



**THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI COURT-III**

**Item No.01**

IA-116/2023

And

IB-574(ND)/2022

**IN THE MATTER OF:**

Mr. HARDEEP SINGH

**... Applicant/Financial Creditor**

**Versus**

M/s. ATS INFRASTRUCTURE LIMITED

**... Respondent/Corporate Debtor**

**Order Pronounced On: 09.06.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant : Mr. Piyush Singh, Mr. Akshay Srivastava,  
Mr. Adithya Ramani, Ms. Riddhi Jain, Advs.

For the Respondent : Mr. Krish Kalra, Adv.

**ORDER**

Order pronounced in open court vide separate sheets. **IA-116/2023** is **allowed** and **disposed of**. **(IB)-574(ND)/2022** is **dismissed**

**-SD-**

**(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

**-SD-**

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**



**THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI COURT III**

IA-116/2023

And

IB-574(ND)/2022

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

**IN THE MATTER OF:**

**Mr. HARDEEP SINGH**

**S/o** Late Mr. Brigadier Ajit Singh AVSM

**R/o** 608A, The Aralias, DLF Golf Links,

DLF Phase-V, Golf Course Road,

Gurgaon, Haryana-122003

**... Applicant/Financial Creditor**

**Versus**

**M/s. ATS INFRASTRUCTURE LIMITED**

*Having Its Registered Office at:*

711/92, Deepali, Nehru Place,

New Delhi, Delhi-110019.

**... Respondent/Corporate Debtor**

**Order Pronounced On: 09.06.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant : Mr. Piyush Singh, Mr. Akshay Srivastava,  
Mr. Adithya Ramani, Ms. Riddhi Jain,  
Advocates.

For the Respondent : Mr. Krish Kalra, Advocate.

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

**Mr. Hardeep Singh vs. M/s. ATS Infrastructure Limited**

**IA-116/2023 And IB-574(ND)/2022**

**Date of Order : 09.06.2023**



1. The present petition has been filed under Section 7 of the IBC, 2016 on 27.06.2022 with the prayer to initiate Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor viz, *M/s. ATS Infrastructure Limited*, declare the Moratorium and appoint the Interim Resolution Professional for default in payment of Rs. 6,60,05,000/- (Rupees Six Crore Sixty Lakh and Five Thousand Only) as on 12.08.2021 due and payable to the Financial Creditor.
2. It is contended that the Financial Creditor advanced money to the Corporate in the year 2018 with an assurance that the money would be repaid to the Financial Creditor by the Corporate Debtor in a time bound manner.
3. Subsequently, one entity, namely *M/s. Umritha Infrastructure Development LLP* (“Umritha Infrastructure”) first allotted 2 units to the Financial Creditor bearing Nos. 5PH1 and 5PH2 each admeasuring 4,450 sq. ft. +1875 sq. ft. Terrace Area, in Tower No. 5 in one of the Projects namely, “ATS Koccon” situated at Sector – 109, Gurgaon, Haryana (“Project”). Accordingly, a Buyer’s Agreement dated 21.05.2018 was signed between the Financial Creditor and Umritha Infrastructure. Against the aforesaid allotment and at the behest of the Corporate Debtor, the Financial Creditor advanced and paid a total sum of Rs. 4,31,20,000/- by way of Cheque No. 000889 dated 21.05.2018 drawn on Standard Chartered Bank to Umritha Infrastructure. In furtherance of the understanding agreed between the Financial Creditor and the Corporate Debtor. Simultaneous to the execution of the Buyer’s Agreement dated 21.05.2018, the Corporate Debtor and the Financial Creditor also entered into a Memorandum of Understanding (“MoU”) dated 21.05.2018 to which Umritha Infrastructure was also a party. The MoU in detail recorded the manner in which the amount paid by the Financial Creditor was to be repaid by the Corporate Debtor and the MoU precisely stated that the Units would be purchased by the Corporate Debtor after the expiry of a certain period.
4. In terms of recital Clause 3 of the MoU, the Corporate Debtor agreed to purchase the Units under the Buyer’s Agreement from the Financial Creditor for Rs. 5,79,00,000/- only and time period within which the



Corporate Debtor had to purchase the Units and repay the amount to Financial Creditor was in accordance with Clause 1.1. of the MoU under “Holding Period” which is 24.07.2020. It was also agreed that upon the expiry of the holding period, the Corporate Debtor shall be liable to pay a sum of Rs. 5,79,00,000/- to the Financial Creditor. As per Clause 3 of the MoU, the Corporate Debtor issued a post-dated cheque in favour of the Financial Creditor bearing No. 028512 dated 24.07.2018 for a sum of Rs. 5,73,21,000/- drawn on Kotak Mahindra Bank, after deduction of TDS to be deposited by the Financial Creditor. The cheque was signed by the Chairman and Managing Director of the Corporate Debtor i.e. Mr. Getamber Anand. It is submitted that the post-dated cheque was issued by the Corporate Debtor in respect of a debt/liability owed by the Corporate Debtor to the Financial Creditor as mentioned in Clause 3.9 of the MoU. The Corporate Debtor requested the Financial Creditor not to encash the post-dated cheque bearing No. 018512 due to financial issues and therefore the addendum to the MoU dated 30.07.2018 was executed wherein it was agreed with the addendum shall become effective from 28.07.2020 and the amount of Rs. 5,79,00,000/- due and payable by the Corporate Debtor by 24.07.2020 to the Financial Creditor as per the MoU shall now be payable by 24.07.2021 with a total agreed value of Rs. 6,60,05,000/-. Thereafter, the Corporate Debtor issued fresh post-dated cheque bearing No. 032941 dated 24.07.2021 for an amount of Rs. 6,55,09,962/- after deducting the TDS. Thus, the earlier post-dated cheque bearing No. 028512 was no longer a valid instrument and was returned to the Corporate Debtor. The Corporate Debtor also allotted an additional collateral security to the Financial Creditor by allotting Unit No. 6212 admeasuring 3,150 sq. ft. in the project “ATS Triumph” situated at Sector-104, Gurgaon, Haryana being developed by its sister concern company namely, M/s. Anand Divine Developers Private Limited. Thereafter, the Corporate Debtor did not seek any extension for payment of money and however, the cheque dated 24.07.2021 issued by the Corporate Debtor was dishonoured and the Bank issued a memo dated 12.08.2021 with the remark with “fund insufficient.” Since, the amount of admitted debt remain unpaid, the



Financial Creditor filed the present petition under Section 7 of IBC, 2016.

5. The Corporate Debtor has filed reply affidavit in which the following objections have been raised: -
- (a) The Financial Creditor failed to perform its obligations under the MoU and Buyer's Agreement dated 25.01.2018, the Respondent is under no obligation to purchase the two Units bearing Nos. 5PH1 and 5PH2 each admeasuring 4,450 sq. ft. + 1875 sq. ft. Terrace Area, in Tower No. 5 in one of the projects namely, "ATS Koccon" situated at Sector-109, Gurgaon, Haryana from the alleged Financial Creditor by paying the alleged amount of Rs. 6,60,05,000/-.
  - (b) The transaction between the Financial Creditor and the Corporate Debtor is that of a sale/purchase agreement and the MoU dated 21.05.2018 and the addendum to the MoU dated 30.07.2020 are in the nature of agreement to sell.
  - (c) The alleged financial debt of Rs. 6,60,05,000/- under the MoU dated 21.05.2018 and addendum dated 30.07.2020 is not a financial debt and it was merely a sale consideration that was agreed to be paid by the Respondent to the Applicant/Financial Creditor. The Applicant/Financial Creditor is merely a seller of the Units and the Respondent is merely a buyer. Further, the MoU does not have effect of borrowing which is a relevant factor to categorize as a financial debt.
6. It is submitted by the Corporate Debtor that the Applicant has not produced any documents to show that any interest is chargeable on the alleged disbursement made to the Respondent and therefore, the alleged debt cannot be termed as a financial debt in the absence of any interest being charged. Further, the Applicant has failed to prove that the alleged disbursement made by the Corporate Debtor is for a time value of money. It is further contended that the MoU executed between the parties is not a buy-back agreement as stated by the Applicant and the said document is merely a sale/purchase agreement entered into between the parties without having any effect of commercial borrowing.



The Respondents, therefore, prayed that the present application filed under Section 7 of IBC, 2016 ought to be dismissed.

7. We have heard the submissions made by the Learned Counsel for both the parties and perused the records as well as relevant provisions of the Code.
8. The Buy Back Agreement dated 21.05.2018 has been signed by the Applicant and one Umrita Infrastructure Development LLP. It is stated that the Applicant advanced a sum of Rs. 4,31,20,000/- vide cheque No. 00889 dated 21.05.2018 to M/s. Umrita Infrastructure Development LLP at the behest of the Corporate Debtor. Clause 4(I) of the Buyer's Agreement deals with the mode of payment of sale consideration and other charges.

The said Clause reads as under: -

- (a) *The Allottee shall make all payments of the sale Consideration through Local Account/Payee Cheque(s)/Demand Draft(s) drawn in favor of "Umritha Infrastructure Development LLP Project ATS Kocoon- Project ATS Kocoon payable at Noida/New Delhi only. The instalments as detailed in Annexure-IV and other sum payable under this agreement and / or agreed to be paid by the Allottee"*

9. On perusal of the abovementioned Clause, we find that there is no mention that the payment has been made at the behest of the Corporate Debtor.
10. It is further submitted that the Financial Creditor and the Corporate Debtor entered into MoU on 21.05.2018 to which M/s. Umritha Infrastructure Development LLP was also a party. In the said MoU, M/s Umritha Infrastructure Development LLP has been described as a developer, Mr. Hardeep Singh has been described as a seller and M/s. ATS Infrastructure Limited has been described as a purchaser.

The relevant clauses of the MoU are extracted below for better understanding of the case: -

- a. *"The Developer had allotted residential apartment bearing nos. 5PH1 & 5PH2, having Total sale price of Rs. 4,31,20,000/- and admeasuring 4450 square feet Plus 1875 square feet of Terrace Area of super area for each PH on Top floor of Tower/Building no. 5 and the right to exclusively use 4*



parking spaces in its group housing residential scheme located at the admeasuring about 15.881 acres in village Pawala Khusropur, Gurgaon (now known as Sector 109, hereunder referred to as the "Said Land") in the name of 'ATS Koccon' (hereinafter referred to as the "Project"), along with all rights, interests, liberties, easements, privileges, appurtenances whatsoever and free from all Encumbrances (as hereinafter defined) to the Seller (hereinafter referred to as the "Apartment") in terms of the Buyer's Agreement dated 21-05-2018 (hereinafter referred to as the "Buyer Agreement").

- b. The Seller had paid to the Developer a sum of Rs. 4,31,20,000/- (Rupees Four Crore Thirty One Lakh and Twenty Thousand Only), by way of Cheque No. 000889 dated 21/05/2018 drawn on Standard Chartered Bank, 13 Malcha Marg, Chanakyapuri, New Delhi for Rs. 4,26,88,800/- (Rupees Four Crore Twenty Six Lakh Eighty Eight Thousand and Eight Hundred Only) the receipt of which is acknowledged by the Developer, and the Seller has agreed to deposit by way of tax deducted at source a sum of Rs. 4,31,200/- (Rupees Four Lakh Thirty One Thousand Two Hundred Only) (both collectively hereinafter referred to as "Purchase Consideration") for purchase of the Apartment.
- c. AND NOW WHEREAS the SELLER has agreed to further sell the said Apartment and/or its rights under the Buyer Agreement to the Purchaser as per the terms of this Agreement, and the Purchaser has agreed to purchase the said Apartment or the rights of the Seller under the Buyer Agreement from the Seller for Rs. 5,79,00,000/- (Rupees Five Crore and Seventy Nine Lakh Only) (hereinafter referred to as "Sale Consideration").
- d. The Parties are entering into this Agreement to (i) record the understanding between the Purchaser and the Seller towards the transfer of the Apartment from Seller to Purchaser; and (ii) certain amendments to the terms and conditions of the Buyer Agreement executed between the Developer and the Seller.”

11. From the perusal of the abovementioned clauses, it appears that the MoU is in the nature of sale agreement. Further, there is no interest element has been provided therein.



12. At this stage, it is pertinent to refer to the definition of the expression “Financial Creditor” in sub-section 7 of Section 5 of the Code.

Section 5 of sub-section 7 reads as follows: -

**“Financial Creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;”**

13. From the perusal of the recitals of the Buyers Agreement as well as the MoU, we do not find any clause which would show that any “Financial Debt” is owed to the present Applicant and therefore by no means the present applicant can be called as a “Financial Creditor”.

14. At this stage, it is also pertinent to refer the definition of the expression “Financial Debt” in sub-section 8 of Section 5 of the Code.

Section 5 of sub-section 8 “Financial Debt” reads as follows: -

**“Financial Debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—**

**(a) money borrowed against the payment of interest;**

**(b) \*\*\*\*\***

**(c) \*\*\*\*\***

**(d) \*\*\*\*\***

**(e) \*\*\*\*\***

**(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;**

**(g) \*\*\*\*\***

**(h) \*\*\*\*\***

**(i) \*\*\*\*\*”**

15. We have perused the various clauses of the Buyer’s Agreement as well as the MoU very carefully. We have not come across any clause which shows that the money in question was borrowed against payment of interest and that the amount involved in the transaction is having the commercial effect of borrowing.

16. We are, therefore, of the considered view that the amount involved in the present case cannot be considered as a Financial Debt within the



definition of sub-section 8 of Section 5 of the Code. We are also of the opinion that the Applicant is not a Financial Creditor holding any financial debt which is in default of payment by the Corporate Debtor. Hence, we are inclined to **dismiss** this application.

17. **Order**

In light of the above facts and circumstances, it is hereby ordered as follows: -

- i.** The Application bearing **(IB)-574(ND)/2022** filed by the Applicant/Financial Creditor, under section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules for initiating CIRP against the Respondent/Corporate Debtor, is hereby **dismissed**.
- ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.
- iii.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

18. **IA-116/2023**

- i.** This Application has been filed by the Corporate Debtor/Respondent under Rule 11 of the National Company Law Tribunal Rules, 2016 seeking leave to place on record additional documents.
- ii.** The IA-116/2023 filed by the Respondent/Corporate Debtor to place on record additional documents are taken on record. Accordingly, the **IA-116/2023** stands **disposed of**.

**-SD-**

**(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

**-SD-**

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**