IN THE NATIONAL COMPANY LAW TRIBUNAL

ALLAHABAD BENCH, PRAYAGRAJ

CP (IB) NO.49/ALD/2021

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

IN THE MATTER OF:

KEELER INDUSTRIES LIMITED
(formerly known as *Wealth Mantra Properties Limited*)
Add: 402, 4th Floor, Shalimar Titanium,
Gomti Nagar, Lucknow, Uttar Pradesh-226010

…..Petitioner / Financial Creditor

Versus

LDR DEVELOPERS PRIVATE LIMITED

Having Registered Office At:
8, Bishop Rocky Street, Faizabad Road,
Opposite Police Line, Lucknow

…..Respondent / Corporate Debtor

Order Pronounced on 17.09.2025

Coram:

Mr. Praveen Gupta : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Abhishek Anand with
Sh. Shubham Paliwal, Advs. : *For the Financial Creditor*

Sh. Anil Kumar, PCS : *For the Corporate Debtor*

ORDER

1. This Application has been filed on 15.07.2021 by M/s Keeler Industries Limited (formerly known as *Wealth Mantra Properties Limited*) (hereinafter referred as "***Applicant" / "Financial Creditor / "FC***") under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("***IBC***") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 against M/s LDR Developers Private Limited (hereinafter referred as "***Respondent" / "Corporate Debtor" / "CD***") in Form 1 containing all the information as required in Part I, II, III, IV and V of the Form showing a total financial debt of Rs. 11,43,68,356/- as on 09.11.2019 with the date of default as specified in the application being 25.11.2019.

2. The Corporate Debtor i.e. M/s LDR Developers Private Limited is having registered office at 8, Bishop, Rocky Street, Faizabad Road, Opposite Police Line, Lucknow-226007 and therefore, this tribunal has jurisdiction to decide this application. The Corporate Debtor is engaged in real estate development and allied businesses,

including purchase and sale of immovable properties.

3. It is submitted that the Applicant and the Corporate Debtor had longstanding business relations, and on the request of the Corporate Debtor, the Applicant advanced monies from time to time for the development of a group housing project situated at Faizabad Road, Lucknow, being part of the "Parsvnath Township" project.

4. According to the Applicant, to formalize the arrangement, a Memorandum of Understanding ("MOU") dated 31.07.2017 was executed between the Financial Creditor, the Corporate Debtor, and one Mr. Nawanshu Goyal. Under the said MOU, the Applicant disbursed sums from September 2015 till November 2018 towards the project. The amounts were reflected in the balance sheet of the Corporate Debtor under the head "unsecured loans."

5. As stated by the Applicant, the MOU contemplated completion of the project within a stipulated period, and in case of delay or failure, the amounts advanced, together with interest, would be repayable within 15 days of recall.

6. The Applicant submits that despite disbursement of funds, there was no meaningful progress in the project, and the Corporate Debtor failed to perform its obligations under the MOU. Consequently, the Applicant

issued a recall notice dated 09.11.2019 demanding repayment of the principal sum of Rs. 7,02,06,667/- along with interest @12% per annum amounting to Rs. 3,11,32,322.81/- up to the date of recall.

7. The recall notice required the Corporate Debtor to repay the aforesaid amount within 15 days, failing which the Applicant would be constrained to take legal recourse. The Corporate Debtor did not comply with the said demand, thereby constituting a default as on 25.11.2019 after 15 days from the date of issuing of recall notice.

8. Therefore, the date of default for the purpose of filing the instant application and initiation of the Corporate Insolvency Resolution Process as per Insolvency and Bankruptcy Code, 2016 is taken as 25.11.2019 as per the recall notice. The relevant excerpts from the recall notice dated 09.11.2019 is reproduced below:

> "*Sir,*
>
> *Ref: Recall of unsecured loan given to LDR Developers Private Limited (CIN-U45400UP2010PTC039520)*
>
> *Whereas the undersigned has given unsecured loan of Rs. 7,02,06,667/- (Rupees Seven Crore Two Lacs Six Thousands Six Hundred Sixty Seven Only) as per details as mentioned in the table provided herein below, to meet your business requirements:*
>
> ……

For the aforesaid reasons, the Board of Directors of the Undersigned Company at their meeting held on 09.11.2019 has decided to recall the loan provided to you. You are requested to remit principal amount of Rs. 7,02,06,667.00/- along with interest @ 12% per annum amounting to Rs. 3,11,32,322.81/- up to the date of recall i.e. November 09, 2019, with future interest and costs to the undersigned within 15 days of receipt of this letter.

……."

9. It is further submitted that Clauses 6 and 31 of the MOU dated 31.07.2017 specifically acknowledge (a) the advance payments made by the Applicant, and (b) the obligation of the Corporate Debtor to compensate the Applicant at 12% per annum in case of delay in the project. Hence, the Applicant qualifies as a Financial Creditor under Section 5(7) of the Code, and the amounts advanced constitute a Financial Debt under Section 5(8).

10. The Applicant submits that the Respondent has also siphoned off funds received from the Applicant and other entities, mismanaged the affairs of the company, and failed to execute the concerned project. These acts demonstrate that the Respondent is no longer a going concern and is insolvent.

11. It is pleaded that the Recall Notice dated 09.11.2019 was issued in compliance with the MOU terms. Although an inadvertent accounting error led to omission of one disbursal dated 28.09.2018 in the notice, the same was subsequently clarified to the Respondent telephonically, and the Respondent assured repayment. However, no payment was made.

12. Hence, the total outstanding amount in default as on 09.11.2019 is Rs. 11,43,68,356/- (wherein principal amount is Rs. 7,12,06,667 along with interest @ 12% per annum amounting to Rs. 4,31,61,689/-).

13. On account of the constant default in repayment of Financial Facilities, the Financial Creditor proceeded with filing this application seeking initiation of CIRP against the Corporate Debtor.

Reply filed by the Respondent/Corporate Debtor

14. The Respondent filed a detailed reply dated 29.03.2022 and stated as follows:

a. The Respondent/Corporate Debtor was incorporated on 10.02.2010 under the Companies Act, 1956, with its primary object being real estate development, including construction and marketing of residential projects.

b. The Respondent entered into transactions with M/s Parsvnath Developers Limited, Aahna Realtors Pvt. Ltd., and Silver Street Infrastructure Pvt. Ltd. for purchase of Floor Space Index (FSI)

measuring 2500 sq. meters (equivalent to 4,03,405 sq. ft.) in Parsvnath City, Faizabad Road, Lucknow, intended for a group housing project.

c. A registered Sale Deed dated 29.09.2014 was executed for purchase of FSI for a consideration of Rs.12,55,44,080/-. The Respondent also entered into a further MOU with the said Sellers for acquisition of 25,166 sq. meters of land in tranches.

d. On 08.12.2015, a Memorandum of Understanding (1st MOU) was executed between the Respondent and Mr. Sanjeev Agarwal (Ex-Director of the Petitioner), for purchase of 11 lakh sq. ft. of FSI in the said project, against which Mr. Sanjeev Agarwal advanced Rs. 5 crore. He was also appointed Director of the Respondent on 03.11.2015 and resigned on 06.03.2018.

e. The Respondent subsequently acquired 6,300 sq. meters (3,38,407 sq. ft. FSI approved by LDA) under Sale Deed dated 20.06.2017 for a consideration of Rs.11.10 crore.

f. A second MOU dated 31.07.2017 (2nd MOU) was executed among the Petitioner (formerly known as Wealth Mantra Properties Ltd.), Respondent, and Mr. Nawanshu Goyal, for purchase of 11,16,000 sq. ft. of FSI @ Rs.918.50 per sq. ft. in the same project. In terms of the MOU, Mr. Nawanshu Goyal and his sister Ms. Palak Goyal, as well as Mr. Rohit Agarwal (Petitioner's Director), were inducted as Directors of the Respondent. Equity shares were also transferred,14.5% to Mr. Nawanshu Goyal, 7.25% each to Mr. Rohit Agarwal and Ms.

Sunita Agarwal.

g. The Respondent raised preliminary objections, contending that the present Petition under Section 7 of the IBC is malafide, erroneous, based on suppression of material facts, and not maintainable. It was argued that:

i. no default has occurred,

ii. the Petitioner is not a financial creditor, and

iii. the Petition amounts to an abuse of process.

h. The Respondent stressed that advances made under the MOUs were investment contributions in a joint development venture and not loans. The alleged claim does not fall within the ambit of "financial debt" under Section 5(8) of the IBC, as there was no disbursement against consideration for time value of money, nor any stipulated repayment schedule. Returns, if any, were contingent on project completion.

i. The reply emphasized that execution of construction work was the responsibility of the Petitioner and Mr. Goyal, while the Respondent had already handed over possession of land. It is submitted that construction had begun (basement of one tower completed), and Respondent fulfilled obligations by obtaining approvals from LDA, Fire Department, and rescheduling dues with LDA.

j. The Respondent placed reliance on Clauses 14 and 31 of the 2nd MOU, providing for interest in case of delayed installment

payments or project hold-ups. It was argued that default, if any, was attributable to the Petitioner for failure to honor funding obligations, rather than the Respondent.

k. It was further contended that disputes, if any, are subject to arbitration as per Clause 41 of the 2nd MOU. Hence, the Petition is not maintainable before the Adjudicating Authority.

l. The Respondent categorically denied allegations of siphoning of funds, asserting that bank accounts were operated strictly as per terms of the MOU, with joint signatories from all parties. Balance sheets show adequate assets, and the Company remains solvent.

m. The Respondent invoked Section 65 of the IBC, contending that the Petition has been filed fraudulently and with malicious intent, for purposes other than insolvency resolution. It was reiterated that IBC is not a recovery mechanism but a process aimed at revival and reorganization.

n. Lastly, it was submitted that as no financial debt or default exists, and since the matter is arbitrable, the Petition under Section 7 deserves to be dismissed at the threshold with exemplary costs.

Written Submissions on behalf of the Applicant/Operational Creditor

15. The Applicant/Operational Creditor filed written submissions vide diary no. 2294 dated 24.08.2023 and stated as under:

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a. The Applicant respectfully submits these written arguments while reserving liberty to rely upon them during oral submissions. References in these submissions are made to pleadings and documents by their titles and page numbers, e.g., documents annexed to the Petition are referred to as (Petition/Para No./Clause No./Page Reference), while those filed by the Corporate Debtor ("CD") are referred to as (Reply/Para No./Clause No./Page Reference).

b. The present petition has been filed against LDR Developers Private Limited ("CD"), which is practically a defunct entity warranting urgent insolvency resolution. The CD has not filed balance sheets after FY 2018-2019; it has reported "Zero" income from operations (Petition/Pg.141 - Balance Sheet FY 2019/Profit and Loss Statement); and it has paid "Zero" salary to employees (Petition/Pg.145 - Balance Sheet FY 2019/Employee Benefit Expenses).

Introduction and Relevant Background Facts

c. On 29.09.2014, the CD acquired FSI admeasuring 4,03,405 sq. ft. for a total consideration of Rs. 12,55,44,080/- at Parsvnath City, Faizabad Road, Village Uttardhauna, Lucknow (Reply/Pg.25-42A).

d. Between September 2015 and November 2018, the Financial Creditor (FC) advanced a total of Rs. 7,12,90,000/- to the CD. This amount was admittedly treated as an "Unsecured Loan" in the Audited Financial Statements (Petition/Pg.143 – Long Term

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Borrowings/Sl. No. 12). Reliance is placed on ***Shailesh Sangani v. Joel Cardoso*, Comp. Appeal (AT) (Ins.) No. 616/2018**, Para 9, Pg.13, where the NCLAT held that documentary evidence showing monies received as long-term borrowings cannot be treated as an investment.

e. On 08.12.2015, the CD executed a MoU ("1st MoU") with Mr. Sanjeev Agarwal (not the FC herein). The CD represented that it was acquiring 25,166 sq. meters of land/FSI and offered 11,00,000 sq. ft. FSI (Reply/1st MoU/Clause 2/Pg.45). It was further agreed that equity shares would be allotted on sale of FSI (Reply/1st MoU/Clause 11/Pg.46). The FC was not a party to this MoU; nevertheless, the CD seeks to rely on it to suggest that amounts paid by the FC were towards FSI purchase.

f. On 31.07.2017, the FC, CD, and Mr. Nawanshu Goyal entered into a MoU ("2nd MoU"). Clause 6 records that FC had already paid "as advance" Rs. 7,84,50,000/- (Reply/2nd MoU/Pg.72).

Clause 31 provides: *"…If project is held up for more than one month then the first party shall compensate second and third party @ 12% p.a. interest on amount invested by Second and Third Party on FSI Payments…"* (Reply/2nd MoU/Pg.77).

Thus, parties acknowledged the advances and recognized FC's entitlement to 12% interest if the project was delayed beyond 31.08.2017.

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g. On 09.11.2019, the FC recalled its advances along with 12% interest (Petition/Pg.128–134). No contemporaneous dispute was raised by the CD.

h. In its Auditor's Report dated 29.09.2019, the CD acknowledged that Rs.7,11,95,000/- stood outstanding in favour of the FC as on 31.03.2019 (Petition/Pg.143 – Audited Financial Statement).

Induction of Funds Demonstrating Commercial Effect of Borrowing

i. A total of Rs. 7.12 crores was advanced between September 2015 and November 2018. No written agreement was executed at the first tranche stage when Rs. 3.70 crores was paid; however, the CD's Balance Sheet treated the amount as a loan, a position consistently maintained till 2019 and reaffirmed in the 2nd MoU.

j. The Supreme Court in ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India*, (2019) 8 SCC 416**, has held that Section 5(8) of the Code is a "catch-all" provision covering a wide array of transactions:

> *"75. And now to the precise language of Section 5(8)(f)… the sub-clause does appear to be a residuary provision which is 'catch all' in nature. This is clear from the words 'any amount' and 'any other transaction'… The expression 'any other transaction' would include an arrangement in writing for the transfer of funds to the corporate debtor and would thus clearly include the kind of financing arrangement by allottees to real estate developers…"*

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k. The CD never disputed the FC's recall notice dated 09.11.2019, thereby reinforcing the position that the debt exists and is due.

16. The Financial Creditor has further advanced the arguments countering the defence raised by the Corporate Debtor against the claim of Financial Creditor as not being financial debt. The same is reproduced as under:

Defence Raised by the Corporate Debtor on first and second MoU

l. The CD relies on the 1st MoU with Mr. Sanjeev Agarwal to argue that monies advanced are not financial debt. However, FC was not a party to that MoU, and even the CD admits that "as per the terms of 1st MoU, Mr. Sanjeev Agarwal has paid an advance of Rs. 5 crores" (Reply/Para 6/Pg.2). Moreover, the CD itself pleads that advances were under the 2nd MoU (Reply/Para 20/Pg.6), making reliance on the 1st MoU redundant.

m. The CD further alleges that contributions were part of a joint development arrangement and that FC gained shareholding and directorship. However:

i. No resolution or document is produced showing that directors were nominees of the FC.

ii. Even if accepted, the FC's Memorandum of Association authorizes it to acquire shares and lend money. In ***Mack Soft Tech Pvt. Ltd. v. Quinn Logistics India Ltd., Company Appeal (AT) 143 of 2017, NCLAT*** held:

> *"37. Grant of loan and to get benefit of development is object of the Respondent… Thus, we find that there is a*

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'disbursement'... against the 'consideration for the time value of money'. The investment was made to derive benefit of development... Thus, we find that the Respondent... is eligible to file an application under Section 7..."

n. The Balance Sheets of the CD (Petition/Pg.143 – Unsecured Loan/SI. No. 12) demonstrate that monies were unsecured loans. In ***Shailesh Sangani v. Joel Cardoso*** **(supra)**, NCLAT held:

"...The amount disbursed... was in the nature of debt treated as long term loan and not as an investment... has all the trappings of a 'financial debt' and falls within the purview of Section 5(8)(f)..."

o. On the plea regarding project development, the Applicant submits that obligations could only arise after the CD procured requisite approvals (2nd MoU/Clauses 24 and 26 Reply/Pg.72, 75, 76). The CD has failed to show compliance or correspondence evidencing approvals. Until approvals were in place, the FC's only obligation was to wait one month before claiming interest (Clause 31).

p. Even assuming that the FC failed in development, the debt and default of the CD in repaying the advances with interest remains unaffected. The Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank*****, (2018) 1 SCC 407**, held:

"...The adjudicating authority has merely to see... that a default has occurred. It is of no matter that the debt is disputed

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so long as the debt is 'due'….. It is only when this is proved to the satisfaction of the adjudicating authority …

The Adjudicating Authority may reject an application…"

q. Similarly, in ***Nishit B. Patel v. Good Value Financial Services Pvt. Ltd.,*** Company **Appeal (AT) (INS) No.198/2020**, NCLAT held:

"65. An 'Adjudicating Authority' is subjectively satisfied as to the existence of 'Default'… the function… is to decide whether the application is complete, whether there is any 'Debt' or 'Default'… proceedings under I&B Code are summary in nature."

r. In the same judgment, the Appellate Tribunal rejected the plea that advances towards FSI were not financial debt, noting:

"68. …a sum *of Rs.5,35,00,000/- is a 'Financial Debt'… Even though the rate of interest… is disputed… the Corporate Debtor is clearly in 'Default' of the 'Debt' due and payable in law."*

s. In the present case too, receipt of funds is undisputed. The CD's Balance Sheets acknowledge them as loans; its pleadings admit them as advances. Therefore, there exists a financial debt and default.

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Conclusion

t. In light of the above, the Applicant prays that the present application be admitted and Corporate Insolvency Resolution Process be initiated against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016.

Written Submissions filed by the Respondent/Corporate Debtor

17. The Respondent/Corporate Debtor filed their written submissions vide diary no. 1615 dated 20.08.2025 and stated as follows:

a. The present petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") has been filed by the Financial Creditor ("FC") alleging a financial debt of Rs. 7.12 crores arising from certain payments purportedly made under a loan transaction.

b. The Respondent/Corporate Debtor ("CD") submits that the relationship between the parties is governed by two instruments:

i. MoU dated 08.12.2015 ("First MoU"), executed between Mr. Sanjeev Agarwal (in his individual capacity) and the CD, for purchase of FSI in the "Parsvnath City" project.

ii. MoU dated 31.07.2017 ("Second MoU"), executed amongst the FC, the CD, and Mr. Nawanshu Goyal, for joint participation in the said real estate project, envisaging shared development rights, equity participation, and profit/loss sharing.

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c. The amounts claimed by the FC were not extended as a loan simpliciter but as capital contribution/advance payment towards FSI purchase and project development, forming part of MoUs which are in the nature of a Joint Development Agreement ("JDA"). Clause 31 of the Second MoU, reproduced in the Reply (Para 29, Pg.11), stipulates:

> *"If the project is held up due to issues in land/title or old bookings mentioned in point number 9 and 28 first party shall compensate second and third party for the losses occurred due to project is held up. If the project is held up for more than one month then first party shall compensate second and third party @ 12% p.a. interest on amount invested by second and third party on FSI payments."*

d. The project was to be implemented jointly, with possession of land handed over to the FC/its nominees. Directorship and shareholding in the CD were restructured to reflect this joint venture structure.

CD's Objections to Maintainability

A. Transaction not a "Financial Debt" under Section 5(8) IBC

a. Under Section 5(8) of the IBC, a financial debt must be:

i. Disbursed against consideration for the time value of money, and

ii. Covered under clauses (a)–(i) thereof.

b. The present transaction fails both tests:

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i. The funds were contributed for acquiring FSI, assisting the CD in obtaining approvals from the Lucknow Development Authority, and constructing the project. Reciprocal consideration for the FC was development rights and equity interest, not repayment with interest.

ii. The MoUs do not require unconditional repayment; recovery/refund, if any, was contingent on specific events under Clause 31 of the Second MoU. Clause 31 itself refers to the funds as "amount invested" and not as loan, revealing the true nature of the transaction.

iii. Returns were to flow from sale/revenue post-development, akin to a partnership/JDA, not a loan (Clause 11 of First MoU).

c. The Hon'ble Supreme Court **in *Pioneer Urban Land v. Union of India*, (**2019**) 8 SCC 416**, recognized that not all real estate advances are financial debts, clarifying that only those satisfying Section 5(8)(f) would qualify. Here, the commercial understanding was investment/joint development, not borrowing.

d. The Hon'ble NCLAT has, in a catena of judgments, held that JDAs are contracts of reciprocal rights and obligations, with parties as "Joint Development Partners," and Section 7 applications are not maintainable for breach of such

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contracts as the amount cannot be construed as "financial debt." Reliance is placed on:

i. ***M/s. Vipul Limited v. M/s. Solitaire Buildmart Pvt. Ltd.,*** Company Appeal (AT) (Insolvency) No. 550 of 2020 (para 26);

ii. ***M/s. Jagbasera Infratech Pvt. Ltd. v. Rawal Variety Construction Ltd.,*** Company Appeal (AT) (Insolvency) No. 150 of 2019 (para 9);

iii. ***Mukesh N. Desai v. Piyush Patel and Ors.,*** Company Appeal (AT) (Insolvency) No. 780 of 2020 (para 15);

iv. ***Chiragsala Sales Pvt. Ltd. v. Vaishno Devi Traders Pvt. Ltd.,*** CP (IB)/33/7/GB/2022, NCLT Guwahati (para 13).

B. <u>Suppression of Material Facts by FC</u>

e. The FC has concealed the following:

i. Role of its directors (Mr. Sanjeev Agarwal, Ms. Sunita Agarwal, Mr. Rohan Agarwal) in the First MoU (Pg.44 of CD's Objections).

ii. Equity/share transfers and board changes acknowledging JV nature (Clause 7 of First MoU, Pg.45; Para 3 of Second MoU, Pg.191).

iii. Its own default under Clause 14 of Second MoU, where post-dated cheques of Rs.5.73 crores issued to Ashray Ventures were dishonoured.

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C. Dispute falls within Arbitration Clause

i. Clause 41 of the Second MoU mandates arbitration: *"if any dispute arises… an Arbitrator shall be appointed by mutual consent to decide the dispute."*

ii. Accordingly, any dispute lies within arbitral proceedings and not in summary insolvency proceedings, which have been invoked only as a recovery tool.

D. No "Default" under Section 3(12) IBC

i. "Default" means non-payment of debt which has become due and payable. Here:

a. Repayment was not stipulated, save contingency in Clause 31 of the Second MoU, which has not been pleaded or established.

b. FC itself committed prior breach, disabling it from claiming relief. Moreover, litigating parties have alternate remedy in law for specific enforcement of contract.

c. The Hon'ble NCLAT in ***Pawan Kumar v. Utsav Securities Pvt. Ltd.*, Company Appeal (AT) (Ins.) No. 251 of 2020** (paras 22–27), held that a "Financial Contract" under Rule 3(1)(d) is necessary to establish tenure, interest, and repayment schedule; in the absence of such Financial Contract the FC has failed

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to satisfy that when the debt and interest became due and payable. The same reasoning applies here.

E. Petition hit by Section 65 IBC (malicious initiation)

i. Given the JV context and absence of crystallized repayment obligation, this petition is a malicious attempt to pressurize the CD by mischaracterizing investment as loan. Furthermore, the FC has itself failed to comply with the obligations under the terms and conditions of the MOU's executed between the FC and CD.

ii. In ***Pawan Kumar*** **(supra)**, para 32, the Hon'ble NCLAT held that the Adjudicating Authority must carefully investigate the nature of the transaction to prevent misuse of IBC provisions to the detriment of legitimate creditors and to protect a CD from mala fide CIRP initiation.

iii. Further, multiple FIRs have been filed against the FC and its directors for investor fund misappropriation. One such FIR, Case Crime No. 486 of 2018 (P.S. Sadar Bazar, Shahjahanpur), alleges fabrication of documents and misappropriation of funds. The Hon'ble Allahabad High Court in ***Wealth Mantra Ltd. v. State of U.P.***, Criminal Misc. Writ Petition No. 11132 of 2019, refused to quash the FIR, finding the allegations serious.

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iv. Thus, the FC, being a habitual offender engaged in multiple criminal litigations, is attempting to misuse IBC in the present matter.

F. Other Objections

i. The FC's board resolution dated 05.04.2021 (Pg.27 of Petition) does not specifically authorize initiation of CIRP, but only confers general authorization for litigation. Reliance is placed on ***Rushabh Civil Contractors Pvt. Ltd. v. Centrio Lifespaces Ltd.*, CP (IB) 2161/MB/C-IV/2019**, NCLT Mumbai (order dated 06.05.2020).

ii. The said resolution itself states that it was passed for recovery of "unrecovered fund invested" in CD, confirming that the FC treated the transaction as investment, not loan.

iii. The petition is not supported by a duly executed affidavit, as Para 3 of the affidavit is left blank and the deponent is not identified by counsel of FC.

iv. Under the MoUs, FC invested funds with Mr. Nawanshu Goyal to acquire 11,16,000 sq. ft. FSI and pay LDA project fees. Obligations were joint: FC undertook marketing (Clause 27 of Second MoU), and its director assumed responsibility for construction (Clause 16 of First MoU).

v. Clause 31 of the Second MoU applies only if the project was halted for specified reasons. It also refers to funds as

"investment" and not loan. If this were a loan, the FC would not have undertaken project execution responsibilities. Clause 31 states as under:

"If the project is held up due to issues in land / title or old bookings mentioned. In point number 9 and 28, first party shall compensate second and third party for the losses occurred due to project is held up. If project is held up for more than one month then first party shall compensate second and third party @ 12% p.a. Interest on amount invested by second and third party will also try to resolve the issue of project held up with the mutual consent of first party at first party expenses."

vi. FC failed to infuse funds per Clause 14 of the Second MoU, which itself required FC to pay interest @12% p.a. on delayed instalments. Clause 14 states as under:

"14. Remaining payment of FSI will be paid in 12 equal quarterly instalments starting from 1st January 2018 after deduction of tax payments on yearly basis after all the expenses. If instalments is delay by second and third party by more than 1 month then interest will be payable @ 12% per annum to first party but the instalment will be cleared before due date of next instalment."

vii. Work commenced at site, and basement of one tower has been constructed after land possession was handed over.

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viii. The FC's pleadings contain contradictions: in the Petition (Pg.9) it claims Rs. 7,12,06,667/-, while in its notice dated 09.11.2019 (Pg.132) it states Rs. 7,02,06,667/-.

ix. No certificate under Section 65B of the Evidence Act has been filed; hence, electronic records such as bank statements are inadmissible.

x. No record of default with the Information Utility has been filed.

xi. CD is a going concern, having reported profits and Earnings per share EPS of Rs.16.17 in FY 2023–24, unlike the FC which reported a loss of Rs. 2.74 crores in the same year.

xii. The CD has also rebutted the legal arguments and judgments relied upon by the FC (Annexure 1).

xiii. In view of the above, the petition is not maintainable. The FC has abused the IBC provisions by initiating malicious prosecution, and the petition deserves dismissal with exemplary costs.

xiv. The Respondent also filed Annexure-1 with the said written submissions and stated as under:

a. <u>On FC's claim that advances are unsecured loans and hence financial debt under Section 5(8), IBC:</u>

Rebuttal by CD: The amounts advanced were investments/contributions under two MOUs and a Joint Development Agreement (JDA) for developing a real

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estate project. Repayment/distribution was contingent on completion and profit realization, not on demand.

FC's reliance on ***Pioneer Urban Land vs. Union of India (2019)***: Section 5(8)(f) is a residuary provision covering any transaction having the commercial effect of borrowing.

Distinction: Unlike *Pioneer Urban*, the present arrangement is in the nature of a joint development/joint venture, with no disbursal against consideration for time value of money or unconditional repayment obligation.

Precedents cited on behalf of the Corporate Debtor:

i. *Ashoka Hi-Tech Builders Pvt. Ltd. vs. Sanjay Kundra & Ors. (NCLAT 2023):* Disbursement must be for time value of money; contributions in a JDA are not automatically financial debt.

ii. *Jagbasera Infratech vs. Rawal Variety Constructions:* Joint development investments by promoters are not financial debt under Section 5(8).

iii. *Realpro Realty vs. Sanskar Projects:* Profit-sharing investments do not constitute financial debt.

b. <u>On FC's argument that the second MOU provides for interest @ 12%, showing time value of money:</u>

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Rebuttal by CD: The interest clause applies only if the project is delayed, i.e., as compensation, not as consideration for use of money. Profit/loss sharing confirms the joint venture nature.

Distinction from FC's reliance on ***Innoventive Industries vs. ICICI Bank (2018):*** In the present case, compensation for delay is contingent, not unconditional or time-based.

Precedents cited on behalf of the Corporate Debtor:

i. ***Bridge and Building Construction Co. Pvt. Ltd. vs. Runwal Realtors Pvt. Ltd. (NCLT Mumbai 2025):*** Financial debt requires clearly defined repayment and unconditional time-linked returns; mere compensation for delay does not make it a financial debt.

ii. ***Kamani Relators vs. Collagen Estates (NCLT Delhi 2022):*** Reciprocal rights in a JDA/collaboration with profit-sharing or compensation clauses are insufficient to create financial debt.

c. ***<u>On FC's reliance on transfer of shares and directorships under MOUs as reinforcing financial creditor status</u>***:

Rebuttal by CD: Shareholding, directorships, and equity participation demonstrate joint venture character, not a lender-borrower arrangement. Repayment was contingent, not unconditional.

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Distinction from ***Mack Soft Tech Pvt. Ltd. vs. Quinn Logistics India Ltd.:*** In that case, loan documentation and unconditional repayment were present; here, equity and directorship transfers and absence of unconditional refund repayment show a joint development structure.

Precedents cited on behalf of the Corporate Debtor:

i. ***Realpro Realty Solutions Pvt. Ltd. vs. Sanskar Projects (NCLAT 2023):*** Investment for profit-sharing is not financial debt but a business partnership.

ii. ***Swiss Ribbons Pvt. Ltd. vs. Union of India:*** CIRP is intended only for clear financial debts, not for disputes or recoveries arising from joint venture/commercial partnerships.

18. During the course of hearing on 28.09.2022, IA No. 323/2022 filed by the Petitioner seeking to place on record additional documents, namely the Memorandum of Association, Articles of Association, and Balance Sheets for Financial Year 2015-2016 and 2016-2017 was taken up for consideration. This Tribunal took the documents on record without prejudice to the Respondent's rights and disposed of the application.

19. Further, during the pendency of the present Petition, the name of the Petitioner Company was sought to be amended by way of I.A. No. 326/2022 filed under Rule 11 of the NCLT Rules, 2016, on account of

issuance of a fresh Certificate of Incorporation dated 23.09.2021 by the Registrar of Companies, Kanpur, recording the change of name from 'Wealth Mantra Properties Ltd.' to 'Keeler Industries Ltd.', which was allowed by this Tribunal vide order dated 07.11.2022. Subsequently, during the course of hearing on 03.02.2023, it was pointed out that in the amended memo of parties, the name of the Petitioner had been inadvertently mentioned as 'Keller Industries Ltd.' instead of 'Keeler Industries Ltd.'. The Ld. Counsel for the Petitioner undertook to rectify the same by filing an additional affidavit.

20. In compliance with the order dated 03.02.2023 the Applicant filed an affidavit vide filing no. 0902109004432021/6 dated 23.02.2023. Accordingly, the Petition proceeded thereafter with the corrected name of the Petitioner Company as 'Keeler Industries Ltd'.

21. Before delving into the specific issues concerning the admission or rejection of the present application, it is noted that the application under Section 7 of the Code was instituted before this Tribunal on 15.07.2021. The date of default, as asserted by the Applicant on the basis of the recall notice dated 09.11.2019, stands as 25.11.2019. Accordingly, the filing of the present application falls within the prescribed period of limitation under Article 137 of the Limitation Act, 1963.

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22. We have heard the Ld. Counsel for the Applicant and also perused the records and examined the pleadings filed before us. The main issues which are before us to be decided in respect of the present Application u/s 7 is:

Whether there is debt and default within the meaning of the I&B Code, 2016?

23. At this juncture, it is relevant to refer to the definition of 'Financial Creditor' as per Section 5(7) of the Code and the definition of 'Financial Debt' as per Section 5(8) of the Code. The same is being reproduced under:

> *"5(7) "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;*
>
> *5(8) "financial debt" means a debt along with 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) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*

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(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

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

1 [Explanation. -For the purposes of this sub-clause, -

any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative

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transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;"

24. Further, the Hon'ble Supreme Court in ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416***, held:

> *"75. ..... the sub-clause does appear to be a residuary provision which is 'catch all' in nature. This is clear from the words 'any amount' and 'any other transaction'... the expression 'any other transaction' would include an arrangement in writing for the transfer of funds to the corporate debtor and would thus clearly include the kind of financing arrangement by allottees to real estate developers..."*

25. On the facts of the present case, there is no dispute that sums to the tune of Rs. 7,12,06,667/- have been disbursed by the Applicant to the Corporate Debtor, as reflected in the balance sheet and corroborated by ledger account of the Corporate Debtor as maintained by the Applicant. The Corporate Debtor's own balance sheet as of 31.03.2019 records the

liability of Rs. 7,11,95,000 as "unsecured loan" under long-term borrowings in the name of the Financial Creditor (formerly 'Wealth Mantra Properties').

26. It is further noted that the Respondent contended that the Financial Creditor has suppressed the First Memorandum of Understanding. However, the said document was executed by the erstwhile Director of the Corporate Debtor, Mr. Sanjeev Agarwal, in his individual capacity and not by the Financial Creditor, therefore, the Financial Creditor cannot be bound by its terms. On the other hand, the Second MOU dated 31.07.2017 was executed between the Financial Creditor, the Corporate Debtor, and Mr. Nawanshu Goyal, and reflects the disbursement of funds by the Applicant. Accordingly, the Second MOU, being the operative document executed by the Financial Creditor and the Corporate Debtor, is relevant for adjudication in the present matter.

27. The Second MOU dated 31.07.2017, executed between the parties, records at Clause 6:

> *"6) Third Party has already paid 15,68,50,000/- (Fifteen Crore, Sixty Eight Lacs and fifty thousand only) to first party as advance on various dates towards this deal which first party acknowledges.*

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Out of above amount 7,84,50,000 was paid in LDR Developers and 7,84,00,000 paid in Ashrey Ventures Pvt. Ltd."

28. While the Corporate Debtor contends that these were investment contributions as part of a joint development arrangement, the same MOU provides at Clause 31:

"31) If the project is held up due to issues in land/title or old bookings mentioned in point number 9 and 28 first party shall compensate second and third party for the losses occurred due to project is held up. If the project is held up for more than one month then first party shall compensate second and third party @ 12% p.a. interest on amount invested by second and third party on FSI payments. The interest calculations will be done from the date of this MOU. If not resolved in one month then second and third party will also try to resolve the issue of project held up with the mutual consent of first party at first party expenses."

Clause 14 further stipulates:

"14) Remaining payment of FSI will be paid in 12 equal quarterly instalments starting from 1st January 2018 after deduction of tax payments on yearly basis after all the expenses. If instalment is delayed by second and third party by more than 1 month then interest will be payable @ 12% per annum to first party but the instalment will be cleared before due date of next instalment."

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29. Reading the clauses of the MOU as a whole, and the conduct of the parties, the nature of the transaction is clear, i.e. funds were advanced by the Applicant to the Corporate Debtor for commercial purposes, with the express arrangement that these sums would, in the event of failure or delay in project execution, bear interest at 12% per annum and be subject to recall. The issuance of a formal recall notice on 09.11.2019, which is also attached at page no. 131 of the application by the Financial Creditor recalling the amount of advance paid to the Corporate Debtor along with interest within 15 days in terms of the MoU dated 31.07.2017, and the absence of any bona fide dispute by the Corporate Debtor to refute the demand or making repayment within specified time limit therein, and also, not even any arguments were advanced by the CD against this recall notice in the reply filed against the present application or during the hearing before us, this establishes default within the scope of Section 3(12) of the Code, which stipulates, "default" means non-payment of debt when whole or any part thereof has become due and payable and is not paid by the debtor, which became due and payable after recall notice.

30. The Corporate Debtor's argument that these advances are to be treated as investments in a joint venture structure, and not as "financial debt,"

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is not convincing, because the Applicant had an express right to recall the money and the MOU clearly provided for payment of interest if the project failed or was delayed. The Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407***, clarified:

> *"…the adjudicating authority has merely to see… that a default has occurred. It is of no matter that the debt is disputed so long as the debt is 'due'…..It is only when this is proved to the satisfaction of the adjudicating authority … the adjudicating authority may reject an application…*"

31. In this regard it is also worth to note that outstanding amounts towards the Financial Creditor is shown as unsecured loan in the balance sheet of the Corporate Debtor. The NCLAT in ***Shailesh Sangani v. Joel Cardoso, Comp. Appeal (AT) (Ins.) No. 616/2018***, held:

> *"9. The balance sheet as on 31st March, 2017 at page 83 of the reply affidavit filed by Respondent No.1, inter alia, reflects a non-current liability of Rs.4,72,76,182/- treated as 'long term borrowings' and not treated as shareholder's funds……..*
>
> *In the face of this documentary evidence it is abundantly clear that the amount disbursed by Respondent No.1 to the Corporate Debtor was in the nature of debt treated as long term loan and not as an investment in the nature of share capital or equity. Such*

disbursement cannot either be treated as largesse. We are convinced that the aforesaid amount outstanding as against Corporate Debtor, default whereof is not in issue, has all the trappings of a 'financial debt' and falls within the purview of Section 5(8)(f) of the I&B Code and Respondent No.1 is covered by the definition of 'Financial Creditor'."

Applying this principle to the present matter, it is evident from the Corporate Debtor's own audited financial statements and the supporting documents that the sums advanced by the Applicant have been consistently reflected as unsecured loans and long term borrowings. There is no contrary evidence before the Tribunal to treat these as mere investments. Thus, in view of the aforesaid judgment, there is a financial debt within the meaning of Section 5(8) of the IBC, and the Applicant qualifies as a Financial Creditor.

32. The Respondent's reliance on **M/s. Jagbasera Infratech Pvt. Ltd. v. Rawal Variety Construction Ltd.** and other similar judgments, which pertain to true joint venture agreements without clear repayment and recall rights for the sums advanced, is misplaced in the present context. Here, the contractual clauses cited above demonstrate that the Financial Creditor's advances have the "commercial effect of a borrowing" for time value of money. The Respondent's contentions regarding the nature

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of the transaction cannot override the parties' clear agreements and the consistent reflection in statutory accounts.

33. We also note that the Respondent has attempted to raise allegations of malafide and suppression of facts under Section 65 of the IBC. However, no cogent material has been produced to demonstrate that the petition has been filed for purposes other than resolution. The record clearly establishes that financial debt exists and has not been repaid.

34. Thus, in view of the aforesaid analysis, the Applicant / Financial Creditor has proved that there is a 'debt' and 'default' on the part of the Corporate Debtor. Hence, as per Section 7(5) of IBC, 2016, the present application is found to be fulfilling all the conditions for admissions of the Application and initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor i.e. LDR Developers Private Limited.

35. In view of our above findings, we are satisfied that the Applicant/Financial Creditor has proved the debt and the default, which is more than the threshold limit of Rs.1 crore applicable at present. The application is also filed within limitation period and complete in all respect and a resolution professional is also proposed as per section 7(3)(b). Accordingly, the present application under Section 7, has been

found fit to be admitted as per Section 7(5) of the I & B Code, 2016.

36. The Financial Creditor has proposed the name of IRP in Part-III of the Application, the Financial Creditor has proposed the name of Mr. Sandeep Chandna as Interim Resolution Professional having Registration Number: IBBI/IPA-002/IP-N00447/2017-2018/11237; R/o 109, Surya Kiran Building, KG Marg, New Delhi-110001, New Delhi, National Capital Territory of Delhi,110001; Email: cssandeep@live.in. The IRP has duly given the consent in Form No. 2 dated 16.06.2021 annexed as Annexure-3 with the Application. The Law Research Associate of this Tribunal, Ms. Akshita Singh, has checked the credentials of Mr. Sandeep Chandna, and found that there are no disciplinary proceedings pending against the proposed Insolvency Professional and also there is nothing adverse against them. Upon verification from the website of IBBI, it is found that Insolvency Professional holds valid authorization till 31.12.2025. After considering these details, we appoint Mr. Sandeep Chandna having registration No. IBBI/IPA-002/IP-N00447/2017-2018/11237, as Interim Resolution Professional (IRP).

37. In the given facts and circumstances of the case as per our above findings, the present application u/s 7 being complete in all respect and

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having established the default in payment of the Financial Debt for the default amount being above the threshold limit and an IRP also having been appointed as per above para 32, the application is admitted in terms of Section 7(5) of the I & B Code, 2016 against the Corporate Debtor and accordingly, moratorium is declared in terms of Section 14 of the Code.

38. Accordingly, this application is admitted u/s 7 of the Code, 2016, under the following terms and conditions.

i. The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of IBC, 2016.

ii. The Suspended Board of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts

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Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance

of Digital Forensic Experts empaneled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

iii. The IRP is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities/ institutions/ others pertaining to the Corporate Debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the IRP to enable him to conduct the CIR Proceedings as per law.

iv. The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report certifying the constitution of the Committee to this

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Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every month.

v. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

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d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.

vi. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.

vii. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

viii. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

ix. We direct the Financial Creditor to deposit a sum of Rs.1,00,000/- with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The

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amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

39. A certified copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a certified copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a certified copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

40. List the matter on 27.10.2025 for filing of the progress report/further proceeding.

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(Ashish Verma)	**(Praveen Gupta)**
Member (Technical)	**Member (Judicial)**

Date: 17.09.2025