

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER**

CP No. (IB)- 01/7/JPR/2023

(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:

M/S TIFFANY FINANCE PRIVATE LIMITED

...Financial Creditor/ Applicant

VERSUS

SANCHETI BUILDTECH PRIVATE LIMITED

...Corporate Debtor/ Respondent

MEMO OF PARTIES

M/S TIFFANY FINANCE PVT. LTD.

1st Floor, Tiffany Tower, Near Pani Ki
Tanki, Sham Ki Sabji Mandi, Bhilwara,
Rajasthan

...Applicant

VERSUS

SANCHETI BUILDTECH PVT. LTD.

13, Hari Sewa Marg, Bhilwara- 311001
(Rajasthan)

...Respondent

For the Applicant : Abhishek Naik, Adv.
Gulafsha Kureshi, Adv.

For the Respondent : Clevans Cletus, Adv.

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Order Pronounced On: - 16.07.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This is an Application filed by *M/s Tiffany Finance Private Limited* ('Applicant'/ 'Financial Creditor') against *M/s Sancheti Buildtech Private Limited* ('Respondent'/ 'Corporate Debtor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the 'IBC'/ 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of the Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor.
2. The Applicant is a Private Limited Company incorporated under the Companies Act, 2013 on 11.05.2017 and duly registered with the Registrar of Companies, Jaipur, bearing CIN: U67190RJ2017PTC057988. The registered office of the Applicant Company is at *1st Floor, Tiffany Tower, Near Pani ki Tanki, Sham ki Sabji Mandi, Bhilwara (Raj.)- 311001*.
3. The Corporate Debtor is a Private Limited Company incorporated under the Companies Act, 1956 on 14.12.1994, duly registered with the Registrar of Companies, Jaipur, having CIN: U50103RJ1994PTC009165. The Registered Office of the Company is situated at 13, Hari Sewa Marg, Bhilwara-311001 (Rajasthan). The authorized share capital of the Corporate Debtor Company is Rs. 70,00,000/- (Rupees Seventy Lakhs Only), and the paid-up share capital is Rs. 53,80,000/- (Rupees Fifty-Three Lakhs Eighty

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Thousand Only). The same has been verified from the online database maintained by the Ministry of Corporate Affairs.

4. The details of the transactions leading to the filing of this Application as averred by the Financial Creditor are as follows:

4.1 In the year 2021, the Corporate Debtor, along with *Mrs. Asha Devi Sancheti, Mr. Prateek Sancheti, Mr. Roshan Lal Sancheti, and M/s Sancheti Traders* ('Co-borrowers') had approached the Financial Creditor for seeking three business loan facilities in the form of secured term loans by mortgaging properties in favour of the Financial Creditor. The Applicant provided loan facilities aggregating to Rs. 5,85,00,000/- (Rs. Five Crore Eighty- Five Lakhs only) to the aforementioned borrowers. The details of the loans advanced by the Financial Creditor to the Co-borrowers are as follows: -

- i. *Loan Agreement bearing No. TL/MTG-483 dated 19 April 2021 for INR 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only) [herein referred to as the Loan Agreement No. 1]*
- ii. *Loan Agreement bearing No. TL/MTG-481 dated 19 April 2021 for INR 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only) [herein referred to as the Loan Agreement No. 2]*
- iii. *Loan Agreement No. TL/MTG-479 dated 15th April 2021 in tune of INR 2,85,00,000/- (Rupees Two Crore Eighty- Five Lakhs Only) [herein referred to as the Loan Agreement No. 3] (Collectively, referred as Loan Agreements)*

4.2 In lieu of the financial facility provided by the Applicant and to secure the Loan Agreements, the Corporate Debtor mortgaged the following

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properties in favour of the Applicant by depositing the title deed, as follows: -

Sr. No.	Loan Agreement	Amount due	Mortgaged Property
1.	Loan Agreement No. TL/MTG-481	INR 2,01,04,379/- (Rupees Two Crore One Lakh Four Thousand Three Hundred Seventy- Nine Only)	Commercial Plot No. 136 to 142 and Plot No. 150 to 153 each situated and registered at Village – Mahapragya Nagar, Nagdiya Road, Asind, Distt. – Bhilwara, Raj. Admeasuring area 1650 Sq. ft
2.	Loan Agreement No. TL/MTG-483	INR 2,01,04,362/- (Rupees Two Crore One Lakh Four Thousand Three Hundred Sixty-Two Only)	Commercial Plot No. 1 to 5 and Plot No. 143 and Residential Plot No. 135 situated and registered at Village- Mahapragya Nagar, Nagdiya Road, Asind, Distt. – Bhilwara, Raj. Admeasuring area of commercial plot area is 15901 and the residential area 1650 sqft so the total area 17551 sqft
3.	Loan Agreement No. TL/MTG-479	INR 3,76,00,196/- (Rupees Three Crore Seventy- Six Lakh One Hundred Ninety- Six only)	Commercial Plot No. 4513, Mahapragya Nagar, Nagdiya Road, Asind, Distt.- Bhilwara, Raj. Admeasuring area 44690 Sq.
Total		7,78,08,937/- (Rupees Seven Crore Seventy-Eight Lakhs Eight Thousand Nine	

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	<i>Hundred Thirty- Seven Only)</i>	
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4.3 After availing the loan facilities, the Corporate Debtor failed to adhere to the repayment schedule and violated the terms of the Loan agreements. Subsequently, the loan accounts were foreclosed, and the loan account of the Corporate Debtor was classified as an NPA on 19.04.2022. Thereafter, a demand notice dated 10.11.2022 was issued by the Applicant against the Corporate Debtor under Section 7 of IBC, 2016. Despite the issuance of the demand Notice, the due amount was not paid by the Corporate Debtor.

4.4 The relevant details as reflected in Part IV of the Application are as follows: -

Part IV

S. No.	Particulars of Financial Debt													
1.	Amount claimed to be in default and the date on which the default occurred	<p>The details of due and outstanding amount under Loan Account No. TL/MTG-483 loan agreement dated 19 April 2021 as on 17 October 2022 is an under: -</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Particulars</th> <th style="text-align: left;">Amount</th> </tr> </thead> <tbody> <tr> <td>Principal Outstanding</td> <td>1,96,40,838/-</td> </tr> <tr> <td>Prepayment Penalty %</td> <td>2%</td> </tr> <tr> <td>Prepayment Penalty Charges</td> <td>3,92,817/-</td> </tr> <tr> <td>GST @ 18%</td> <td>70,707/-</td> </tr> <tr> <td>Total Amount Receivable (as</td> <td>2,01,04,362/-</td> </tr> </tbody> </table>	Particulars	Amount	Principal Outstanding	1,96,40,838/-	Prepayment Penalty %	2%	Prepayment Penalty Charges	3,92,817/-	GST @ 18%	70,707/-	Total Amount Receivable (as	2,01,04,362/-
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Prepayment Penalty Charges	3,92,817/-													
GST @ 18%	70,707/-													
Total Amount Receivable (as	2,01,04,362/-													

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on 17 October
2022)

The details of due and outstanding amount under Loan Account No. TL/MTG-479 loan agreement dated 19 April 2021 as on 17 October 2022 is as under: -

Particulars	Amount
Principal Outstanding	3,67,33,291/-
Prepayment Penalty %	2%
Prepayment Penalty Charges	7,34,666/-
GST @ 18%	1,32,240/-
Total Amount Receivable (as on 17 October 2022)	3,76,00,196/-

The details of due and outstanding amount under Loan Account No. TL/MTG-481 loan agreement dated 15 April 2021 as on 17 October 2022 is as under: -

Particulars	Amount
Principal Outstanding	1,96,40,855.01/-
Prepayment Penalty %	2%
Prepayment Penalty Charges	3,92,817/-
GST @ 18%	70,707/-
Total Amount Receivable (as on 17 October 2022)	2,01,04,379/-

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		<p>Date of Default: -</p> <p>(i) Under loan agreement dated 19 April 2021 (Loan Account No. TL/MTG- 483) the default occurred. The statement of Loan Account No. TL/MTG-483 is enclosed herewith and marked as Annexure-6.</p> <p>(ii) Under loan agreement dated 19 April 2021 (Loan Account No. TL/MTG- 479) the default occurred. The statement of Loan Account No. TL/MTG-483 is submitted herewith and marked as Annexure-7.</p> <p>(iii) Under loan agreement dated 15 April 2021 (Loan Account No. TL/MTG- 481) the first default occurred. The statement of Loan Account No. TL/MTG- 481 is submitted herewith and marked as Annexure- 8.</p> <p>Total default amount is Rs. 7,78,08,937/- (Rs. Seven Crore Seventy- Eight Lakhs Eight Thousand Nine Hundred Thirty-Seven Only) as on 17.10.2022.</p> <p>Further the aforementioned loan accounts were classified as Non-Performing Assets on 19 April 2022</p>
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5. Consequent to the notice issued by this Adjudicating Authority, the Corporate Debtor filed its Reply *vide* Dairy No. 1732/2023 dated 18.07.2023 stating as follows:

5.1 The Corporate Debtor hereby denies each and every statement, allegation, averment and submissions made in the Application and affidavit in support thereof that is contrary to and/or inconsistent with the statements made herein. The Corporate Debtor has submitted that there is no relationship of Financial Creditor and the Corporate Debtor

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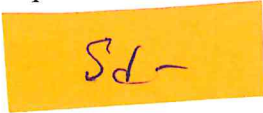
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between the Applicant and the Respondent. The Corporate Debtor has not availed any financial facility, either directly or indirectly, from the Applicant and it explicitly denies any liability whatsoever to the Applicant. In the instant case, there is no debt or default which are pre-requisite for initiating the CIRP under Section 7 of the Code.

5.2 The statement that the Applicant granted loans in three accounts to the Corporate Debtor is completely misleading, misconceived, and in fact, fraudulent. It is submitted that the director of the Applicant Company namely, *Shri Virendra Prakash Ranka*, along with his son, *Shri Rounak Ranka*, and Manager, *Shri Neeraj Shah*, fraudulently sanctioned loans in favour of *Mr. Roshan Lal Sancheti*, *Mrs. Asha Devi Sancheti*, and *Mr. Prateek Sancheti* ('the Sanchetis'). The said loan was never disbursed and even after the disbursement of some amount, a certain amount was immediately retrieved by the aforementioned trio, namely *Shri Virendra Prakash Ranka*, *Shri Rounak Ranka* and *Manager Shri Neeraj Shah*.

5.3 Subsequently, the Sanchetis discovered that the director of the Applicant Company had utilized them as a conduit for round-tripping of funds. The Sanchetis filed criminal and civil complaints against the Applicant Company and its directors. These matters are currently pending before various forums for adjudication. Meanwhile, the Applicant has filed this instant Application in an attempt to exert

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undue pressure upon the Corporate Debtor. Additionally, the Sanchetis have approached the Reserve Bank of India (RBI) and the Special Operations Group (SOG) of the Rajasthan Police to investigate the financial fraud committed by the Applicant Company in the name of granting a financial facility.

- 5.4 It is crucial for this Adjudicating Authority to ascertain whether the conditions stipulated in Section 7(5) of the IBC have been satisfied in this case. The respondent emphatically denies that the Applicant granted any direct or indirect financial facility to the Corporate Debtor. In the absence of such a financial facility, there can be no default. According to the definition under the IBC, without a default, there is no basis for invoking the powers under Section 7. Therefore, the Application is inherently misconceived.
- 5.5 It is stated that one of the directors of the Corporate Debtor, *Shri Roshan Lal Sancheti*, and the director of the Applicant, namely *Shri Virendra Prakash Ranka*, are friends. These persons had long-standing business relations, and the trust developed over the years was wrongly utilized by *Shri Virendra Prakash Ranka*. As mentioned earlier, *Shri Roshan Lal Sancheti* had business relations with the Director of the Applicant, *Shri Virendra Prakash Ranka* and they were lending money to each other in the course of business. The significant

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amount taken by the Corporate Debtor from *Shri Virendra Prakash Ranka* was duly returned to him.

5.6 The alleged financial facility was granted to the Sanchetis by the Applicant in the month of April 2021. According to the Applicant, the Sanchetis executed so called loan agreement starting from 15.04.2021 to 19.04.2021. The alleged loan was sanctioned by the Applicant to *Shri Roshan Lal Sancheti* for an amount of Rs. 2,85,00,000/- on 15.04.2021, to *Smt. Asha Devi Sancheti* for amount of Rs. 1,50,00,000/- on 19.04.2021, and to *Mr. Prateek Sancheti* for amount of Rs. 1,50,00,000/- on 19.04.2021. The Applicant through their directors instructed Sanchetis to deposit the disbursed amount to *Mr. Raunak Ranka*. As per the instruction given by *Shri Virendra Prakash Ranka* and his manager, *Mr. Neeraj Shah*, the Sanchetis transferred an amount of INR 60,00,000/- (Rupees Sixty Lakh only) on 16.04.2021, INR 50,00,000/- (Rupees Fifty Lakh Only) on 20.04.2021 and INR 50,00,000/- (Rupees Fifty Lakh Only) on 22.04.2021 to *Raunak Ranka*. It is evident that the Applicant granted alleged loan to Sanchetis and thereafter immediately, the amount was taken back in a different account.

5.7 Further, an agreement dated 09.09.2021 executed by *Shri Virendra Prakash Ranka* shows that the amount allegedly granted as financial facility was duly settled by purchasing land from the Sanchetis against

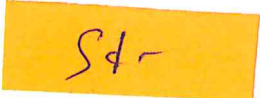
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the consideration of INR 5,85,00,000/- (Rupees Five Crores Eighty-Five Lakh Only). The said agreement clearly mentions that the amount given as financial facility to *Shri Roshan Lal Sancheti, Smt. Asha Devi Sancheti, and Sh. Prateek Sancheti* is being settled against the piece of land situated at Soniyana, Chittorgarh. Therefore, in view of the agreement dated 09.09.2021, there exists no financial facility that can be defaulted by the Corporate Debtor.

- 5.8 The Corporate Debtor contended that it is roped in the instant matter in the capacity of guarantor of the alleged loans granted to the Sanchetis. However, the Respondent was kept in dark regarding the financial facility between *Shri Virendra Prakash Ranka* and *Shri Roshan Lal Sancheti*. Further, the guarantee contract is revoked in view of the supplementary variations made by the Applicant Company and the Sanchetis.
- 5.9 To remedy the said financial fraud, the Sanchetis immediately filed a criminal complaint against the Applicant Company and its directors. Meanwhile, the Sanchetis learned that the Applicant Company had filed a criminal complaint bearing FIR No. 125/2022 at PS Kotwali, Bhilwara, against the Sanchetis alleging that they had misappropriated the loan amount and that no loan instalments had been paid by the Sanchetis. Both the FIRs are pending adjudication before the competent court in the ordinary course.


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- 5.10 Furthermore, the financial liability and existence of default as alleged by the Applicant is meaningless in view of the loan statement submitted by the Applicant itself. It is interesting to note that the three loan accounts were shown as foreclosed, but nothing in the application or supporting documents suggests how the foreclosure request was made by the Sanchetis. No information regarding such foreclosure was given to the Corporate Debtor. Therefore, the Corporate Debtor cannot be roped into the matter as guarantor in contravention of the provisions of the Indian Contract Act.
- 5.11 There is no information regarding the default, such as when it occurred or when the foreclosed amount was supposed to be deposited by the Sanchetis. The Application does not provide any details in compliance with Section 7(3)(a) of the IBC. It is clear from the foregoing that the Corporate Debtor has no legal default or liability as prescribed under Section 7 of the Code.
6. The Applicant filed its rejoinder *vide* Diary No. 2241/2023 dated 13.09.2023 and made the following submissions: -
- 6.1 The Applicant submitted that the Corporate Debtor had denied to have availed any loan facilities, however, it had failed to produce any documents on record that would substantiate the bald averments. It is mentioned herein that the loan facilities were duly sanctioned and disbursed in favour of the Corporate Debtor and the loan agreements

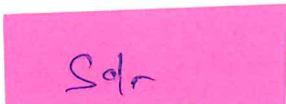
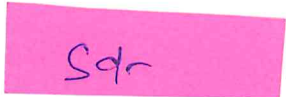
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were duly executed among the parties and the same are already on record as Annexure- 6, 7 and 8 of the Application. The Corporate Debtor had relied on the settlement agreement dated 09.09.2021, however, a bare perusal of the said agreement would reveal that the Corporate Debtor had admitted the fact concerning the loan facilities advanced by the Applicant. Further, the Corporate Debtor had made contradictory statements whereby on one hand, they have stated that the *“said loan amount was never disbursed”*, and on the other hand, it has stated that *“even after the disbursement of some amount, a certain amount was immediately taken back by the aforesaid trio”*.


6.2 The Corporate Debtor had alleged that the Applicant had round tripped the money by using them, however, no complaint was ever lodged by the Corporate Debtor against the Applicant and there is no document to corroborate the said facts. Further, the Applicant had lodged an FIR No. 125/2022 against the Corporate Debtor and as a counter blast, the Corporate Debtor had lodged an FIR No. 213/2023 wherein the Police after due investigation had filed a Final Report. Further, the contention with regard to the pending investigation before the RBI and SOG of the Rajasthan Police are denied for want of Knowledge as no such proceedings had been bought to the knowledge of the Applicant and the burden to prove the same rests on Corporate Debtor.

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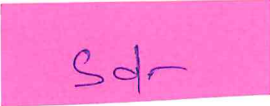
6.3 It was contended that the alleged transactions by the Corporate Debtor for an amount of Rs. 60,00,000/- (Rupees Sixty Lakh Only) on 16.04.2021, Rs. 50,00,000/- (Rupees Fifty Lakh Only) on 20.04.2021 and Rs. 50,00,000/- (Rupees Fifty Lakh Only) on 22.04.2021 were neither made towards the repayment of the loan facilities nor the payment were received by the Applicant. Further, the alleged account wherein transfers have been made does not belongs to the Applicant. The alleged Account wherein the amount has been transferred is in the name of "*Scribbling Shipping Pvt. Ltd.*" belonging to one *Mr. Jayanti Bhai* and the Applicant does not have any nexus with the alleged account bearing No. 0061002101613993.

6.4 The Corporate Debtor had failed to repay the outstanding dues as such a settlement agreement dated 09.09.2023 was executed between *Mr. Roshan Lal Sancheti & Mr. Virendra Kumar Ranka* whereby *Mr. Roshan Lal Sancheti* had agreed to sale certain immovable properties (more particularly described in the settlement agreement) to *Mr. Virendra Kumar Ranka*. However, since *Mr. Roshan Lal Sancheti* had not honoured the terms of the settlement, *Mr. Virendra Kumar Ranka* had issued a letter dated 22.09.2021 wherein he had repudiated the settlement agreement dated 09.09.2021. Later, *Mr. Roshan Lal Sancheti* had replied to the said notice through their counsel and had repudiated the settlement agreement dated 09.09.2021. Thus, the said settlement

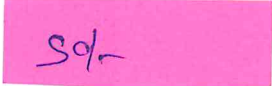


agreement had been repudiated by the parties and has lost its significance. However, a bare perusal of the settlement agreement dated 09.09.2021 and the reply notice would make it axiomatic that the Corporate Debtor had availed the loan facilities.

7. The Corporate Debtor filed a Brief Factual Matrix vide Diary No. 363/2024 dated 08.02.2024 wherein it contended that the loan agreements submitted by the Applicant indicate that among the borrowers—*Shri Prateek Sancheti, Roshan Lal Sancheti, and Asha Devi Sancheti*—only, *Roshan Lal Sancheti*, a director of the Respondent Company, signed with the company seal. Further, *Asha Devi Sancheti* signed in her personal capacity, and *Prateek Sancheti*, a partnership firm, had no role in the Respondent company. Furthermore, funds were disbursed into the personal accounts of the aforementioned borrowers. Additionally, no security or mortgage exists in favor of the Applicant from the Respondent Company. Moreover, the Application and accompanying documents submitted by the Applicant do not sufficiently establish any default on the part of the Respondent Company. The Corporate Debtor has filed its audited financial statement along with the Financial Statements for the Financial Year 21-22. Additionally, the Corporate Debtor has filed its Written Submission wherein reiterated its earlier submissions.



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8. The Applicant filed its Written Submission vide Diary No. 630/2024 dated 12.03.2024 wherein the Applicant reiterated the contentions raised in the Company petition and placed reliance upon the following case laws:

- I. *Maitreya Doshi vs. Anand Rathi Global Finance Ltd. & Anr. [Company Appeal (AT) (Ins.) No. 191/2021].*
- II. *Ashique Ponnamparambath & Anr. vs. BMW India Financial Services Pvt. Ltd. [Company Appeal (AT) (CH) (Ins.) No. 301/2021].*
- III. *Arvind Bali vs. Union of India & Anr. [Company Appeal (AT) (Ins.) No. 110/2021].*
- IV. *MRF Ltd. vs. Manohar Parrikar & Ors. [Civil Appeal No. 4220/2002].*
- V. *Pegasus Assets Construction Pvt. Ltd. vs. Whiz Enterprise Pvt. Ltd. in [CP No. 530/(IB)-MB-V/2021, NCLT Mumbai Bench].*
- VI. *Urban Infraprojects Pvt. Ltd. vs. EDCL Infrastructure Ltd. [IA (IB) No. 2105/KB/2023 in CP (IB) No. 106/KB/2023, NCLT Kolkata Bench].*
- VII. *Suresh Kumar Reddy v/s Canara Bank & Ors in Civil Appeal No. 7121/2022*

9. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Corporate Debtor is situated in the State of Rajasthan; therefore, this Adjudicating Authority has the jurisdiction to entertain this Application. Further, this matter is within the purview of the Laws of Limitation, as the default arose in 2022, and the Application was filed before this Adjudicating Authority in 2022.

10. In the instant case, the Corporate Debtor along with other borrowers namely,

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Mrs. Asha Devi Sancheti, Mr. Prateek Sancheti, Mr. Roshan Lal Sancheti, and M/s Sancheti Traders availed the following loan facilities from the Applicant: -

Sr. No.	Loan Agreement No.	Amount	Date	Name of Borrowers	Repayment Terms
1.	TL/MTG-483	1,50,00,000/-	19.04.2021	Mrs. Asha Devi Sancheti, Mr. Prateek Sancheti, Mr. Roshan Lal Sancheti, M/s Sancheti Traders and M/s Sancheti Buildtech Pvt. Ltd. (Corporate Debtor)	60 EMIs of Rs. 3,49,024/- commencing from 22.05.2021 to 22.04.2026
2.	TL/MTG-481	1,50,00,000/-	19.04.2021	Mrs. Asha Devi Sancheti, Mr. Prateek Sancheti, Mr. Roshan Lal Sancheti, M/s Sancheti Traders and M/s Sancheti Buildtech Pvt. Ltd. (Corporate Debtor)	60 EMIs of Rs. 3,49,024/- commencing from 19.05.2021 to 19.04.2026
3.	TL/MTG-479	2,85,00,000/-	15.04.2021	Mrs. Asha Devi Sancheti, Mr. Prateek Sancheti, Mr. Roshan Lal Sancheti, M/s Sancheti Traders and M/s Sancheti Buildtech Pvt. Ltd. (Corporate Debtor)	60 EMIs of Rs. 6,63,146/- commencing from 16.05.2021 to 16.04.2028
Total Amount of Loan granted by Applicant		Rs. 5,85,00,000/- (Rs. Five Crore Eighty- Five Lakhs only)			

11. It is pertinent to mention that loan amount of TL/MTG-483 was disbursed in the account of *Mr. Prateek Sancheti*; the amount of TL/MTG-481 was disbursed in the Account of *Mrs. Asha Devi Sancheti*; and the loan amount of TL/MTG-479 was disbursed in the Account of *Mr. Roshan Lal Sancheti*.

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12. The Applicant declared the aforementioned loan accounts as NPA on 19.04.2022 and it allegedly foreclosed the aforementioned loan accounts on 17.10.2022 due to the default in repayment of the loans by the borrowers. Consequently, the Applicant filed the instant application alleging default of Rs. 7,78,08,937/- (Rupees Seven Crores Seventy-Eight Lakh Eight Thousand Nine Hundred and Thirty-Seven Rupees).
13. In the instant matter, the Corporate Debtor has raised the allegations that the Corporate Debtor is not liable for the aforementioned loan as the loan amount was disbursed in the personal account of the Co-borrowers and moreover, there is no relationship of Corporate Debtor and Financial Creditor between the Applicant and the Respondent.
14. A perusal of the loan agreements reveal that the said agreement were executed by the Financial Creditor on the one hand, and *Mrs. Asha Devi Sancheti, Mr. Prateek Sancheti, Mr. Roshan Lal Sancheti, M/s Sancheti Traders*, and the Corporate Debtor on the Other hand. Further, on behalf of the Corporate Debtor, one of its directors, namely, *Mr. Roashan Lal Sancheti*, and the seal of the Corporate Debtor is also affixed on the said document. Thus, we are not inclined to admit the submission of the Corporate Debtor that it is not a party to the said loan agreement.
15. The only issue that remains for our consideration is Whether CIRP can be initiated against a Company who is a co-borrower in a loan agreement and has not received the proceeds of the loan, in case of default.

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16. The aforementioned issue is no more res-integra and it has already been decided by the Hon'ble NCLAT. In this regard, reliance can be placed upon the Judgment of Maitreya Doshi v/s Anand Rathi Global Finance Ltd. & Ors in Company Appeal (AT) (Insolvency) No. 191 of 2021 wherein it was observed that:

“18. A Co-borrower is as much a Borrower like the other entity and is fully liable to repay the loan taken and it is immaterial as to in which account Co-borrowers received the money, when receipt is an admitted position.”

17. Similarly, in the case of Ashique Ponnamparambath & Anr. Vs BMW India Financial Services Pvt. Ltd. Company Appeal (AT) (CH) (Ins) No. 301/2021 it was observed that: -

“15. There is no doubt that as per Section 5(8) of the Code a financial debt means a debt alongwith interest, if any, which is disbursed against consideration for the time value of money and as per Section 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. The contention of the Appellant that the Appellant having been added as a Co-borrower though with respect of the loan facilities created in favour of the Platino Classic Motor India Pvt. Ltd. yet no disbursement has been made, therefore, the Respondent would not fall within the definition of financial creditor. The argument though appears to be attractive but in view of the fact that the Appellant has itself chosen to join hands with the Co-borrower



and owned all its right and liabilities as a Co-borrower, passed a resolution on 16.05.2017 and made a joint request on 17.05.2017 to add the Corporate Debtor as a Co-borrower in the aforesaid three facilities coupled with the fact that an addendum agreement was also executed on 17.05.2017 itself wherein the Appellant had taken over all rights and liabilities alongwith Co-borrower in respect of the facilities extended by the Financial Creditor and the Corporate Debtor passed a board resolution on 23.02.2018 consenting to assume the liability would cumulatively prove that the Appellant is a Co-borrower against whom the application under Section 7 of the Code is maintainable. In this regard, the judgment relied upon by the Appellant in the case of Anuj Jain (Supra) is not applicable to the facts of this case rather the judgment relied upon by the Respondent in the case of Maitreya Doshi (Supra) covers the issue involved.”

18. In view of the aforementioned Judgments, we are of the opinion that the argument of the Corporate Debtor that no liability can be fastened upon it as the loan amount has not been disbursed to it cannot be accepted. It is a settled position of law that a Co-borrower’s liability is co-extensive with the other borrowers.
19. At this stage, it is relevant to refer to Section 7 of the Code which clarifies that the Adjudicating Authority upon being satisfied that default has occurred of the financial debt, may order for initiation of CIRP of the Corporate Debtor. The key ingredients of an Application filed under Section

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7 of the Code are: (i) there has to be a financial debt and; (ii) there must be a default in repayment of the financial debt. For ease of reference, Section 7 of the Code is reproduced hereunder: -

“Section 7: Initiation of corporate insolvency resolution process by financial creditor

(1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first

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or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.

Explanation. --For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish--

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.

(5) Where the Adjudicating Authority is satisfied that--

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

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(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate--

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.”

20. It is germane to refer the Judgement of the Hon’ble Supreme Court in *M/s Innoventive Industries Ltd. vs. ICICI Bank*, (2018) 1 SCC 407 wherein it was held that upon the Adjudicating Authority being satisfied that a debt was due and default had occurred, it was bound to commit the Corporate Debtor into CIRP. The relevant excerpts from the judgment are as below:

“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. The moment the adjudicating authority is satisfied that a default

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has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

(emphasis added)

21. It is trite law that under the IBC once a debt which becomes due or payable, in law and in fact, and if there is incidence of non-payment of the said debt in full or even part thereof, CIRP may be triggered by the financial creditor as long as the amount in default is above the threshold limit. Once the Adjudicating Authority is subjectively satisfied that there is a debt and a default has been committed by the Corporate Debtor and the Section 7 application is complete in all respects, the Adjudicating Authority in the exercise of summary jurisdiction has to admit the Section 7 Application.
22. In the instant case, the Corporate Debtor along with other borrowers, namely, *Mrs. Asha Devi Sancheti, Mr. Prateek Sancheti, Mr. Roshan Lal Sancheti* and *M/s Sancheti Traders* had availed three loan facilities from the

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Financial Creditor to the tune of Rs. 5,85,00,000/- (Rupees Five Crores Eighty-Five Lakh Rupees Only). The said loan agreements form part of the record. Further, a perusal of the statements of the loan accounts reveals that the Corporate Debtor along with other borrowers failed to pay the amount of interest and consequently, the said loan accounts were foreclosed on 17.10.2022. Further, the loan accounts were declared as NPA on 19.04.2022 by the Financial Creditor.

23. In our considered view, the debt and default were adequately demonstrated by the Applicant in the instant case and the same is supported by the records. Further, the default is above the threshold limit of Rs. 1 crore. This is a case where all the pre-requisites for filing a Section 7 stood fulfilled thus the Adjudicating Authority is incline to admit the Corporate Debtor into CIRP for having defaulted in repaying a financial debt which was above the threshold limit.
24. Under such circumstances, The Corporate Insolvency Resolution Process can be initiated against the Corporate Debtor, as it has committed a default. Therefore, the Adjudicating Authority has come to the view that the Corporate Insolvency Resolution Process of the Corporate Debtor should be initiated. We are inclined to admit this Application and accordingly, same is hereby Admitted and the Corporate Insolvency Resolution Process against the Corporate Debtor is hereby initiated. Since the Applicant has proposed the name of the IRP, therefore, we appoint *Mr. Rishabh Chand Lodha*

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having Registration Number IBBI/IPA/-001/IP-P-01075/2017-2018/11766, duly registered with ICSI Insolvency Professional Agency, to be appointed as the Interim Resolution Professional. The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the named IRP.

25. Consequences of initiation of CIRP shall be inter-alia as follows:


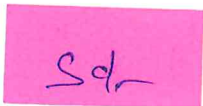
- i) The Resolution Professional proposed by the Applicant is *Mr. Rishabh Chand Lodha*, who is an IP registered with ICAI Insolvency Professional Agency having Registration No. IBBI/IPA/-001/IP-P-01075/2017-2018/11766. He is hereby appointed as the Insolvency Resolution Professional (IRP) to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016, including the issue of the publication in widely circulated Newspaper as contemplated under the provisions of IBC, 2016 and calling for the claims from the creditors of Corporate Debtor and collation of the same shall be done.
- ii) Further, as a sequel of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked concerning the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly





as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.

- iii) The said IRP shall act strictly in compliance with the provisions of IBC, 2016 and defray his expenses to be incurred and fees on the account. The Applicant is directed to act in accordance with Regulation 33(1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Applicant shall deposit a sum of Rs. 1,00,000/- (Rupees One Lakh Only) as the fees in the account of IRP within three days from the date of this order. The IRP shall duly file a status report from time to time appraising this Adjudicating Authority about the progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Section 17 & 19 of IBC, 2016, all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- iv) In terms of Section 7 of IBC, 2016, this order shall be communicated to the Applicant, Corporate Debtor, and the Interim Resolution Professional (IRP) appointed by this Adjudicating Authority to carry out the CIRP at the earliest, not exceeding one week from today.





26. Copy of this order shall also be communicated to IBBI for its record, and to any other body/entity to whom the Corporate Debtor is under legal/contractual obligation to inform/update.

27. In the circumstances, CP No. (IB) 01/7/JPR/2023 is admitted.

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(DEEP CHANDRA JOSHI)
JUDICIAL MEMBER

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(RAJEEV MEHROTRA)
TECHNICAL MEMBER