



**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI SPECIAL BENCH (COURT-II)**

**IN**

**IA-4555/ND/2024**

**IN**

**Company Petition No. (IB)-128/PB/2024**

**IN THE MATTER OF:**

**(Under Section 7 of IBC, 2016)**

**Bhushan Power and Steel Limited**

**... Applicant/  
Financial Creditor**

**Versus**

**Atma Ram House Investment Private Limited**

**... Respondent/  
Corporate Debtor**

**IN THE MATTER OF IA-4555/ND/2024:**

**(Under Section 65 of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016)**

**Atma Ram House Investment Private Limited  
Through it Authorised Representative**

5, Tolstoy Marg, Connaught Place  
New Delhi-110001

**... Applicant/  
Financial Creditor**

**Versus**

**Bhushan Power And Steel Limited**

4th Floor, A-2,  
NTH Complex, Shaeed Jeet Singh Marg,  
USO Road, Qutab Institutional Area,  
Delhi, Delhi-110067

**... Respondent/  
Corporate Debtor**

**Order Delivered on: 12.11.2025**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. RAVINDRA CHATURVEDI, HON'BLE MEMBER (T)**



**PRESENT:**

**For the BPSL**

: Sr. Adv. Pinaki Mishra, Adv. J. Sivanand Raaj  
Varua Bhanrale, Adv. Riddhima Sharma, Adv.  
Ribhu Garg, Adv. Tanya Hasita Sharwal

**For the Respondent**

: Sr. Adv UK Chaudhary , Adv Mansummer Singh  
Adv Sandeep Bajaj, Adv Soayib Qureshi Adv  
Anchal Kushwaha, Adv Mayank Biyani

**ORDER**

**PER: SHRI ASHOK KUMAR BHARDWAJ, MEMBER (J)**

The IB-128/(PB)/2024 could be preferred by Bhushan Power and Steel Limited (Applicant) initiating CIRP qua the Respondent viz. Atma Ram House Investment Private Limited (CD/Respondent). As has been espoused in brief synopsis filed with the IA, the Applicant and the Respondent entered into Memorandum of Understanding (MoU) dated 01.04.2008, in terms of which the Applicant agreed to disburse an amount up to INR 140,00,00,000 (Rupees One Hundred and Forty Crores) to the Respondent as an advance, which was to be adjusted in future against the purchase price of commercial flats/floor/space which were to be purchased by the Applicant, on completion of proposed construction by the CD. Pursuant to the MoU, the Applicant had admittedly disbursed an amount of INR 136.92 Crores.

**2.** As the Corporate Debtor was not able to complete the construction within the period provided in the MoU, both the parties renewed the terms thereof by entering into a fresh MoU dated 01.04.2013. In terms of the revised MoU, the period of construction could be extended by five years viz. till 01.04.2018. In the 2<sup>nd</sup> MoU, it was noted that the Applicant had already



disbursed amount of INR 136.92 Crore (advance) to the Corporate Debtor for the purchase of commercial floors/space.

**3.** In the year 2017, CIRP was ordered to be commenced qua the Applicant, in which JSW emerged as SRA. Having taken over the affairs of the Applicant, the SRA discovered that the disbursed amount was not disclosed to it. Ergo, on 02.07.2020, the SRA issued a letter to the erstwhile RP qua the Applicant asking for investigation into the transaction viz. disbursement of the amount of Rs. 136.92 Crores as advance payment for commercial flats/floor/space.

**4.** It is the case of the Applicant that the Corporate Debtor acknowledged the Disbursed Amount viz. INR 136.92 Crores as long-term borrowing in its financial statements for the years 2016-17 to 2020-21.

**5.** On discovery of the transaction between the Applicant and the Corporate Debtor on 09.12.2021, the Applicant issued a notice to the Corporate Debtor recalling and demanding the repayment of the Disbursed Amount along with interest @ 12% per annum from 01.04.2018 till the date of payment.

**6.** Then, the Applicant acting on the advice of its erstwhile counsel, initiated proceedings under Section 9 of IBC, 2016, vide IB-291/(PB)/2022. Nevertheless, in terms of the order dated 04.09.2023, this Tribunal observed that the debt arising from the Disbursed Amount ex facie appeared to be a financial debt. Later, in terms of the order dated 15.09.2023, the Applicant could withdraw the application preferred under Section 9 of IBC, 2016, with liberty to pursue appropriate action in accordance with law.



**7.** As has been espoused by the Applicant, in the proceedings initiated in terms of the application moved under Section 9 of IBC, 2016, the Corporate Debtor did not dispute either the execution of the initial and subsequent MoUs or the payment of the Disbursed Amounts.

**8.** In the reply filed on its behalf, the Corporate Debtor has pleaded that:-

- I. The amount claimed by the Applicant/Financial Creditor as debt is in fact, an investment/security for future space and does not constitute the debt. It was agreed between the parties that the Financial Creditor shall be entitled to the same super area measuring 50,000 sq. ft. in the building proposed to be constructed at Plot No.5 Tolstoy Marg, New Delhi.
- II. There is no financial debt owed by the CD to the Applicant within the meaning of Section 5 (8) of IBC, for the simple reason that disbursement of money against time value is “sine qua non” for any debt. The money must be disbursed by the Petitioner and received by the CD against the consideration of time value of money which is not the case in the present matter.
- III. The transaction in the instant case was entered into, when the FC held 96% of equity in the CD and the CD was a wholly owned subsidiary of the FC. Thus, the amount claimed by the Applicant as debt was invested by a holding company in its subsidiary as a commercial venture between two entities. Over a period of time, the FC had divested its stake in the subsidiary company, namely, the CD and having done



so the FC cannot stake a claim for refund of the amount invested in the proposed venture.

- IV. The claim for refund of debt is hopelessly time barred.
- V. FC has undergone CIRP under the provisions of IBC and the Resolution Plan could be approved by this Tribunal as also by NCLAT.
- VI. In terms of the Supplementary Agreement dated 02.09.2015, the FC was entitled to receive land measuring 50,000 sq. ft. of super area in the building proposed to be constructed at plot no. 5 Tolstoy Marg New Delhi. In terms of the Agreement, after factoring the amount already paid the balance amount of Rs. 88 Crores was liable to be paid by the FC to CD.
- VII. Till date the FC has neither paid the balance amount nor it terminated the MoU or the Supplementary Agreement dated 02.09.2015, thus the remedy for the Applicant is to file suit for specific performance of contract and it cannot claim the amount of part payment of consideration as financial debt.
- VIII. The amount for which the SRA has filed the present application was never taken into account by it while submitting its Resolution Plan and it has preferred the present application only to strong arm the CD to extort money from it.
- IX. The Applicant has written off the amount claimed by it as the financial debt payable by the CD in its books of accounts.
- X. The address of the Applicant/FC mentioned as F-Block, First Floor, International Trade Tower, Nehru Place, New Delhi-110019 is incorrect



as its correct address is TH Complex Shaheed Jeet Sing Marg, USO Road, Qutub Institutional Area, New Delhi-110067.

**9.** The Corporate Debtor has also preferred IA-4555/2024 espousing therein:-

- i. The amount of INR 136.92 Crores claimed by the Applicant as financial debt has been written off by the Respondent in I.A. i.e. Financial Creditor thus, IB-128/(PB)/2024 is not maintainable.
- ii. The Petition has been preferred to strong arm the Respondent.
- iii. The SRA viz. JSW vide its letter dated 02.07.2020 addressed to RP stated that as per auditor's report of 03.09.2018 the security advanced by Respondent (FC) to Applicant between 2008-2013 has been converted into long term borrowing. The letter also indicated that the transaction was not included in the purported transaction in applications before this Tribunal as preferential/ fraudulent transaction.
- iv. In the wake of the aforementioned letter, the Monitoring Committee informed the lenders that the flagged amount was part of provision for bad and doubtful debts of Rs. 3000 Crores which was written off during the period of 2016-2017.
- v. The Respondent in I.A. viz. FC despite being aware of the letter dated 02.07.2020 and minutes of Monitoring Committee dated 08.07.2020, maliciously issued a letter dated 09.12.2021 to the Applicant/CD recalling the amount of debt given to the CD stating therein that in case the outstanding amount of Rs. 136 Crores along with 12% interest is not



paid within 7 days from the receipt of the letter, Respondent would be at liberty to initiate appropriate legal action against the Applicant/CD.

vi. When the Respondent in I.A./ FC had issued a demand notice dated 19.02.2022 under Section 8 of IBC to Applicant/CD calling upon to take the amount of INR 136.92 Crores along with interest as more specifically detailed out therein, the Applicant/CD gave its response in terms of the reply dated 08.03.2022 clearly espousing that the FC has no claim over the alleged outstanding amount.

**10.** Broadly, the stand taken in the application is same as in reply to IB-128/(PB)/2024.

**11.** As far as the issue relating to writing off the debt is concerned, the Ld. Counsel for the FC relied upon the order dated 11.08.2017 passed by Hyderabad Bench of this Tribunal in **Quinn Logistics India Private Limited vs. Mack Soft Tech Pvt. Ltd.** (2017 SCC OnLine NCLT 15426) in C.P. (IB) No. 97/7/HDB/2017 taking the view that the writing off the huge amount of debt by holding company would not absolve the subsidiary company of its liability towards the same. Paras 75-89 of the order reads thus:-

*“75. The Bench is of prima facie view that writing off of the huge amount of Rs. 62.94 cores, considering the same as income in the hands of the Corporate Debtor would be to give a healthy/better Financial results (Profit & Loss Account/Balance Sheet).*

*76. It is worth to mentioned that profit/loss for the period up to 31-03-2015 was Rs. 2,58,01,926/- whereas for the period 31-03-2016 was only Rs. 32,354/- and Reserves & Surplus for the period as on 31-03-2015, was negative balance of Rs. 38,21,56,388 and as at 31-*



03-2016 was negative balance of Rs. 34,10,08,087/-. The Corporate Debtor has not submitted the Balance Sheet as on 31-03-2017 either audited/un-audit. As per the information furnished, the basic earnings per equity shares (EPS) before extraordinary items for the year ending 31-03-2015 was Rs. 105.72 and for the year 31-03-2016 was Rs. 0.13.

**77.** *The stand of the Corporate Debtor that the recovery is time barred and therefore, the amount is not due or payable as per law, the same appears to be incorrect. The lender will have a right to recover its money and equally the borrower is under obligation is to repay the loan. If we accept the stand of the borrower then borrower becomes King and the lender is put to disadvantageous position which should not be a normal commercial practice. Borrower/Lender should fulfill their individual obligations so as to ensure the Corporates function well which inturn will help the economy.*

**78.** *The Corporate Debtor's stand that inter company balance is not a debt or claim, however, we agree with the submissions of the petitioner and we are also of the view that both are one and the same and having the same effect.*

**79.** *We are of the prima facie view the Accounting Standard relied upon by Corporate Debtor is not related to the current facts & circumstances of the case since the accounting standard states that when the obligation specified in the contract is discharged or cancelled or expires.*

**80.** *Apparently, in the instant case there are no obligations specified, more over the petitioner itself accepted that there is no written agreement between the petitioner and Corporate Debtor. Further, the term "Expires" stated in the aforesaid accounting standard, there is no corresponding provision stating that the same is governed by Limitation Act, 1963. Therefore, even this contention of the respondent does not help them.*



**81.** *From the entire records, contentions of the Corporate Debtor who pointed out various preliminary objections on the part of the Financial Creditor viz:*

- 1) Name of the Applicant has been struck off from the ROC, the Applicant does not exist as a company and or legal entity,*
- 2) Petitioner is not a Financial Creditor,*
- 3) Claim is time barred, etc.*

**82.** *It appears that instead of taking defense with regard to the Financial Debt, repayment of the Financial Debt, the Respondent spent sufficient energy on the other preliminary issues.*

**83.** *There is no demand from the Financial Creditor to repay the debt during the three years period. According to us, it is quite strange that borrower instead of repaying the borrowed money/ debt discussed in detail, the functioning of the Financial Creditor such as the Financial Creditor did not file its Annual Reports/ Balance Sheets with ROC, did not conduct Annual General Meetings for years etc. We are of the considered view that the borrower cannot take all these pleas, and escape from non-fulfilment of its liability, non-payment of its debt.*

**84.** *However, the Bench is of the prima facie view that to avoid disputes like in this case it would be advisable/beneficial/for audit trials for all to enter into an agreement with detailed terms & conditions including the schedule of the repayments, interest charged etc. However, in the present case, the Financial Creditor and Corporate Debtor had Holding/Subsidiary Company relationship and the Financial Creditor also submitted the bank statements towards disbursement of loan/money to Corporate Debtor and in balance sheet for the year ending 31.12.2009.*

**85.** *The Hon'ble NCLAT in the matter of Innoventive Industries Ltd. decided on 15-05-2017 held that for initiation of Corporate Insolvency Resolution Process by Financial Creditor under sub-section 4 of the Section 7 of the Code. The adjudicating authority on receipt of*



*application under sub-section (2) is required to ascertain existence of default from the records of information utility or on the basis other evidence furnished by the Financial Creditor and the sub-sec. (3). Under sub-section 5 of sec. 7, the adjudicating authority is required to satisfy—*

- a. whether a default has occurred,*
- b. whether an application is complete; and*
- c. whether any disciplinary proceeding is against the proposed insolvency resolution professional.*

**86.** *Once Itsatisfied, it is required to admit the case.....*

**87.** *In the instant case, we are of the considered view that Financial Creditor has fulfilled all the three essential criteria's mentioned above therefore, we have no hesitation in admitting the case/application under IBC 2016.*

**88.** *After careful examination of all the records and contents of the Corporate Debtor, we are satisfied that the Corporate Debtor owes Rs. 62,90,45,905/- therefore, debt and default has been established by the Financial Creditor and accordingly the CP (IB) No. 97/2017 as prayed by the Financial Creditor is admitted.*

**89.** *In view of the above facts and circumstances, records produced, expert legal opinion, judgements submitted by both the parties, we are satisfied that Financial Creditor has to receive Rs. 62,90,45,905/- which is the debt & default amount. Therefore, there is a default by the Corporate Debtor and we are satisfied that the Financial Creditor is entitled to claim relief under section 7 of the IBC, 2016. Therefore, we admit the present company petition/application filed under IBC with following directions:*

- a. We declare a moratorium by prohibiting the following actions:*
  - 1. 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;*
- 2. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*
  - 3. 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.*
  - 4. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*
  - 5. The supply of essential goods or services to the Corporate Debtor if continuing, shall not be terminated or suspended or interrupted during moratorium period.*
- b. Direct to cause the public announcement of initiation of Corporate Insolvency Resolution Process of the Company as per the details given in section 15(1) and 15(2) on [www.ibbi.gov.in](http://www.ibbi.gov.in) (designated website of Insolvency and Bankruptcy Board of India, circulated vide IBI/IP/PUBUC ANN/221, dated 01.02.2017) in addition to other accepted modes of publication, immediately and call for submission of claims as per section 15 of the IBC, 2016 read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The publication shall also be made in the website of the Corporate Debtor.*
- c. We appoint Mr. Sundaresh Bhatt, (Regn. No. IBBI/IPA-001/IP-P00077/2017, 18-10162) as an Interim Resolution Professional.*
- d. Direct the personnel of Mack Soft Tech Pvt. Ltd. to assist and cooperate with Interim Resolution Professional to provide access to documents and records and management of the affairs of the company.*
- e. We direct the Interim Resolution Professional to constitute a committee of Creditors, after collation of all claims received against the Corporate Debtor and determination of Financial position of Corporate Debtor as per section 21 of IBC. The first meeting of the committee of Creditors, shall be held within 7 days*



*of the constitution of committee of Creditors and their decision has to be communicated to the Tribunal as per section 22 of IBC, 2016.*

- f. We direct the Interim Resolution Professional to follow all the applicable provisions of the Insolvency and Bankruptcy Code 2016 and Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016.*
- g. The IRP shall perform all these functions religiously and strictly which are contemplated, inter alia, by sections 15, 17, 18, 19, 20 & 21 of the Code. He must follow best practices available in the discipline of insolvency.*
- h. It is further made clear that all the personnel connected with a Corporate Debtor its promoters or any other person associated with the management of the Corporate Debtor are under legal obligation under section 19 of the code to extend every assistance and cooperation to the IRP as may be required by him in managing the affairs of the Corporate Debtor. We specifically direct the IRP to protect and reserve the value of the property of the Corporate Debtor as a part of his obligation imposed under Section 20 of the code and perform all his functions strictly in accordance of the provisions of the code.*
- i. We also direct the Financial Creditor to file appropriate compounding applications before the Registrar of Companies, Hyderabad for various non-compliances/delayed compliances with regard to various provisions of the Companies Act as contended by the Respondents within two weeks from the date of receipt of copy of this order and report compliance to the Registry of NCLT, Hyderabad.*
- j. Post the case on 15-09-2017.”*

**12.** We have no reason to take a view different from the one taken by Hyderabad Bench of this Tribunal in the aforementioned case. In ***Taqa India Power Ventures vs. NCC Infrastructure Holdings*** (2023 SCC OnLine Del 7207) also it could be ruled by Hon’ble Delhi High Court that a written off debt remains a recoverable asset. The relevant excerpt of the judgment reads thus:-



*“9. To my mind, the submission of the award debtor erroneously equates the writing off of the debt in the award debtor's accounts, with its obliteration as an amount legally due to the creditor. One of the primary purposes of financial statements of any entity is to provide a realistic picture of its economic health to its shareholders, creditors, other stakeholders, as also to those proposing to transact with it. The manner in which accounts are to be prepared is the subject matter of extensive accounting standards, which inter alia prescribe for the manner in which debts must be classified, so that the picture presented regarding the financial position of the company is realistic. However, even if a debt is written off in the accounts, this does not mean that the debt becomes altogether unrecoverable. It would be open to the creditor, if so advised, to pursue its debtor, and it would be no defence for the debtor to assert that the creditor has written off the debt. In such circumstances, it cannot be said that the debt has, in fact or in law, been obliterated or extinguished.*

*10. The aforesaid analysis is supported by the judgment of Supreme Court in Salim Akbarali Nanji. The appellant before the Supreme Court was a shareholder in a bank. He challenged a decision of the Reserve Bank of India to permit the bank to write off debts amounting to Rs. 120 crores, which had, over the years, turned into non-performing assets. The Reserve Bank of India, in its counter affidavit, took the position that write-off is an internal accounting procedure to clean up the balance sheet of the bank, and does not affect the right of the bank to proceed against the borrowers to collect the dues. The Court held as follows:-"17. **The submission proceeds on the assumption that the bad debts written-off cannot be recovered. In fact and in law it is not so. Despite writing-off the debt is still recoverable by the Bank.** The affidavit filed by the Bank also discloses the steps which are being taken to realise the dues from the debtor. Some amounts have been recovered over the years though the figure does not appear very impressive. Even so, steps are being taken to recover*



the dues whenever possible and Respondent 6 Bank has furnished particulars of the various proceedings pending for recovery of such debts. **The write-off is only an internal accounting procedure to clean up the balance sheet, and it does not affect the right of the creditor to proceed against the borrower to realise his dues.** Moreover, it does give some benefit to the Bank under the income tax laws because after write-off tax is payable only on the amount recovered as and when recovery is made..."<sup>14</sup>

**13.** In taking the aforementioned view, Hon'ble Delhi High Court relied upon the judgment of Hon'ble Supreme Court in **Salim Akbarali Nanji vs. Union of India And Others** [(2006) 5 Supreme Court Cases 32], wherein it could be ruled thus:-

"17. The submission proceeds on the assumption that the bad debts written-off cannot be recovered. In fact and in law it is not so. Despite writing-off the debt is still recoverable by the Bank. The affidavit filed by the Bank also discloses the steps which are being taken to realise the dues from the debtor. Some amounts have been recovered over the years though the figure does not appear very impressive. Even so, steps are being taken to recover the dues whenever possible and Respondent 6 Bank has furnished particulars of the various proceedings pending for recovery of such debts. The write-off is only an internal accounting procedure to clean up the balance sheet, and it does not affect the right of the creditor to proceed against the borrower to realise his dues. Moreover, it does give some benefit to the Bank under the income tax laws because after write-off tax is payable only on the amount recovered as and when recovery is made. In the guidelines issued by Reserve Bank of India, it is observed:

"Writing-off of NPAs. In terms of Section 43-D of the Income Tax Act, 1961 income by way of interest in relation to such categories of bad and doubtful debts as may be prescribed having regard to the guidelines issued by RBI in relation to such debts, shall be chargeable



*to tax in the previous year in which it is credited to the bank's profit and loss account or received, whichever is earlier.*

*This stipulation is not applicable to provisioning required to be made as indicated above. In other words, amounts set aside for making provision for NPAs as above are not eligible for tax deductions.*

*Therefore, the banks should either make full provision as per the guidelines or write-off such advances and claim such tax benefits as are applicable, by evolving appropriate methodology in consultation with their auditors/tax consultants. Recoveries made in such accounts should be offered for tax purposes as per the rules."*

**14.** Thus, we are unable to take a view that non-payment of the debt, which could be shown as written off in the books of accounts of lender would not constitute default, on the same being recalled.

**15.** As can be seen from MoU dated 01.04.2008, the Financial Creditor entered into an understanding with the CD as the CD being owner of Plot No.5 Tolstoy Marg New Delhi admeasuring the area of 0.86 acre and has constructed ground story in and around 1965. At the time of entering into MoU agreed to raise further construction, the FC was to pay Rs. 140 Crores to CD in one or more tranches to purchase commercial floors/space in the building, as security. Clause 4 and 5 of the MoU reads thus:-

*"4. The First party agreed to give security not exceeding Rs140 crores(Rs. One hundred and forty crores) in one or more trenches for purchase of commercial floors/space in the said building in future as and when constructed and the said security will be free of interest.*

*5. The Second Party represented that*

*a) Plot is free from all encumbrances, charges, mortgages, lien, claims etc*



- b) *Second party has not entered into any agreement/MOU with any third party for the sale of floors after constructions*
- c) *Second party will submit the plans to the concerned authority for getting approval at the earliest*
- d) *That construction shall be started after taking all approvals and will be constructed as per approved plans*
- e) *Second party represented that it has authority to entered into this MOU.”*

**16.** The MoU was revised on 01.04.2013. The relevant excerpt of revised MoU reads thus:-

- “A. The parties entered into Memorandum of Understanding (MOU) on 01.04.2008 for the purpose to purchase commercial flats/ floor at market price relevant at that time of taking possession and/or registration of title/ ownership by the first party.*
- B. The said MOU was valid for 5 years from the date of signing i.e 01.04.2008 and which expires on 31.03.2013*
- C. The Second party informed the First party that construction of the building could not be started due to delay in granting approvals for construction under various Laws by the Authorities. Therefore, the said MOU is required to be extended for further period of 5 years.*
- D. Both the parties agreed to extend the terms of MOU dated 01.04.2008 for further period of 5 years without any change in other terms and conditions”.*

**XXX**

- 3. That the First party has already given the security to Second party of Rs. 136.92 crores (One Hundred and Thirty Six Crores and Ninety Two Lakhs) for the purchase of commercial*



*floors/space from Second party as and when construction be complete.*

4. *That the Second party could not construct the building on Plot No. 5, Tolstoy Marg, Connaught Place, New Delhi due to delay in receiving the various approvals for construction under various applicable Laws from Authorities.*
5. *That the First party agreed to renew the terms and conditions of MOU, dated 01.04.2008 for further period of 5 years without any change.”*

**17.** As can be seen from the aforementioned MoU, the FC paid an amount of Rs. 136.92 Crores to the CD as security amount. Now, coming to Agreement dated 02.09.2015, as can be seen therefrom, parties had an understanding for balance payment of Rs. 88,08,00,000 (Rupees Eighty Eight Crores Eight Lakh only). It is also mentioned in the Supplementary Agreement that the period for completion of construction was extended by five years i.e. upto 31.03.2023. The relevant excerpt of the Supplementary Agreement reads thus:-

*“**WHEREAS** Parties have entered into Memorandum of Understanding on 1 April 2008 and 1 April 2013 which are valid upto 31 March 2018, wherein the Second Party agreed to sell office space in the Property owned by the Second Party after redevelopment of the building bearing Plot No. 5, Tolstoy Marg, Connaught Place, New Delhi 110 001 on the terms and conditions as agreed in the said MOU.*

***AND WHEREAS** the second Party is contemplating to again apply for sanction of the building plan and thereafter commence construction which requires sufficient funds.*

***AND WHEREAS** in keeping with the understanding already executed between the parties and in keeping with subsequent discussion on*



*the basis of tentative plan prepared for the building to be constructed on the said Property, the Second Party has offered to allot in favour of the First Party commercial space measuring 50,000 Sq. ft. (approximately) of super area on the 3rd, 4th 5th 6th, 7th and 8 Floor of the new building without any roof right on the terms and conditions as written here under.*

***NOW THIS DEED OF AGREEMENT WITNESSETH AS UNDER:-***

- 1. That the Second Party has agreed to allot commercial space admeasuring measuring 50,000 Sq. ft. (approximately) of super area on the 3rd, 4th 5<sup>th</sup> 6th, 7th and 8th Floor in the newly Constructed building in favour of the First Party at Rs. 45,000/- (Rupees Forty Five thousand only) per sq. ft. of super area for a total consideration of Rs. 225,00,00,000 (Rupees Two Hundred Twenty Five Crores only).*
- 2. That out of the total sale consideration, the first party had already paid a sum of Rs. 136,92,00,000/- (Rupees One Hundred Thirty Six Crores Ninety Two lakhs only)*
- 3. That the balance payment of sum of Rs. 88,08,00,000 (Rupees Eighty Eight Crores Eight Lakh only) shall be paid in 18 months installments commencing from 01.10.2015 and the time of payment is the essence of the Agreement. The first seventeen installments shall be of Rs. 5,00,00,000 (Rupees Five Crore only) each and remaining last installment i.e eighteen installment shall be of Rs. 3,08,00,000/- (Rupees Three Crore Eight Lakhs only).*
- 4. That subject to Force Majeure, the second party shall commence and complete and obtain the completion certificate within a period of five years from the date of receipt of all requisite approvals and permission from the competent authorities for commencement of the construction.*



5. *That it has been agreed by the First Party that balance payment shall be made by the First party within a period of eighteen months commencing from 01.10.2015, since the Second Party requires funds to settle various claimants and also meet preconstruction costs. It is upon this assurance and undertaking of the First Party, the Second Party is taking all steps in this regard. The First party do hereby agree and undertake to discharge his obligation for facilitating the Second party to take steps for obtaining various approvals.*
6. *That in the event of delay in payment, the First Party shall be liable to pay interest @18% for delayed period.*
7. *In the event the First Party fails to pay the balance on or before by 31 March 2017, the Second Party's at its sole discretion may forfeit the entire amount received till that date and terminate the agreement without any act or action by the Second Party.*
8. *That on termination of the agreement by the Second Party, the First Party shall not have any claim of any nature against the Second Party, its Directors, its Shareholders, Employees on allotted space, or any part of the building in any manner.*
9. *This Agreement is not and shall not be deemed to be constituted as a partnership between parties hereto nor will the same be deemed to constitute one as the agent of the other.”*

**18.** Apparently, it is not the case of the CD that it offered the space mentioned in the Supplement Agreement (S.A.) to the FC either before 31.03.2023 or till now. Thus, having not offered the space as above, the CD committed the default at least towards the security amount. In **Global Credit Capital Limited & Anr. vs. Sach Marketing Pvt. Ltd. & Anr.** in Civil



Appeal No. 1143 of 2022 dated 25.04.2024, Hon'ble Supreme Court ruled thus:-

*“18. Therefore, we have no hesitation in concurring with the NCLAT's view that the amounts covered by security deposits under the agreements constitute financial debt. As it is a financial debt owed by the first respondent, sub-section (7) of Section 5 of the IBC makes the first respondent a financial creditor.”*

**19.** The view taken by the Hon'ble Supreme Court as above could be followed and reiterated by Hon'ble NCLAT in **Mr. Ram Ratan Modi vs. Sumangal Dealmark Pvt. Ltd. & Anr.** in Company Appeal (AT) (Insolvency) No. 2018 of 2024. The relevant excerpt of the judgment reads thus:-

*“47. Once the Corporate Debtor has acceded to the nature of the transaction being a financial debt', it cannot later resile from it on the ground that it is payable only after the purported completion of the project, wherein the Corporate Debtor is yet to obtain basic necessary permits. It is submitted that in a similarly placed matter, the Hon'ble Supreme Court in **Global Credit Capital Limited & Anr. v. Sach Marketing Pvt. Ltd. & Anr. 2024 INSC 340** has reiterated the settled principles of law in order to determine whether a security deposit and its underlying interest could be construed as 'financial debt' under Section 5(8) of IBC, 2016.*

*48. Upon the demand of the disbursed amounts by the FCs vide letter dated 23.11.2022 and the subsequent termination of the Agreement dated 18.02.2014 by the Corporate Debtor on 24.12.2022, the debt of INR 13.20 crores and the interest thereupon became due and payable and the non-payment of the same is a default on part of the Corporate Debtor. There is no basis in either law or in fact for the Corporate Debtor to not repay the defaulted amount of INR 13.20 crores and accrued interest.*



49. There is no clause in the agreement entitling the Corporate Debtor to forfeit the said security deposit. The Appellant has made no case to rebut the undisputable fact that after the Corporate Debtor itself terminated the Agreement dated 18.02.2014, the financial assistance granted to it became due and payable upon the termination of the Agreement dated 18.02.2014 vide letter dated 24.12.2022. The Corporate Debtor cannot be allowed to retain the money to its advantage and to the detriment of the FCs. The same has also been succinctly held by the NCLT in para 7.16 of the impugned order:

"7.16. Once, the agreement is terminated the corporate debtor cannot hold on to one Clause of the same agreement which allows him to refund the amount upon completion of the project. Moment there is no denial by the corporate debtor that he has received 13.2 crores from the financial creditor, the same will have to be returned to them, upon termination of the agreement that too by the corporate debtor unilaterally on 24.12.2022."

50. Appellant's contention that the Section 7 proceedings are a counter-blast to the ongoing arbitration proceedings is without any basis in law inasmuch pending arbitral proceedings do not bar a FC to institute proceedings under IBC, 2016 against a defaulting Corporate Debtor. Rather, it is submitted that the Corporate Debtor's invocation of arbitration is nothing else but an abuse of process of law to avoid its liabilities arising from the financial assistance. In any case, it is well settled that insofar as the application under Section 7 of the IBC are concerned, any dispute raised by the Corporate Debtor is irrelevant in consideration of the debt and default of the Corporate Debtor in repayment thereof.

51. Appellant's fallacious and hyper-technical contention that since the financial agreement dated 18.02.2014 stipulated disbursement of security deposit without any interest, and thus, the transaction cannot be construed as a financial debt, has no basis in fact or in law. It is submitted that the Corporate Debtor has already treated the disbursement as a loan carrying interest by paying TDS for the



interest accrued on the loan disbursed by Respondent No. 1, the said stand cannot later be resiled from vis-à-vis loans availed from other FCs under the Agreement dated 18.02.2014.

52. Hon'ble Supreme Court in para 31 of **Orator Marketing v Samtex Desinz Pvt Ltd**. Civil Appeal No. 2231 of 2021 has settled the law in this regard that financial assistance even though it may not carry interest, can still qualify to be a financial debt under Section 5(8) of IBC, 2016.

53. In light of the above, it becomes clear that the amounts disbursed by the FCs to R-5/ Corporate Debtor, to the tune of INR 13.20 crores (being the principal amount) and its accrued interest is the 'debt' due and payable by R5/ Corporate Debtor to the FCs. The 'default' of R-5/ Corporate Debtor is also evident from the record inasmuch it failed to meet its obligations under the Agreement dated 18.02.104, including getting building plans sanctioned and developing the premises within three years, failing to refund the financial assistance disbursed by the FCs and also being unable to repay the FCs profits in the ration of 50:50. The Corporate Debtor further committed a default when it failed to repay the FCs the disbursed amount and the accrued interest, even after terminating the Agreement dated 18.02.2014 itself.

54. Corporate Debtor repeatedly and consistently admitted that amount disbursed to it by the FCs was in the nature of 'financial assistance' in its correspondences with the FCs, its own pleadings before the Arbitral Tribunal in an arbitration which it initiated, and most pertinently, in its reply before the NCLT as well as its Appeal before this Hon'ble Appellate Tribunal. Now the CD cannot contend that the amounts so disbursed were not in the nature of a 'financial debt' under Section 5(8) of IBC, in light of its own treatment of the funds as 'financial assistance' for development of the project premises. NCLT has rightly deduced that the factum of disbursal is



*not denied by the CD. Nor has the CD denied disbursement before this Hon'ble Tribunal. Moreover, the CD has not taken a single ground in its appeal before this Appellate Tribunal to sufficiently rebut the finding of the NCLT that the profit sharing of 50% amounts to consideration for time value of money disbursed by the CD, making the amounts disbursed a financial debt.*

*55. There are numerous judgements of this Appellate Tribunal as well as the Hon'ble Supreme Court wherein disbursal for the purposes of funding, against consideration for time value of money, even under the nomenclature of Security Deposit, has been held to be in the nature of 'financial debt' under Section 5(8) of IBC.*

*56. The Corporate Debtor raised a fallacious plea before the NCLT that the disbursed amounts were not in the nature of financial debt'. However, the nature of the disbursements being that of 'financial assistance' is an undisputed fact, even as per the CD's own admissions and pleadings.*

*57. Independent and separate from the above admissions by the CD of the amount disbursed being towards "financial assistance", the CD has also repeatedly admitted in various letters and pleadings that the finance for the project included furnishing of SD and that it utilised the amount of ₹13.20 crores disbursed by Respondents No. 1-4 towards development of the property.*

*58. As an afterthought and a counterblast to its innumerable admissions, CD has relied upon a single and stray statement of the FCs in their Statement of Defence and Counter Claim ('SOD/CC') before the Arbitral tribunal to contend that the disbursement of SD is an obligation independent of the disbursement of funds for construction of the project. It is most pertinent to note that it is not open for the CD to contend that the amounts disbursed to it was merely in the nature of SD and not financial assistance for construction of the project, in light of its own repeated admissions in*



correspondences with the FC, pleadings before the Arbitral Tribunal, NCLT as well as its treatment of the funds disbursed by the FCs towards construction and development of the project. Admittedly, Clauses 3, 6 and 7 of the Agreement have to be read harmoniously. While Clauses 3 and 7 stipulates that the FCs will make available funds to the CD from time to time for meeting costs of construction, not a single document has been brought on record either before the NCLT or before this Appellate Tribunal which establishes that CD asked for more funds, which fact has not been refuted by the CD.

59. Additionally, after CD itself unilaterally terminated the agreement, it has no right to retain the amounts paid. The impugned judgement in paras 7.16 records that the moment there is no denial by the CD that he received money, upon termination, money has to be returned.

60. Notably, there is no survival clause in the agreement which saves certain obligations after termination of the said the agreement. The CD has raised several fallacious and hyper technical objections that since the Agreement stipulated that the financial assistance by the FC of INR 13.20 crore disbursed to CD was interest free, the same cannot be a financial debt, which contention has been rejected by the Supreme Court by holding that financial assistance even without interest, can still qualify to be a financial debt in **Orator Marketing Pvt. Ltd. v. Samtex Desinz Pv. Ltd (2021 SCC OnLine SC 513, paras 29 and 31)**.

**XXXX**

74. We begin with the first question of whether the amount of ₹13.20 cron disbursed constitutes a financial debt under Section 5(8) of the Code or n Before proceeding further, it would be instructive to note the definition financial debt as per the Code which is reproduced as follows:



“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;

(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;

.....

(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 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;

(i) 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;

*The definition of financial debt as reproduced above clearly indicates to include debt and interest, if any.”*

**20.** Apparently, it is nowhere mentioned either in MoU or Supplementary Agreement that on non-payment of balance amount, security amount could



be forfeited. Besides, since the CD never offered the possession of the space to purchase which security amount was paid by the FC to it, there could be no question of forfeiture of the same.

21. Now, coming to the issue of the amount of Rs. 136.92 Crores being treated as long term loan. Apparently, in the Balance Sheet of the CD for the year 2021, the amount of Rs. 136.92 Crores has been reflected as advance for construction security/Long term borrowing. The relevant excerpt of the Balance Sheet reads thus:-

<b>ATMA RAM HOUSE INVESTMENT PRIVATE LIMITED</b>		(Figure in 00's)	
<b>NOTES TO ACCOUNTS</b>		<b>31.03.2022</b>	<b>31.03.2021</b>
<b>NOTE - 4 LONG TERM BORROWINGS</b>			
Unsecured Loan			
From Corporate Bodies		32 81 306	36 18 152
		<u>32 81 306</u>	<u>36 18 152</u>
<b>NOTE - 5 TRADE PAYABLE</b>			
Total outstanding dues of Micro and Small Scale Industrial Enterprises			
Less Than 1 Year			
1-2 Years			
2-3 Years			
More than 3 Years			
Total outstanding dues of Creditors other than Micro and Small Scale Industrial Enterprises			
Less Than 1 Year			
1-2 Years			
2-3 Years			
More than 3 Years			
Total outstanding dues of Micro and Small Scale Industrial Enterprises - Disputed			
Less Than 1 Year			
1-2 Years			
2-3 Years			
More than 3 Years			
Total outstanding dues of Creditors other than Micro and Small Scale Industrial Enterprises- Disputed			
Less Than 1 Year			
1-2 Years			
2-3 Years			
<b>NOTE - 6 OTHER CURRENT LIABILITIES</b>			
Electricity Expense Payable		-	882
Water Expenses Payable		-	101
Power & Fuel Charges Payable		83	-
Book Keeping Charges Payable		80	-
Travelling Expenses Payable to Director		-	5
Audit Fee Payable		250	177
Advance for Constructions (Security)		1 36 92 000	1 36 92 000
		<u>1 36 92 336</u>	<u>1 36 93 165</u>



**22.** In the wake of the aforementioned, there is no doubt that the CD is liable to pay the aforementioned amount to the FC and having not paid the same on demand, it committed a default. As far as issue of limitation is concerned, the liability being acknowledged in the financial statement of 2021, the application filed in the year 2024 is within the limitation. Looking at the issue from another angle, having not given the possession of booked premises for which security amount was paid by the FC, the CD committed default in 2023. From this point of view also, the IB-128/(PB)/2024 is within limitation.

**23.** As far as the issue of filing of application by SRA is concerned, indubitably, it is the claim of the CD and the representation of the CD by original management or RP or Monitoring Committee or SRA would not make any difference. Rather we are appalled and dismayed to note that the RP could not discharge his function diligently.

**24.** We also note that the Applicant had reported the default to NeSL and the NeSL issued Form D, which reads thus:-

**NeSL** NATIONAL E-GOVERNANCE SERVICES LIMITED  
India's Best Information Utility

**FORM D  
RECORD OF DEFAULT (RoD)**

*(Issued By information utility under sub-regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)*

This Record of Default is issued to the Financial Creditor M/s BHUSHAN POWER & STEEL LIMITED in respect of the default of debt as per details given below-

(a) Name of the Submitter:	M/s BHUSHAN POWER & STEEL LIMITED
(b) Schedule-2 Bank (Y/N):	N
(c) Name of Corporate Debtor:	M/s ATMARAM HOUSE INVESTMENTS PVT. LTD.
(d) Unique Debt Identifier Number:	AAACB9760D_NA
(e) Registered Address:	F-Block, 1st Floor International Trade Tower, Nehru Place, New Delhi-110019, India
(f) Total Outstanding Amount:	2413000000.00
(g) Default Amount:	2413000000.00
(h) Date of Default:	01-04-2018
(i) Status of Authentication of Default:	DEEMED TO BE AUTHENTICATED
(j) Date of Last Acknowledgement of Debt (AoD):	Not Available



Filing of Default (Submission ID No.)	Submitted on	Status of Authentication (Authenticated / Disputed / Deemed to be authenticated)	Authentication completed on
(1)	13-11-2023 17:22:03	*DEEMED TO BE AUTHENTICATED Colour Code :YELLOW	29-11-2023 00:07:04

NeSL is authorized to issue this record of default and has accordingly affixed its digital signature, as per the provisions of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, Guidelines for Technical Standards for Performance of Core Services and Other Services and the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2017.

25. As could be ruled by Hon'ble NCLAT (Principal Bench), New Delhi, in **Vipul Himatlal Shah & Anr. vs. Teco Industries and Anr.** in Company Appeal (AT) (Insolvency) No. 470 of 2022, in case the record of IU shows that there is debt which is in default, the Adjudicating Authority is not required to further examine the record maintained by the IU. Para 16 of the order reads thus:-

*“16. In the light of the detailed discussion as above, it is clear that in case the record of Information Utility shows that there is a debt which is in default, the Adjudicating Authority or the Appellate Authority are not required to further examine the record maintained by the Information Utility, moreso when the record of the Information Utility is deemed authenticated and no dispute or refutation of said record has been done by the corporate debtor earlier. We also note that in the judgment of **Rushabh Civil Contractors Pvt. Ltd. vs. Centrio Lifespaces Ltd. (supra)**, which has been cited by the Learned Counsel for Appellant, the record that formed the basis for financial debt and default was found to be forged and fabricated, which is not the case in the present appeal. Therefore, this judgment does not come to the rescue of the Appellant.”*

26. During the course of hearing, Mr. UK Chaudhary, Ld. Counsel for the CD submitted that the transaction between a holding company and a



subsidiary company could at best be alleged by the financial creditor as avoidance transaction, thus the appropriate remedy could be to move the PUFEE application. May be the RP could be watchful to move such applications at appropriate stage, but merely because he failed to do so, the CD cannot be deprived of its entitlement under IBC to initiate process for resolution of insolvency of the CD by espousing its cause in accordance with law. The concern that the amount referred to by the Applicant as debt and default was not included in the Information Memorandum (IM) and had not been taken into account by the SRA, while submitting the resolution plan can be addressed appropriately and the same cannot be ground to nix the CIRP.

**27.** In the totality of the facts and circumstances of the case, we are left with no option but to admit the application. Ordered accordingly.

**28.** As proposed by the Petitioner **Santanu T. Ray** having Registration No. IBBI/IPA-002/IP-N00360/2017-2018/11055 & email santanutray@gmail.com is appointed as IRP. It is further ordered that **Mr. Santanu T. Ray** shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016. There would be moratorium in terms of the provisions of Section 14(1)(a-d) of IBC, 2016, qua the CD.

**29.** The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to



adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

**30.** A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Applicant/Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

**31.** In the peculiar facts of the case, it is directed that the Applicant before us would submit its claim before RP jointly with the creditor with maximum vote share in the CoC qua the Applicant and the amount offered to be distributed to the Applicant in the resolution plan would be given to the creditors qua the Applicant as per Section 53 of IBC, 2016.

**Sd/-**  
**(RAVINDRA CHATURVEDI)**  
**MEMBER (T)**

**Sd/-**  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**