NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 2040 of 2025

[Arising out of Orders dated 15.12.2025 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court – II), in C.P. (IB) No.474/ND/2025]

IN THE MATTER OF:

Bindu Kapoor
(Suspended Director)
Bliss Abode Pvt. Ltd. **...Appellant**

Versus

Sapan Mohan Garg
Interim Resolution Professional
Bliss Abode Pvt. Ltd. & Ors. **...Respondents**

Present:

For Appellant : **Mr. Krishnendu Datta, Sr. Advocate with Mr. Abhay Chattopadhyay, Mr. Udipto Koushik Samrah, Mr. Kumar Shubham and Mr. Harsh Gurbani, Advocates.**

For Respondents : **Mr. Sandeep Bajaj, Ms. Aakanksha Nehra, Mr. Raj Shakya and Mr. Shubham Jaiswal, Advocates for R-1.**

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Ritesh Kumar, Mr. Sidhant Kumar Marwah, Ms. Ekssha Kashyap, Mr. Shivam Sharan, Mr. Naman Gowda and Mr. Siddhant Ahirwal, Advocates for R-2.

Ms. Mamta Binani, Advocate for IRP.

WITH

Company Appeal (AT) (Insolvency) No. 585 of 2026

[Arising out of Orders dated 21.01.2026 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court – II), in C.P. (IB) No.585/ND/2025]

IN THE MATTER OF:

Bindu Kapoor
(Suspended Director)
Bliss House Private Ltd. **...Appellant**

Versus

Sapan Mohan Garg
Interim Resolution Professional
Bliss House Pvt. Ltd. & Ors. **...Respondents**

Present:

For Appellant : **Mr. Krishnendu Datta, Sr. Advocate with Mr. Abhay Chattopadhyay, Mr. Udipto Koushik Samrah, Mr. Kumar Shubham and Mr. Harsh Gurbani, Advocates.**

For Respondents : **Mr. Sandeep Bajaj, Ms. Aakanksha Nehra, Mr. Raj Shakya and Mr. Shubham Jaiswal, Advocates for R-1.**

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Ritesh Kumar, Mr. Sidhant Kumar Marwah, Ms. Ekssha Kashyap, Mr. Shivam Sharan, Mr. Naman Gowda and Mr. Siddhant Ahirwal, Advocates for R-2.

Ms. Mamta Binani, Advocate for IRP.

J U D G M E N T

ASHOK BHUSHAN, J.

These two appeals have been filed by the suspended director of the corporate debtor challenging two separate orders passed by the adjudicating authority (National Company Law Tribunal, New Delhi, Court – II) in C.P. (IB) No.474/ND/2025 dated 15.12.2025 & C.P. (IB) No.585/ND/2025 dated 21.01.2026. The adjudicating authority by the above two separate orders have admitted Section 7 application filed by the JC Flowers Asset Reconstruction Private Limited, the financial creditor herein. Appellant aggrieved by the above orders initiating Corporate Insolvency Resolution Process ("CIRP") proceedings against the corporate debtor has filed these two appeals.

2. Brief facts of the case giving rise to these two appeals are as follows:

Comp. App. (AT) (Ins.) No. 2040/2025

i. The corporate debtor – Bliss Abode Private Limited entered into Loan Agreement dated 13.07.2017 with Indibulls Housing Finance Limited for Rs.90 crore.

ii. 4 other Loan Agreements dated 05.10.2017 were entered between the corporate debtor and Indiabulls Housing Finance Ltd. for sum of Rs.75 crore, Rs.67 crore, Rs.60 crore and Rs.83 crore respectively.

iii. As security to the loan personal guarantees were executed by the appellant Ms. Bindu Kapoor and her husband Mr. Rana Kapoor. Deed of Hypothecation dated 08.08.2019 was executed.

iv. On 23.08.2019, Memorandum of Entry (MoE) was executed which is recorded the deposit of title deed of property being 40, Amrita Shergill Marg, New Delhi with IDBI Trusteeship Services Limited as security trustee.

v. On 09.03.2020, a loan recall notice was issued to the corporate debtor – M/s. Bliss Abode Private Limited, appellant Ms. Bindu Kapoor and Mr. Rana Kapoor stating that event of default has occurred, hence the lender recall the outstanding loan totalling to Rs.388,42,96,875/- which need to be paid within 5 days from date of receipt of the notice. No payments were made in response to the loan recall notice.

vi. Notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 18.06.2020. The lender also initiated arbitration proceedings against the corporate debtor Bliss Abode Private Ltd., M/s. RAB Enterprises (India) Pvt. Ltd., Mr. Rana Kapoor and Ms. Bindu Kapoor.

vii. The sole arbitrator gave an arbitration award dated 28.02.2023 in favour of lenders holding that claimants are entitled to recover INR 453,75,24,066/- along with the interest from 19.06.2020 till date of payment. Certain other claims were allowed.

viii. Corporate debtor filed an application under Section 34 of the Arbitration & Conciliation Act, 1996 against the award dated 28.02.2023, which is stating to be pending before the Delhi High Court. The Delhi High Court has not passed any interim order in Section 34 application.

ix. The financial creditor has also filed application – Execution Petition under Section 36 of the Arbitration & Conciliation Act, 1996 seeking execution of the award on 20.11.2023.

x. On 29.03.2025, Indiabulls Housing Finance Ltd. executed an Assignment Agreement in favour of JC Flowers Asset Reconstruction Pvt. Ltd.

xi. On 23.07.2025, the financial creditor filed a Section 7 application being C.P. (IB) No.474/2025 alleging the total amount of Rs.453,75,24,066/- along with TDS and interest @11.25% per annum. In Section 7 application Part IV, the lenders have pleaded the details of sanctioned

loan disbursement, loan recall notice dated 09.03.2020 as well as the arbitration award dated 28.02.2023.

xii. Notices were issued in Section 7 application, to which reply was filed by the corporate debtor objecting to Section 7 application. Adjudicating authority after hearing the parties vide order dated 15.12.2025 admitted Section 7 application and appointed the Interim Resolution Professional (**"IRP"**), aggrieved by which order, Comp. App. (AT) (Ins.) No.2040/2025 has been filed.

Comp. App. (AT) (Ins.) No. 585/2026

i. Loan Agreement dated 05.09.2018 was entered into between Bliss Abode Pvt. Ltd., the corporate debtor with Indibulls Housing Finance Ltd. for Rs.75 crore.

ii. Further Agreement dated 29.03.2019 was entered between the corporate debtor and Indiabulls Housing Finance Ltd. for sum of Rs.105 crore. The common deed of guarantee was executed by appellants Ms. Bindu Kapoor and Mr. Rana Kapoor.

iii. Mortgage deed was executed in favour of security trustee, mortgaging the Duplex Apartment No. 5 on 15th & 16th Floor at a project named as Sesen, owned by a related party – Imagine Residence Private Limited.

iv. On 09.03.2020, Indiabulls Housing Finance Ltd. issued a loan recall notice asking the corporate debtor to repay the outstanding amount of Rs.189,27,34,375/- along with the TDS and interest within 5 days from receipt of the notice.

v. The corporate debtor also initiated arbitration proceedings which finally concluded on 08.05.2021, where sole arbitrator gave an award in favour of lenders, which arbitration proceeding was concluded on 28.02.2023. Against the award, corporate debtor has filed Section 34 application before the Delhi High Court which is pending.

vi. Assignment was made by Indiabulls Housing Finance Ltd. in favour of JC Flowers Asset Reconstruction Pvt. Ltd. on 29.03.2025. Section 7 application was filed by the financial creditor on 24.10.2025 claiming outstanding amount of Rs. 258,74,50,829/-.

vii. Notices were issued by the adjudicating authority to which reply was filed by the corporate debtor. Adjudicating authority after hearing the parties vide order dated 21.01.2026 admitted C.P. (IB) No.585/ND/2025 and appointed the IRP, aggrieved by which order, Comp. App. (AT) (Ins.) No.585/2026 has been filed.

viii. Both the Section 7 applications filed by the financial creditors relied on 2 separate loan recall notice dated 09.03.2020 issued to the corporate debtor.

3. We have heard learned Sr. counsel Mr. Krishnendu Dutta appearing for the appellant in both the appeals as well as learned Sr. counsel Mr. Abhijeet Sinha appearing for the financial creditor and learned counsel appearing for the IRP.

4. Learned Sr. counsel Mr. Krishnendu Dutta appearing for the appellant challenging the orders impugned in these appeals submits that very basis of

initiating proceedings under Section 7 of the Insolvency & Bankruptcy Code, 2016 (for short the **'Code'** or the **'IBC'**) are baseless. It is submitted that NCLT failed to consider that there was no default in payment by the corporate debtor. As per the Loan Agreement, the corporate debtors were discharging liability to pay interest and there was no default committed in payment of the interest. Thus, financial creditor has unreasonably recall the loans on 09.03.2020 within few hours of personal guarantors arrest on 08.03.2020 (arrest of Rana Kapoor husband of the appellant). Liability of personal guarantor only arises when the principal borrower fails to repay the debt. There was no default on the part of the corporate debtor as per Loan Agreement. FIR against the personal guarantor registered subsequently on 13.03.2020 and assets were attached by Directorate of Enforcement only on 09.07.2020 valued for Rs.562 crore. NCLT failed to consider that debt and default had not been crystallized. The award in favour of the financial creditor in C.P. (IB) No.474/2025 was under challenge by filing Section 34 application by the corporate debtor, which is pending consideration before the Delhi High Court. Debt and default had not been crystallized in view of the challenge to award of Section 34. Section 7 was not maintainable on basis of uncrystallised award. The adjudicating authority failed to consider that financial creditor in C.P. (IB) No.474/2025 was seeking execution of the arbitration award by means of Section 7 proceeding which is impermissible. Financial creditor when failed to achieve the execution before the Delhi High Court, it proceeded to file Section 7 application. Further Section 7 application filed in C.P. (IB) No.474/2025 was barred by time.

5. Learned counsel for the appellant pressed the above noted submissions in support of Comp. App. (AT) (Ins.) No.585/2026 also claiming that loan recall notice being unfounded the entire proceedings initiated by financial creditor is without any basis and deserves to be set aside.

6. Learned counsel for the financial creditor refuting the submissions of the counsel for the appellant submits that recall notice issued on 09.03.2020 was based on contractual terms between the parties. On arrest of Mr. Rana Kapoor on 08.03.2020, there was material adverse effect on the repayment capacity of the obligors, financial creditor invoked Clause 12.1.8 read with Clause 12.2 of the Loan Agreement and issued the loan recall notice dated 09.03.2020. Corporate debtor failed to make the payment within time allowed. Arbitral award was also passed in favour of the lenders of Bliss Abode Pvt. Ltd. for an amount of Rs.453,75,24,066/- with TDS and interest, which award gave fresh period of limitation to the financial creditor. It is well settled that in the proceeding under Section 7 it has to be found out as to whether there exist debt and default or not. In event, the debt and default is proved, adjudicating authority is obliged to pass an order of admission of Section 7 application. The present is the case where both the corporate debtors have failed to pay any amount in response to loan recall notice. Further, even after the arbitral award dated 28.02.2023 the corporate debtor Bliss Abode Pvt. Ltd. did not pay any amount. Default by the corporate debtor was committed when they fail to make payment in response to loan recall notice dated 09.03.2020 which default still continue since no payments have yet been made by any of the corporate debtors for last six years. The fact that

lenders have filed an application before the Delhi High Court for execution of the award does not in any manner prohibit the lenders to file Section 7 application which is an independent remedy. Submission of the appellant that lenders are proceeding only for purposes of taking assets namely; 40 Amrita Shergill Marg, which is a valuable property, is incorrect. The mortgaged asset had already been provisionally attached under PMLA Act. The reliance of appellant on Regulation 2A(b) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (for short the **"CIRP Regulations, 2016"**) is also misplaced. The inquiry of the Section 7 of the IBC is limited to determining the existence of debt and default both having been established, the adjudicating authority has rightly admitted Section 7 application. More than 6 years have elapsed but the corporate debtor has not paid even a rupee. In the facts and circumstances of both these appeals, it is necessary to resolve the corporate debtor through insolvency resolution process under the IBC and both the appeals deserves to be dismissed with cost.

7. Learned counsel for both the parties have placed reliance on the judgments of this Tribunal and the Hon'ble Supreme Court, which we shall notice while considering the submissions hereinafter.

8. The loan recall notice dated 09.03.2020 was issued to the corporate debtors; Bliss Abode Pvt. Ltd. and Bliss House Pvt. Ltd. with guarantors Bindu Kapoor and Rana Kapoor. It is useful to notice the loan recall notice dated 09.03.2020 issued to the corporate debtor Bliss Abode Pvt. Ltd. and the said

personal guarantors. It is useful to extract the notice 09.03.2020 which is to the following effect:

> *"To* *Date: March 09, 2020*
>
> *1. M/s Bliss Abode Private Limited*
>
> *40, Amrita Shergill Marg New Delhi-110003 Corporate Identity Number: U70109DL2017PTC313912*
>
> *2. M/s RAB Enterprises (India) Private Limited*
>
> *15th Floor, Tower 2A, One Indiabulls Centre, Senapati Bapat Marg, Lower Parel, Mumbai-400013 Corporate Identity Number. U70101MH2005PTC153499*
>
> *3. Mrs. Bindu Kapoor*
>
> *427-428, 27th Floor, Samudra Mahal, Dr. A. B. Road, Worli, Mumbai-400018 Permanent Account Number: ALEPK8691A*
>
> *4. Mr Rana Kapoor*
>
> *427-428, 27th Floor, Samudra Mahal, Dr. A. B. Road, Worli, Mumbai-400018*
>
> *Permanent Account Number: AHIPK0411A*
>
> *5. M/s. Imagine Realty Private Limited*
>
> *15th Floor, Tower 2A, One Indiabulls*
>
> *Centre, Senapati Bapat Marg, Lower Parel, Mumbai-400013 Corporate Identity Number: U70102M112008PTC178672*
>
> *6. M/s Bliss Habitat Private Limited*
>
> *15th Floor, Tower 2A. One Indiabulls*
>
> *Centre, Senapati Bapat Marg, Lower Parel, Mumbai - 400013 Corporate Identity Number: 70100M112016PTC316962*
>
> *Dear Sir/Madam,*
>
> *Subject: Notice under the Loan Documents and/or the applicable laws for, inter aliu, (a) Loan recall and pavment of all amounts under the Loan Documents and/or (b) sale/transfer/assignment/encumbrance of the Security/Securities provided under the Loan Documents and/or (c) invocation of guarantee(s)*

executed by the Guarantor(s) in favour of the Lender under the Loan Documents.

This has reference to the loan agreement(s) executed by (a) the Borrower(s) (as mentioned in Schedule I hereunder) (b) the Co-Borrower(s) (as mentioned in Schedule 1 hereunder) and (c) Indiabulls Housing Finance Limited (hereinafter referred to as the "Lender") for the loan(s) more particularly mentioned in Schedule I herminder and/or any amendment(s)/addendum(s) thereto ("Loan Agreement(s)"), the other Loan Documents and/or various letter(s), if any, exchanged between the Obligor(s) and the Lender.

Please note that Event of Default has/have already occurred under the Loan Documents as a result of, inter alia, Material Adverse Effect on account of occurrence of event which is likely to or prejudicially or adversely affect in any manner, the ability/capacity of the Obligor(s) to perform or comply with its obligations under the Loan Documents Kindly note that, as on March 09, 2020, the total outstanding Loan(s) amount along with the interest thereon is Rs. 388,42,96,875/- (Rupees Three Hundred Eighty Eight Crores Forty Two Lakli Ninety Six Thousand Eight Hundred and Seventy live only) in the aggregate, which is payable to the Lender under the Loan Documents. In addition to the aforesaid amount, TDS certificates of Rs. 4,36,46,048/- (Rupees Four Crore Thirty Six Lakh Forty Six Thousand Forty Eight only) is also to be submitted to the Lender under Loan Documents,

In view of the aforesaid and pursuant to the provisions of the Loan Documents, without prejudice to our other nights. and remedies, we hereby recall the outstanding Loan(s) and call upon you to forthwith pay us all the amounts payable to the Lender under the Loan Documents within five days from the date of receipt of this notice.

In case of failure on your part to comply with the aforesaid, without prejudice to our other rights/remedies and without any further notice to any of you,

(a) please treat this notice (issued under the Loan Documents and/or the applicable laws) as a notice of/for sale, disposing off, transfer, grant, conveyance, assignment and/or encumbrance of any fall of the

Security/Securities provided in favour of the Lender under the Loan Documents; and/or

(b) please treat this notice (issued under the Loan Documents and/or the applicable laws) as a notice for invocation of the guarantee(s) executed by the Guarantor(s) in favour of the Lender, and pursuant to which the Guarantor(s) shall be liable to forthwith pay to the Lender all amounts payable to the Lender under the Loan Documents (including the amounts specified above); and/or

(c) the lender shall be entitled to, inter alia, exercise other rights and/or enforce remedies (at your costs and risk) available under the Loan Documents and/or applicable laws to, inter alia, recover all amounts payable by you to the Lender under the Loan Documents.

Notwithstanding anything to the contrary, this notice shall prevail over and/or shall not be affected by any other correspondence, payments, actions, etc., in present or future, by or between you and the Lender, unless this notice is specifically withdrawn/annulled by the Lender in writing.

Any capitalized terms used and not defined herein shall have the same meaning as ascribed to such terms under the Loan Documents

We expect prompt action on your part."

9. Along with the notice, schedule was attached with respect to separate loan and the amount outstanding being Rs.388,42,96,875/- with TDS and interest, the loan recall notice has been issued as per loan agreement entered between the corporate debtor and financial creditor. It is useful to notice certain clauses of the loan agreement entered between Bliss Abode Pvt. Ltd. and financial creditor dated September, 2017. In the present case loan recall notice refers to material adverse change i.e., Clause 12.1.8. Clause 12.1.8 provides as follows:

"12.1.8 Material adverse change

> *Any event or circumstance occurs which the Lender believes is likely to have a Material Adverse Effect or if any circumstance or event occurs which in the opinion of Lender, would or is likely to prejudicially or adversely affect in any manner, the ability/ capacity of the Obligor(s) to perform or comply with its/their obligations under the Loan Documents and/or to pay/repay the Borrower's Dues or any part thereof."*

10. The Clause 12.1.8 provides that any event or circumstance which lenders believes is likely to have a material adverse effect or is likely to prejudicially or adversely affect in any manner, the ability or capacity of the obligors to perform or comply with their obligations under the loan documents. Material adverse effect and obligors are defined in loan agreement in following words:

> *" **"Material Adverse Effect"** means, a material adverse effect, in the opinion of the Lender on or affecting:*
>
> *(a) the business, operations, property or condition (financial or otherwise) of the Borrower(s);*
>
> *(b) the ability of the Obligor(s) to perform its/their obligations under the Loan Documents; or*
>
> *(c) the validity or enforceability of the Loan Documents or the rights or remedies of the Lender under the Loan Documents.*
>
> *"**Obligor(s)**" means the Borrower(s), the Hypothecator(s), the Guarantor(s), the mortgagor(s), the Pledgor(s) and/or any other persons providing Security to secure the Borrower(s)' obligations under the Loan Documents including the Borrower's Dues and/or who is or becomes a party (other than the Lender) to the Loan Documents."*

11. Guarantors are included into the definition of obligors both Rana Kapoor and Bindu Kapoor are admittedly the guarantors of the loan.

12. Learned counsel for the appellant questioned very issuance of loan recall notice. It is contended that the fact that one of the guarantors Rana

Kapoor was arrested on 08.03.2020 cannot be said to be any effect which is material adverse effect. The liability of guarantors arises only when borrower commits default in making payments of its obligation. In the present case, there was no default on the part of the borrower since the payments of interest was being made and principal amount was not due for payment, whereas on the other hand the counsel for the respondent submits that material adverse effect which is in the opinion of lender effect ability of the obligor to perform their obligation. Rana Kapoor one of the guarantors has been arrested and various criminal investigations had commenced that was material adverse effect within meaning of loan agreement. The expression material adverse effect has defined in loan agreement as noted above is a wise definition which in opinion of lenders affects various circumstances as enumerated in Clauses (a), (b) & (c). When Criminal investigation commenced against Rana Kapoor the promoter of the Yes Bank and the personal guarantor in the loan agreement and he was arrested on 08.03.2020, it cannot be said that formation of opinion by the lender that the said event is the material adverse effect can be said to against the contractual terms agreed between the parties. Lenders were entitled to exercise their contractual rights as provided in Clause 12.2 on consequence of an event of default is as follows:

> ***"12.2 Consequence of an Event of Default***
>
> *On and at any time after the occurrence of an Event of Default, Lender may, with or without any notice to any of the Obligor(s):*
>
> > *(i) cancel/recall the Loan whereupon the Loan and/or the Borrower's Dues shall become immediately repayable/payable by the Obligor(s); and/or*

(ii) initiate/exercise any or all of its rights, actions, remedies and powers under the Loan Documents and/or applicable laws (including issuance of show-cause notice(s) to the Obligor(s) and for making submissions before the relevant committee of the Lender); and/or

(iii) enforce, allot, sell, invoke, deliver, deal with, take possession, convey, transfer, assign, lease, sub-lease, encumber and/or dispose off in any manner (on terms and conditions including the sale/transfer price of the Security or any part/unit thereof as deemed fit by the Lender) any or all or part of the Security (with or without the intervention of the court/arbitrator) including mortgaged properties or any portion or unit thereof, Hypothecated Asset(s) or any portion or unit thereof and/or the Pledged/ Charged Shares, guarantees and demand promissory notes, and/or do such other things in relation to and/or with respect to the Security (any part thereof) which may be permitted under law."

13. We thus are of the view that no infirmity is found in issuance of loan recall notice dated 09.03.2020. The loan recall notice recalled the entire loan and asked the corporate debtor and obligors to make the payment within 5 days from receipt of the notice. Loan recall notice dated 09.03.2020 to M/s. Bliss Abode Pvt. Ltd. demanded a payment of amount of Rs.388,42,96,875/- , whereas, loan recall notice dated 09.03.2020 demanded the corporate debtor Bliss House Pvt. Ltd. an amount of Rs.189,27,34,375/-. We thus are of the view that submission raised by the counsel for the appellant that loan recall notice is not in accordance with the agreement between the parties cannot be accepted. The loan agreement between the financial creditor and Bliss Abode Pvt. Ltd. as well as Bliss House Pvt. Ltd. were both in the same terms relying on which, the loan recall notice against the corporate debtor was issued on 09.03.2020.

14. Learned counsel for the appellant in support of Comp. App. (AT) (Ins.) No.2040/2025 submits that the arbitration award dated 28.02.2023 which has been obtained by lender from the Arbitral Tribunal being under challenge under Section 34 of the Arbitration & Conciliation Act, 1996, and which has not attained any finality, the said award can never be basis of Section 7 application. We need to notice the pleading and basis of Section 7 application filed against Bliss Abode Pvt. Ltd. The copy of the Section 7 application in C.P. (IB) No.474/2025 is filed as Annexure A-21 to the Comp. App. (AT) (Ins.) No.2040/2025. In Part IV of the application after giving the details of the sanctioned and relevant clauses of the loan agreement under the heading **"Event of Default and Recall of Loan Facilities",** has made following averments:

"PART-IV

PARTICULARS OF FINANCIAL DEBT		
1	***TOTAL AMOUNT OF DEBT GRANTED AND DATE OF DISBURSEMENT***	***EVENT OF DEFAULT AND RECALL OF LOAN FACILITIES*** *10. During the tenure of the above Loan Agreements, the repayment ability of the personal guarantors i.e., Mr. Rana Kapoor and Mrs. Bindu Kapoor was materially affected and as per Clause 1.1 read with Clause 12.1.8 of the Loan Agreements as detailed above, an event of default was committed.* *11. The following events briefly describe the circumstances creating the material adverse effect and*

		the consequent recall of the loan facilities by SCL- *a. In the wake of multiple financial irregularities and allegations against the Personal Guarantors, a criminal investigation was initiated into the activities of the personal guarantors.* *b. The above criminal investigations led to the arrest of Mr. Rana Kapoor by the Directorate of Enforcement in relation to the offence of money laundering of assets.* *c. Subsequent thereto, the Central Bureau of Investigation initiated prosecutions against the Personal Guarantors and the same cases continue to remain pending as of date.* *12.In lieu of the above events, SCL formed a reasonable apprehension that the Corporate Debtor and its obligors had been materially affected in terms of Clause 12.1.8 and accordingly, an Event of Default had occurred as per Clause 12.2 of the Loan Agreements.* *13.As such, on 09.03.2020, SCL issued a Loan Recall Notice to the Corporate Debtor, recalling the loan facilities i.e., Loans 1 to 5 and called upon the Corporate Debtor and the obligors under*

		the Loan Agreement to repay an outstanding sum of Rs. 388,42,96,875/-, along with Rs. 4,36,46,048/- towards Tax Deductible at Source (TDS) within a period of 5 days i.e., on 14.03.2020, failing which SCL would the Loan Recall Notice would be treated as an invocation of all security documents and that SCL would be entitled to enforce such securities as offered by the Corporate Debtor and the obligors to recover the outstanding dues under Loans 1 to 5. A copy of the Loan Recall Notice dated 09.03.2020 issued by Sammaan Capital Limited to the Corporate Debtor and the obligors is annexed herewith and marked as ***Annexure P-11.***

15. Part IV also referred to the Arbitration Proceedings which culminated into arbitral award on 28.02.2023. In Part IV it was specifically pleaded that after loan recall notice did not pay any outstanding amount. Part IV pleads that default on the part of the corporate debtor subsist. In Part IV in paragraph 33, following has been pleaded:

"PART-IV

PARTICULARS OF FINANCIAL DEBT		
1	***TOTAL AMOUNT OF DEBT GRANTED AND DATE OF DISBURSEMENT***	*33.It is clear from the position set out above that the Corporate Debtor has defaulted in its obligations under the Loan Agreements for Loans 1 to 5 and as on 30.06.2025 the Corporate Debtor is in default of a sum of Rs. 922,46,13,471/-*

		(Indian Rupees Nine Hundred Twenty Two Crore Forty Six Lakhs Thirteen Thousand Four Hundred and Seventy One) ("Total Default Amount"). The default has been committed by the Corporate Debtor - *a. On 14.03.2020, when the Corporate Debtor failed to repay the outstanding sum in terms of the Recall Notice.* *b. On 18.09.2020, when the Corporate Debtor failed to repay the outstanding sum under the Loan Agreements in relation to Loans 1 to 5, in terms of the Demand Notice.* *c. Further, the default of the Corporate Debtor continued during the pendency of the arbitral proceedings, that is from 29.06.2020 till 28.02.2023.* *d. On 28.02.2023 when the Arbitral Award was passed against the Corporate Debtor and the quantum of the default under the Loan Agreements for Loans 1 to 5 was crystallized at INR 453,75,24,066/- to SCL along with interest ("Awarded Amount").* *e. On 29.05.2023 when the Awarded Amount was not repaid to SCL in terms of the timeline*

		stipulated under the Arbitral Award. *f. The default further continued when the Corporate Debtor and its Obligors failed to pay the Petitioner in accordance with the Legal Notice.* *g. The default is continuing as on date since neither the Corporate Debtor nor its Obligors have repaid the Default Amount under the Loan Agreements for Loans 1 to 5.* *A table containing the outstanding sums payable under the Loan Agreements for Loans 1 to 5 is annexed herewith and marked as Annexure P-17.*

16. Thus, the pleading is that default was claimed on 14.03.2020 which continues during the arbitration proceedings and after the arbitral award delivered on 28.02.2023, awarded amount was not paid.

17. Submission which has been pressed by the counsel for the appellant is that arbitral award is under challenge in Section 34 proceeding, it is not open for the lenders to file Section 7 application. Learned counsel for the appellant has relied on Regulation 2A of the CIRP Regulations, 2016 and submits that order of Court or Tribunal can be relied only where the period of the appeal of such order has expired that is when the said order has become final. It is submitted that order of the Arbitral Tribunal 28.02.2020 being under challenge under Section 34 of Arbitration & Conciliation Act, 1996 that

cannot be relied by the lenders for filing any Section 7 application. We have already noticed the pleadings in Part IV of Section 7 application against the Bliss Abode Pvt. Ltd. which indicate that application is not founded only on Arbitral Award rather that first default which is claimed by corporate debtor is default on loan recall notice dated 09.03.2020, when no payment was made by 14.03.2020. Section 7 application specifically relies on loan recall notice 09.03.2020. Thus, it cannot be said that application was filed only on basis of Arbitral Award. The Regulation 2A(b) which is relied by the appellant which provides that record or event of default by financial creditor which can be relied in support of Section 7 application. As noted above in the facts of the present case arbitral award is not the only basis for filing Section 7 application and default was committed on 14.03.2020 in response to loan recall notice, no amount was paid.

18. Learned counsel for the appellant further submitted that Section 7 application was filed to execute the award which is not permissible. Learned counsel for the appellant has relied on the judgment of this Tribunal in ***'Shaikh Mohammed Tariq' Vs. 'Aegis Forging Ltd.'*** reported in **[2022 SCC OnLine SC 4429].** The above was a case where Section 7 application filed by the financial creditor was rejected by the adjudicating authority and appeal was filed against the said order. This Tribunal relied on the judgment of the Hon'ble Supreme Court in ***'Vidarbha Industries Power Ltd.' Vs. 'Axis Bank Limited'*** reported in **[(2022) 8 SCC 352]** and held that admission of Section 7 application is not obligatory merely on proof of debt and default. The said order passed by this Tribunal relied by the appellant is as follows:

"Heard Learned Counsel for the Appellant.

This appeal has been filed against the order passed by the Adjudicating Authority rejecting Section 7 petition filed by the Appellant for initiation of CIRP.

The appellant's case is that on his personal guarantee the Creditor's investors gave some funds to the Corporate Debtor. The Appellant's further case is that on the basis of the said guarantee, arbitration proceedings were initiated and there is an award dated 11.11.2013 in favour of the Appellant which award has already been put into execution by the Appellant.

Adjudicating Authority after noticing the aforesaid fact has refused to admit Section 7 application.

Learned Counsel for the Appellant submits that the guarantee which was given by the Appellant is fully covered by Section 5(8)(i) of the Code which was a financial debt.

Be that as it may, the fact that there is already an award to pay Cash Security of Rs. 3,64,58,785/- with interest, which award has already been put in execution by the Financial Creditor, this was reason good enough to refuse admission of Section 7 application. It has now been laid down by the Hon'ble Supreme Court in Vidarbha Industries Power Ltd. v. Axis Bank Limited that admission of Section 7 application is not obligatory merely on proof of Debt. and default.

The facts as has been noticed by the Adjudicating Authority, as noted above are sufficient to refuse admission of Section 7 application. We thus are of the view that the appeal deserves to be dismissed.

Appeal is dismissed accordingly."

19. The above judgment which was delivered on 15.11.2022 does not help the appellant in the facts of the present case. Hon'ble Supreme court has clarified and explained the judgment of the Vidarbha Industries Power Ltd.' (supra) in subsequent judgments. It is relevant to notice the recent judgment of the Hon'ble Supreme Court in ***'Power Trust (Promoter of Hiranmaye Energy Ltd.)' Vs. 'Bhuvan Madan & Ors. (Interim Resolution Professional***

of Hiranmaye Energy Ltd.)' reported in **[2026 SCC OnLine SC 248],** where in paragraphs 33 & 34 following was laid down:

> ***"33.*** *Reiterating the ratio in Innoventive Industries Ltd. v. ICICI Bank [(2017) 205 Comp Cas 57 (SC); (2018) 1 SCC 407; (2018) 1 SCC (Civ) 356; 2017 SCC OnLine SC 1025.] , this court in E.S. Krishnamurthy v. Bharath Hi-Tech Builders P. Ltd. [(2022) 230 Comp Cas 226 (SC); (2022) 3 SCC 161; (2022) 2 SCC (Civ) 129; 2021 SCC OnLine SC 1242.] held as follows [See page 245 of 230 Comp Cas.] :*
>
> > *"The Adjudicating Authority has clearly acted outside the terms of its jurisdiction under section 7(5) of the Insolvency and Bankruptcy Code. The Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application, respectively. These are the only two courses of action which are open to the Adjudicating Authority in accordance with section 7(5). The Adjudicating Authority cannot compel a party to the proceedings before it to settle a dispute."*
>
> ***34.*** *In a similar vein, the Adjudicating Authority is not required to go into the inability of a corporate debtor to pay its debt. This is a clear departure from the scheme of winding up envisaged under section 433(e) of the erstwhile Companies Act, 1956 which required the Adjudicating Authority to come to a finding with regard to the inability of the company to pay the debt and thereby arrive at a requisite satisfaction whether it is just and equitable to wind up the company. The Code restricts the scope of enquiry for admission of an insolvency process by a financial creditor merely to the existence of default of a debt due and payable and nothing more. The legislative intent behind such prompt and summary intervention is "to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation [Swiss Ribbons P. Ltd. v. Union of India(2019) 213 Comp Cas 198 (SC); (2019) 4 SCC 17; 2019 SCC OnLine SC 73, paragraph 28.] ."""*

20. In ***'Elegna Co-op. Housing & Commercial Society Ltd.' Vs. 'Edelweiss Asset Reconstruction Co. Ltd. & Anr.'*** reported in **[2026 SCC OnLine SC 82],** Hon'ble Supreme Court has also again laid down that once it review the Section 7 that is debt and default is specified, admission must follow. Relevant paragraph of the judgment is as follows:

> ***"12.3.*** *The legal position is now well settled. In Innoventive Industries Ltd. v. ICICI Bank [[2017] 205 Comp Cas 57 (SC); (2018) 1 SCC 407; (2018) 1 SCC (Civ) 356; 2017 SCC OnLine SC 1025.] , this court held that once the Adjudicating Authority is satisfied that a financial debt exists and a default has occurred, it must admit the application unless it is incomplete. The inquiry under section 7(5)(a) is confined strictly to the determination of debt and default, leaving no scope for equitable or discretionary considerations.*
>
> ***12.4.*** *This principle was reiterated in E.S. Krishnamurthy v. Bharath Hi-Tech Builders P. Ltd. [(2022) 230 Comp Cas 226 (SC); (2022) 3 SCC 161; (2022) 2 SCC (Civ) 129; 2021 SCC OnLine SC 1242.] , wherein this court clarified that no discretion survives once default is established. Similarly, in Swiss Ribbons P. Ltd. v. Union of India [[2019] 213 Comp Cas 198 (SC); (2019) 4 SCC 17; 2019 SCC OnLine SC 73.] , this court reaffirmed that the trigger for the corporate insolvency resolution process is default, and the object of the Code is to ensure timely resolution to preserve enterprise value.*
>
> ***12.5.*** *The reliance placed by the corporate debtor on Vidarbha Industries Power Ltd. v. Axis Bank Ltd. [(2022) 233 Comp Cas 544 (SC); (2022) 8 SCC 352; (2022) 4 SCC (Civ) 329; 2022 SCC OnLine SC 841.] is wholly misconceived. That decision has consistently been recognised as a narrow exception confined to its peculiar facts, namely the existence of an adjudicated and realisable claim in favour of the corporate debtor exceeding the debt owed.*
>
> ***12.6.*** *This position now stands authoritatively clarified in M. Suresh Kumar Reddy v. Canara Bank [[2023] 22 Comp Cas-OL 586 (SC); (2023) 8 SCC 387; 2023 SCC OnLine SC 608.] , wherein this court held that Vidarbha Industries Power Ltd. v. Axis Bank*

Ltd. [(2022) 233 Comp Cas 544 (SC); (2022) 8 SCC 352; (2022) 4 SCC (Civ) 329; 2022 SCC OnLine SC 841.] does not dilute the binding ratio of Innoventive Industries Ltd. v. ICICI Bank [(2017) 205 Comp Cas 57 (SC); (2018) 1 SCC 407; (2018) 1 SCC (Civ) 356; 2017 SCC OnLine SC 1025.] and E.S. Krishnamurthy v. Bharath Hi-Tech Builders P. Ltd. [(2022) 230 Comp Cas 226 (SC); (2022) 3 SCC 161; (2022) 2 SCC (Civ) 129; 2021 SCC OnLine SC 1242.] Admission under section 7 thus remains mandatory once debt and default are established, with Vidarbha Industries Power Ltd. v. Axis Bank Ltd. [(2022) 233 Comp Cas 544 (SC); (2022) 8 SCC 352; (2022) 4 SCC (Civ) 329; 2022 SCC OnLine SC 841.] operating only in exceptional circumstances."

21. Learned counsel for the appellant further relied on the judgment of the Hon'ble Supreme Court in ***'P. Mohanraj & Ors.' Vs. 'Shah Brothers Ispat Pvt. Ltd.'*** reported in **[(2021) 6 SCC 258]** submits that in view of the moratorium which has commenced on admission of Section 7 application, the corporate debtor is precluded to pursue his Section 34 application. Hon'ble Supreme Court in the above case in paragraph 97 has laid down following:

"97. *Shri Mehta then relied upon Power Grid Corpn. of India Ltd. v. Jyoti Structures Ltd. [Power Grid Corpn. of India Ltd. v. Jyoti Structures Ltd., 2017 SCC OnLine Del 12189 : (2018) 246 DLT 485] , in which the Delhi High Court held that a Section 34 application to set aside an award under the Arbitration and Conciliation Act, 1996 would not be covered by Section 14 IBC. This judgment does not state the law correctly as it is clear that a Section 34 proceeding is certainly a proceeding against the corporate debtor which may result in an arbitral award against the corporate debtor being upheld, as a result of which, monies would then be payable by the corporate debtor. A Section 34 proceeding is a proceeding against the corporate debtor in a court of law pertaining to a challenge to an arbitral award and would be covered just as an appellate proceeding in a decree from a suit would be covered. This judgment does not, therefore, state the law correctly."*

22. Hon'ble Supreme Court in the above case has held that proceeding under Section 34 is a proceeding against the corporate debtor just as an appellate proceeding in a decree from a suit. It was held by the Hon'ble Supreme Court that said proceeding under Section 34 are also to be covered by Section 14 of the IBC. There can be no dispute to the proposition laid down by the above case. The mere fact that corporate debtor is unable to pursue Section 34 application in which corporate debtor has challenged the arbitral award dated 28.02.2023 cannot be a ground to admit Section 7 application which was also founded on default which was committed by the corporate debtor on 14.03.2020 even much before the arbitral award was delivered.

23. Learned counsel for the appellant has also relied on the recent judgment of the Hon'ble Supreme Court in ***'Anjani Technoplast Ltd.' Vs. 'Shubh Gautam'*** in **[Civil Appeal No.8247/2022]** decided on 23.04.2026. Reliance has been placed on paragraph 31 of the judgment. In paragraph 31 following has been held:

> ***"31.*** *We have considered the NCLAT's reliance on this Court's decision in Dena Bank (supra). It is true that in paragraph 141 of that judgment, this Court held that a decree for money in favour of a financial creditor would give rise to a fresh cause of action for initiating proceedings under Section 7 of the IBC. We do not doubt that proposition as a general statement of law. However, that principle does not operate in a vacuum. It does not mean that every decree holder who also happens to be a financial creditor is entitled, as a matter of right, to invoke the insolvency process in preference to execution. The question of whether, in each case, the invocation of the IBC amounts to misuse of the process or to the use of the Code as a recovery*

mechanism remains a question to be examined on the facts."

24. In the above case, Section 7 application which was rejected by NCLT was reversed by the NCLAT relying on money decree passed by the Delhi High Court. What was held by the Hon'ble Supreme Court that every decree holder who is the financial creditor is not entitled to as a matter of right to invoke the IBC. Thus, question as to whether in each case by invocation of the IBC amounts to abuse of on the process or to use the forum as a recovery mechanism are the question to be examined in the facts of each case. In the facts of the above case, where Hon'ble Supreme Court held that application under Section 151 of the CPC and proceedings under Section 340 of the CrPC are pending before the Delhi High Court, where the decree passed and in the above case it was held that CIRP process was abuse of the process. In paragraphs 32 & 33, Hon'ble Supreme Court held that Section 7 application in the facts of the said case was abuse of process. In the above circumstances, the order of the NCLT dismissing the Section 7 application was upheld. Judgment of the ***'Anjani Technoplast Ltd.'*** **(supra)** was based on its own facts and does not come to any aid to the appellant in the facts of the present case.

25. Learned counsel for the respondent has relied on the judgment of the Hon'ble Supreme Court in ***'Pioneer Urban Land & Infrastructure Ltd. & Anr.' Vs. 'Union of India & Ors.'*** reported in **[(2019) 8 SCC 416],** where it was held that financial creditor can take various remedy including Section 7 application. It was held that remedies under RERA Act are concurrent remedy. In paragraph 30 of the judgment, following was laid down:

"30. *As a matter of fact, the Code and RERA operate in completely different spheres. The Code deals with a proceeding in rem in which the focus is the rehabilitation of the corporate debtor. This is to take place by replacing the management of the corporate debtor by means of a resolution plan which must be accepted by 66% of the Committee of Creditors, which is now put at the helm of affairs, in deciding the fate of the corporate debtor. Such resolution plan then puts the same or another management in the saddle, subject to the provisions of the Code, so that the corporate debtor may be pulled out of the woods and may continue as a going concern, thus benefitting all stakeholders involved. It is only as a last resort that winding up of the corporate debtor is resorted to, so that its assets may be liquidated and paid out in the manner provided by Section 53 of the Code. On the other hand, RERA protects the interests of the individual investor in real estate projects by requiring the promoter to strictly adhere to its provisions. The object of RERA is to see that real estate projects come to fruition within the stated period and to see that allottees of such projects are not left in the lurch and are finally able to realise their dream of a home, or be paid compensation if such dream is shattered, or at least get back monies that they had advanced towards the project with interest. At the same time, recalcitrant allottees are not to be tolerated, as they must also perform their part of the bargain, namely, to pay instalments as and when they become due and payable. Given the different spheres within which these two enactments operate, different parallel remedies are given to allottees under RERA to see that their flat/apartment is constructed and delivered to them in time, barring which compensation for the same and/or refund of amounts paid together with interest at the very least comes their way. If, however, the allottee wants that the corporate debtor's management itself be removed and replaced, so that the corporate debtor can be rehabilitated, he may prefer a Section 7 application under the Code. That another parallel remedy is available is recognised by RERA itself in the proviso to Section 71(1), by which an allottee may continue with an application already filed before the Consumer Protection Fora, he being given the choice to withdraw such complaint and file an application before the adjudicating officer under RERA read with Section 88. In similar circumstances, this Court in Swaraj*

> *Infrastructure (P) Ltd. v. Kotak Mahindra Bank Ltd. [Swaraj Infrastructure (P) Ltd. v. Kotak Mahindra Bank Ltd., (2019) 3 SCC 620 : (2019) 2 SCC (Civ) 136] has held that the Debts Recovery Tribunal proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and winding-up proceedings under the Companies Act, 1956 can carry on in parallel streams (see paras 21 and 22 therein).”*

26. Learned counsel for the respondent has also rightly submitted that it is well settled that the decree gives a fresh period of limitation which has been laid down in ***‘Dena Bank’ Vs. ‘C. Shivakumar Reddy & Anr.’*** reported in **[(2021) 10 SCC 330],** as well as the judgment in ***‘Kotak Mahindra Bank Ltd.’ Vs. ‘A. Balakrishnan & Anr.’*** reported in **[(2022) 9 SCC 186].** In paragraph 28 of the judgment in ***‘Kotak Mahindra Bank Ltd.’*** **(supra),** following was laid down:

> ***“28.*** *It could thus be seen that this Court in Dena Bank [Dena Bank v. C. Shivakumar Reddy, (2021) 10 SCC 330] in SCC paras 136 and 141, has in unequivocal terms held that once a claim fructifies into a final judgment and order/decree, upon adjudication, and a certificate of recovery is also issued authorising the creditor to realise its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decree and/or the amount specified in the recovery certificate. It has further been held that issuance of a certificate of recovery in favour of the financial creditor would give rise to a fresh cause of action to the financial creditor, to initiate proceedings under Section 7 IBC for initiation of the CIRP, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the certificate of recovery, if the dues of the corporate debtor to the financial debtor, under the judgment and/or decree and/or in terms of the certificate of recovery, or any part thereof remained unpaid.”*

27. The submission of the appellant that application filed under Section 7 against Bliss Abode Pvt. Ltd. was barred by time cannot be accepted. There being an arbitral award dated 28.02.2023 in favour of the lenders, a fresh

cause of action shall accrue and the application is admittedly filed within 3 years thereafter and is within time.

28. In view of the foregoing discussions, we are of the view that no grounds have been made out to interfere with the order of the adjudicating authority admitting Section 7 application against the corporate debtor. Adjudicating authority has rightly come to conclusion that financial creditor has been able to prove the debt and default. It is relevant to notice that in last more than 6 years, no payments have been made by any of the corporate debtors despite outstanding debt which was communicated by loan recall notice dated 09.03.2020. Debt and default was proved that is continuing. We are satisfied that in the facts of the present case, corporate debtor requires resolution under the IBC.

29. We thus are of the view that no grounds have been made out to interfere with the impugned order. Both the appeals are dismissed.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

29th May, 2026

himanshu