**

Whereas the FIRST PARTY having purchased and absolute owner of Entire First Floor covered area 204.60 Sq. meters, as 30% share in the residential property E-13/11, having plot area 407.50 Sq. Yards (340.72 Sq. Meters approx.) by way of Document no.3867 Book no.1 Vol no 767 Pages 181-191 dt.02.8.2018 duly registered in the office of Sub-Registrar Sarojini Nagar New Delhi in favour of his wife Mrs. Swati Jain (Confirming Party). FIRST PARTY has full right, absolute authority to sell, dispose-off and transfer the same in whole or in parts and none else except the FIRST PARTY has any right title or interest in the same.

AND WHEREAS NOW, the FIRST PARTY has agreed to sell, convey, transfer and assign, to the SECOND PARTY in settlement of his outstanding due, and the SECOND PARTY has agreed to purchase the Entire First Floor consisting of Four Bedrooms, Five Bathrooms, One Kitchen, One Drawing and One Dining Room, One Servant Quarter on Top Floor consisting of One Room and a Pantry along with a common toilet, space for one car parking in common driveway and common submersible pump also right to access to terrace for Installation and maintenance of T.V. Antenna along-with proportionate 30% (Thirty Percent) undivided share in the plot of land beneath the said building bearing no. 11, Street No. E-13, measuring 407.50 square yards situated in the layout plan of Government Servants Cooperative House Building Society at Vasant Vihar New Delhi - 110057 for a total consideration of Rs. 8,00,00,000/- (Rs. Eight Crore Only) on the following terms & conditions:

1. That it is clarified that the consideration herein stated is true and genuine sale price/sale consideration as mutually agreed between the parties and is fair market value of the said portion of the said property.
2. That the said property is registered in name of Mrs Swati Jain (Confirming Party) w/o First Party Mr Puneet Jain, who has owed debt of Rs.7,80,00,000/- (Rs. Seven Crore Eighty Lac only) from Second Party. As settlement of her husband's debt, she agreed to transfer the said property in favour of the Second party.

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3. That First party hereby confirm and accept that out of sale amount Rs.8,00,00,000/-, at first, second party will adjust his outstanding dues Rs.7,80,00,000/- and balance Rs.20,00,000/- after deduction of TDS, shall be payable after execution of registration of sale documents.
4. That First party informed to second party that there is a housing loan over this said property from Tata Capital Housing Finance Ltd and sought time period of 6 month from the execution of this agreement, to repay the said housing loan and N.D.C from Tata Capital Housing Finance Ltd.
5. That after mutual understanding, the First party agrees to execute the sale deed registration of the said property in favour of Second party as on 12th August,2024.
6. That a separate agreement to sell of the said property shall be prepared between the parties.
7. That First party state that he is expected to receive funds shortly till 30th April,2024 in Ashiana Ispat Ltd and after receiving fund, first First Party would clear the above stated outstanding dues of Rs.7,80,00,000/- to second party. After repayment of outstanding due till 30th April,2024, the separate agreement to sell as mentioned on Sr. No.06 shall be treated as cancelled.
8. That if First party doesn't clear the outstanding dues of Second party by 30th April,2024, in such case, the separate agreement to sell as mentioned on Sr. No.06 shall be in force until execution of sale deed registration
9. That Second party has full right to nominate or assign this agreement to sell in favour of any person or persons, be it a firm, body corporate or association of person and the first party shall have no objection to register the sale deed documents in favour of Third Party directly.
10. That in the case, the first party refused to execute the sale deed registration of the said property in favor of the second party / Third party on stipulated date, for whatsoever reason, the Second party has legal right to register the said property is his name, nominee name or any third-party name through court of law by specific performance of contract at cost and expense of the First Party.
11. That all expenses in respect of registration of sale deed documents, stamp duty and other miscellaneous expenses shall be borne by the second party or by third party.
12. That all the previous original sale deeds and other relevant papers concerning to the said property will be handed over by the first party to second party/ third party at the time execution of the sale deed.
13. That First party assure that prior to the date of sale deed registration, First Party would repay the housing loan as mentioned at Sr. No.04 and the said property under this agreement shall be free from all encumbrances, Housing loan, financial institutional lien, any type of dispute & litigation etc as on date of sale deed registration and First party shall give peaceful vacant physical possession of the said property to Second Party at the time of registration of sale deed documents. All the outstanding dues up to the date as on sale document registration of the said property i.e maintenance charges, property tax, electricity & water charges, municipal corporation charges or any other outstanding charges shall be paid/cleared by First Party. In case of legal defect in ownership of property, [illegible] first party will be liable and responsible to make good the loss suffered by the second party and [illegible]

the second party saved, harmless and indemnified against all such losses and damages suffer by second party.

14. That First party has not entered into agreement with any other parties for sale of the said property. First party represent and warrants that she has not granted or assigned the right to any third party that would conflict with the interest of Second Party.

15. That in case First party fails to execute sale deed registration on stipulated date 12th August 2024 due to whatsoever reason, second party can move to court of law for judicial relief and remedy at the cost & expense of First party.

16. That Second party co-operate to first party in quashing the F.I.R. in High Court. F.I.R. No. 33 [illegible] [illegible] and Second Party shall make [illegible] statement before [illegible] P.S. / officer / Court etc.

In witness whereof, both the First party and Second Party have signed this deed of agreement at New Delhi on the date first mentioned above, in token of their accepting the terms herein above given in the presence of following witnesses:

For Mani Mahesh Ispat Pvt. Ltd.

Director

Executants:

For Ashiana Ispat Limited

For Ashiana Ispat Limited

Director

Director

(First Party)

For Mani Mahesh Ispat Pvt Ltd

For Mani Mahesh Ispat Pvt. Ltd.

Navnitya Parkash Goyal Director

(Second Party)

Confirming Party:

Swati Jain

Swati Jain W/o Sh Puneet Jain

Witness:

(1)

Rajkumar Dyna

Aadhar No. 9188 4087 7061

(2)

Naresh Chand

Aadhar No. 7013 3405 4493

48. Perusal of the settlement agreement dated 14 February 2024 would reveal that it has been executed between Mr. Puneet Jain, director of the CD, and Mrs. Swati Jain, his wife, and Mr. Navnitya Prakash Goel, director of the OC. In the opening part of it, it is stated that whereas the second party (OC) has supplied material to the first party (CD), the following amount is shown outstanding, and bifurcation of the same is given as under:

M/s Mani mahesh Ispat Private Limited –	Rs. 5,73,65,819/-
Shree Balaji Rolling Mills,	-Rs. 1,50,83,395/-
Other outstanding amount:	-Rs. 55,51,786/-
	Total: ₹7,80,00,000 /-

49. It is also stated therein that the first party (Puneet Jain) is the absolute owner of the entire first floor covered area of 204.60 sq. meters and has a 30% share in the residential property E – 13/11, having a plot area of 407.50 sq. yards, by way of document number 3867, book number 1, volume number 767, dated 02/08/2018, in favour of his wife, Mrs. Swati Jain (confirming party) and Puneet Jain has full right to sell and dispose of the said property. Thus, it reflects that the property was purchased by the director of the CD Sri Puneet Jain in favour of his wife Swati Jain, who is the owner of the same?

50. The second opening clause of the settlement agreement dated 14 February 2024 would reveal that it is agreed that the First Party (CD/Puneet Jain) has agreed to sell, convey, transfer, and assign to the Second Party (Nav Nitya Prakash Goyal/OC) the entire property described therein for the total consideration of ₹8 Crore in settlement of his outstanding dues payable to the operational creditor.

51. In clause 2 of the settlement agreement, it has been clarified that the property is registered in the name of Mrs. Swati Jain, and she has also agreed to transfer the said property as settlement of her husband's debt.

52. Clause 3 of the settlement agreement provides that, out of the sale amount of Rs. 8 crores, the OC will get his outstanding dues of Rs. 7.80 crore, and the balance of 20 lakhs, after deduction of TDS, would be payable after execution of the registration of the sale deed.

53. Clause 4 of the settlement agreement talks about the loan on the property, which is stipulated to be cleared by the CD/ Puneet Jain within 6

months from the date of agreement, however, clause 5 fixes the date of execution of the sale deed as 12th August 2024.

54. Clause 6 of the settlement agreement provides for execution of a separate agreement to sell between the parties, and clause 7 provides that the first party (CD) is expected to receive some funds till 30 April 2024 and would clear the outstanding dues of 7.80 crore by paying the second party (OC) till 30/4/2024 and after repayment of outstanding dues till 30 April 2024, the agreement to sell shall be treated as cancelled.

55. Clause 8 of the settlement agreement provides that if the first party does not clear the outstanding dues of the second party (OC) by 30th April 2024, the agreement to sell shall be in force until execution of the sale deed.

56. Clause 10 shows that if the first party (CD) refuses to execute the sale deed for whatever reason, the second party (OC) has a legal right to register the said property in his name through the court of law by specific performance of contract at the expense of the CD.

57. It is also reflected that an agreement to sell between Mrs. Swati Jain, wife of Mr. Punish Jain, and Mr. Nav Nitya Prakash Goel, director of the OC, was also executed on 14th February 2024 and by virtue of this agreement, Mrs. Swati Jain agreed to sell the above property to Nav Nitya Prakash Goel. In clauses 2 and 3 of the same, it is stated that she has received Advance consideration of ₹7.80 crore in her husband's company (CD) and the remaining ₹20 lakh is required to be paid at the time of registration of the sale deed and the date of execution of the sale deed is fixed as 12th August 2024.

58. Clause 5 of the agreement to sell provides that if Mrs. Swati Jain fails to execute the sale deed by the stipulated date, the Nav Nitya Prakash Goel (OC) will have the right to get it executed through the court of law by specific performance of contract. Other provisions of this agreement to sell are not appearing relevant for our purpose, and therefore we refrain from discussing the same.

59. An addendum to this agreement to sell was also executed between the parties on 12 September 2024, whereby the date for execution of the sale deed was extended from 12 August 2024 to 12 October 2024. Significantly, in this addendum, it is also mentioned in clause 2 that Mrs. Swati Jain has handed over the physical vacant possession of the said property to Mr. Navnitya Prakash Goel on 11^{th} September 2024. The keys of the main door have been handed over and the remaining keys of the flat will be given within 2-3 days and also that Mrs. Swati Jain will not claim possession of this property.

60. Basis on the aforesaid clauses of the agreements, it is claimed by the appellant that the debt which was due to the appellant (Rs. 5,73,65,819/-) has been discharged, as the same has been set off/adjusted in the consideration of the agreement to sell and the only remedy available to the OC was to get the contract executed through specific performance of contract, for which he has already filed a suit for specific performance before the Hon'ble High Court of Delhi.

61. We at the outset observe that the law with regard to the interpretation of agreements/contracts is well settled i.e. the intention of the parties is to be assessed at the time of entering into the contract.

62. It is evident that when the settlement agreement and agreement to sell were executed on 14th February 2024, the debt to the tune of ₹5,73,65,819/- was due on the CD, of the operational creditor and ₹1,50,83,395/- of Balaji Iron Company Limited. Fifty lakhs were shown as other dues and the total dues which have been shown in the settlement agreement are Rs. 7,80,00,000. Thus, on 14th February 2024, it was admitted to the parties, including the director of the CD, i.e. ₹7,80,00,000 was due on the CD and owed to the operational creditor, including ₹5,73,65,819, for which the Section 9 proceedings have been initiated by the OC against the CD.

63. It is also reflected that, for the payment of this outstanding dues and agreement was executed on 14th February 2024. The intention of the first party, i.e, CD, is crystal clear in this settlement agreement i.e. to pay the debt owed to the operational creditor. It is reflected from clauses 7, 8, and 10 of the settlement agreement that CD was expected to receive some funds by 30th April 2024 and after receiving the funds, CD would discharge the outstanding dues of the OC till 30th April 2024 and In this scenario, the agreement to sell would be treated as cancelled and If the money is not paid, the agreement to sell shall be in force until execution of the sale deed, which, according to clause 10, may be executed through specific performance of contract through the instrumentality of the court of law.

64. Much emphasis has been given by learned counsel for the appellant on the fact that, in case of non-payment of outstanding dues, the only remedy available to the OC was to get the specific performance of the contract (for which the suit for specific performance has already been filed by the OC before

the Hon'ble Delhi High Court) and that the OC cannot maintain the proceedings under Section 9 of the Code, as the nature of the debt has now changed from operational debt to advance consideration paid under an agreement to sell.

65. We are not inclined to accept this submission, as perusal of the agreement to sell would reveal that it is stated therein that Mrs. Swati Jain has received Rs. 7.80 crore in the company of her husband. However, there is no mention of adjustment of this outstanding debt in the agreement to sell and it is admitted to the parties that no amount has been paid by the OC to Swati Jain in lieu of the agreement to sell. Thus, we have to read all the agreements i.e. agreement to sell, settlement agreement and addendum, conjointly in order to deduce the real intention of the parties.

66. As stated earlier, the settlement agreement has a clause (clause number 7), which clearly stipulates that if the outstanding dues are paid by the CD to the OC, the agreement to sell would be treated as cancelled. Therefore, it is not a case of a simpliciter agreement to sell. The settlement agreement clearly stipulates that, in case of payment of outstanding dues, the agreement to sell shall be treated as cancelled. Significantly, the addendum to the agreement, which has been executed on 12 September 2024, whereby the stipulated date for execution of the sale deed has been extended from 12 August 2024 to 12 October 2024, would further show the intention of the parties as it is stated in clause 2 of the same that the first party has handed over physical possession of the property to the second party (OC). It is admitted during the course of submissions by the appellant that the

possession of the property is still with the first party (Mrs. Swati Jain). Therefore, this clause of handing over possession of property also appears to have been placed in the addendum to compel the CD to pay the outstanding dues to the OC and the real intention of the parties by executing these three agreements appears to be to pay the outstanding dues of the OC and not to execute the sale of the property.

67. Subsequent events will further clarify the intention of the parties as after the expiry of the time to pay the outstanding dues till 30 April 2024, no action appears to have been taken by the OC. The date mentioned in the agreement to sell, that is, 12 August 2024, expired and one month thereafter, on 12 September 2024, the addendum to the agreement to sell was written, whereby the date of execution of the sale deed was extended to 12 October 2024. Thus, this addendum has been executed after the expiry of the stipulated date of execution of the sale deed, and possession is said to have been given to the OC, which was not a correct recitation. Significantly, till the last date provided in the addendum, neither the money was paid nor the sale deed was executed by the CD, and therefore the CD issued three cheques on 21st October 2024, 22nd October 2024, and 23rd October 2024, of ₹2 Crore, ₹2 Crore, and Rs. 1,73,65,819/-, respectively, totalling ₹5,73,65,819/- and when presented to the bank these cheques were dishonoured.

68. The question which stares at our face is that when, according to the appellant, the debt has changed its nature and the only course available to the OC was to institute suit for specific performance, why were these cheques issued by the CD to the OC? That too of the same amount which has been

shown in the settlement agreement i.e. ₹5,73,65,819/-, and the same amount has been shown in Part IV by the OC in his application moved under Section 9 of the Code. Thus, issuance of these cheques would further fortify that the real intention of the parties, by executing these three agreements and also by issuance of cheques, was payment of outstanding debt and not the sale of the property and the agreement to sell appears to have been executed to provide security for payment of outstanding debt to the CD to ensure payment.

69. Moving further, it is also reflected that a demand notice was given by the OC on 10th January 2025, and the application under Section 9 of the Code was moved by the OC on 25th February 2025. The suit for specific performance has been filed by the OC on 14th May 2025. Thus, Section 9 application has been filed by the OC before filing of the suit for specific performance, therefore, the argument of simultaneous proceedings would not be available to the appellant/CD with regard to the proceedings under Section 9 of the code, as no specific performance suit was pending at the time, when Section 9 application was filed and this argument may perhaps be available to the Appellant in the suit for specific performance and it has actually been taken by Mr Puneet Jain in that proceedings.

70. The pleadings filed before the Hon'ble High Court of Delhi have been highlighted by the appellant to show that the adjustment of the operational debt has been admitted by the operational creditor in the plaint filed before the Hon'ble High Court of Delhi. We have already opined that the real intention of the parties to execute the agreement was to pay the outstanding debt and not to purchase the property, so we do not want to consider this

submission again, however, it is to be noted that in the written statement filed by Mrs. Swati Jain before the Delhi High Court, it is stated that the agreement to sell dated 14th February 2024 does not have a valid and lawful consideration and is thus violative of Section 10 of the Contract Act as instead of lawful consideration, an independent business liability, allegedly due on CD, is shown as consideration of the agreement to sell. Highlighting this, Learned Counsel for the Respondent No. 1/Operational Creditor submits that Mrs. Swati Jain admits that the liability to pay outstanding dues is of the CD and it is independent. Mrs. Swati Jain further stated that dues against the CD cannot be set off by the property owned by her. She also admitted that she is a third party so far as the transactions between OC and the CD are concerned and that she did not receive any consideration. It is submitted that when Swati Jain admits that she has not received any consideration and also that the outstanding dues against the CD could not be adjusted with her independent property, how the outstanding dues may be deemed to have been set off against consideration of agreement to sell. We find force in this submission of learned counsel for the respondent No. 1/operational creditor.

71. Significantly, the director of the appellant, Mr. Puneet Jain, who had executed the settlement agreement on behalf of the CD, has also filed written statement before the Hon'ble Delhi High Court and stated that he is not a signatory to the agreement to sell and be deleted from the array of parties, as he does not have any role therein. It is also stated that the operational creditor has already invoked parallel proceedings. Learned counsel for the OC/Respondent No. 1 has drawn our attention to para-No. 10 of the written

statement filed by Puneet Jain wherein he has stated that the non-payment of outstanding dues to the operational creditor is a separate cause of action for which the operational creditor has instituted proceedings under Section 9 of the Code. Mrs. Swati Jain and Mr. Punit Jain, thus, both stated that possession of the property was not given to the OC. Thus, what is transpired from the above sequence of events is that, in the proceedings with regard to specific performance, defence of pendency of section 9 proceedings before us has been taken by Swati Jain and in the proceedings pending before us (under section 9 of the Code) defence of pendency of the suit for specific performance is being taken by the CD. Thus, it is clear that, to satisfy the outstanding dues of the operational creditor, the Director of the CD, Mr. Puneet Jain, initially, by writing a settlement agreement dated 14th February 2024, agreed to pay the dues till 31st April 2024, which were not paid, thereafter three cheques were issued by the CD in October 2024 for ₹5,73,65,819/- which were dishonoured. Defence before the Delhi High Court has been taken by Mrs. Swati Jain that the outstanding debt of the corporate debtor could not be set off with her property. Thus, the intent of the CD appears to be not to pay the outstanding dues of the OC.

72. So far as the defence of existence of prior dispute is concerned, a fine distinction is required to be made between the dispute with regard to the quality of the goods supplied and the dispute with regard to the payment of the admitted outstanding amount. In the case at hand, what is disputed is only the property pertaining to which the specific performance suit has been filed by the director of the operational creditor, while there is no dispute raised

with regard to the quality and quantity of the goods supplied by the OC to the CD, ever. It is admitted by the director of the CD, namely Mr. Puneet Jain, in the settlement agreement, in categorical terms, that the second party (operational creditor) supplied material to the first party (CD), and ₹7.80 crore, including ₹5,73,65,819/- of the operational creditor, is outstanding on the corporate debtor. This agreement is not only admitted by the CD but has also been made the basis of submissions before us. Thus, in view of this admission and the absence of any proof with regard to any objections raised with regard to the quality and quantity of material supplied by the OC to the CD, we are of the considered view that there is no prior dispute existed between the parties. The dispute highlighted by the Counsel for the appellant is moonshine, which has not been substantiated by any documentary proof.

73. Ld. Counsel for the Appellant has also submitted that in view of the novation of the contract by entering into the agreement to sell the old contract cannot be executed by virtue of Section 62 of the Indian Contract Act. Section 62 of the Contract Act provides that if the parties to a contract agree to substitute a new contract for it, or to resend or alter it, the original contract need not be performed.

74. A plain reading of this section shows that in order to have a novation, the parties to a contract must agree to the extinguishment or discharge of the old debt or obligation. There can be no novation until this has been accomplished. A novation may take place by the introduction of new parties or new terms into the contract. The test; therefore, is what was the intention

of the parties, or, in other words, whether they intended to bring about a new or altered contract between themselves.

75. When the requisite conditions of novation are not satisfied then it will be considered as no novation. The essential features of a novation are the replacement or relinquishment of a right under the original contract by a new one and when these essential features are missing then, there will be no novation. In our considered opinion the second or substituted contract should rescind or extinguish the previous contract. The terms of the two contracts should be so inconsistent that they cannot stand together. Novation under Section 62 may be by introduction of new parties or also by alteration or introduction of new terms between the same parties. Its essential feature is that a right under the original contract is relinquished or replaced by a new contract. Where these ingredients are missing there is no novation.

76. We recall that under the Settlement Agreement a clause has been put by the parties which clearly stipulate that if the outstanding dues are paid by the CD, in that case the Agreement to sell shall stand cancelled and if the amount is not paid then the Agreement to sell would be revived. By these clauses alone it will be evident that the Agreement to sell itself was dependent on the happening or not happening of an event. Thus, it is clear that even after execution of the new contract the earlier contract was kept alive by the parties under which the CD may still discharge his debt by paying the outstanding amount and therefore it was not a case where the two contracts have become completely inconsistent.

77. Ld. Counsel for the OC has relied on **Lata Construction and others vs Dr Ramesh Chandra Ramniklal Shah and Another, (2000) 1 SCC 586,** Para No. 9,10 and 11 of the same are placed as under: -

> *"9. We may, at this stage, refer to the provisions of Section 62 of the Indian Contract Act which provides as under:*
>
> > *"62. 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."*
>
> *This provision contains the principle of "novation" of contract.*
>
> *10. One of the essential requirements of "novation", as contemplated by Section 62, is that there should be complete substitution of a new contract in place of the old. It is in that situation that the original contract need not be performed. Substitution of a new contract in place of the old contract which would have the effect of rescinding or completely altering the terms of the original contract, has to be by agreement between the parties. A substituted contract should rescind or alter or extinguish the previous contract. But if the terms of the two contracts are inconsistent and they cannot stand together, the subsequent contract cannot be said to be in substitution of the earlier contract.*
>
> *11. In the instant case, the rights under the original contract were not given up as it was specifically provided in the subsequent contract that the rights under the old contract shall stand extinguished only on payment of the entire amount of Rs 9,51,000. Since the amount was not paid by the appellants as stipulated by the subsequent contract, the rights under the original contract were still available to the respondents and they could legally claim enforcement of those rights. Obviously, under the original contract, the appellants were under an obligation to provide a flat to the respondents. This right would come to an end only when the appellants had, in pursuance of the subsequent contract, paid the entire amount of Rs 9,51,000 to the respondents. Since they had not done so, the respondents could legally invoke the provisions of the earlier contract and claim before the Commission that there was "deficiency in service" on the part of the appellants".*

78. Keeping in view the aforesaid legal position we are not inclined to accept the submission of Ld. Counsel for the Appellant with regard to novation of contract.

79. Keeping in view all the facts and circumstances of the case and for the reason given hereinbefore, we do not find any good ground to interfere in the impugned judgment. In result, the appeal filed by the appellant is **dismissed**.

80. There is no order as to costs.

81. Pending I.A.'s are disposed of.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi
25.08.2026
sr