IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

I.A. No. 2191 of 2021
In
CP No. (IB) 2104/ MB/ 2019

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

In the matter of

Reliance Commercial Finance Limited
Having its Registered Office at: Reliance Centre, 6th Floor, South Wing, Off Western Express Highway, Santacruz East, Mumbai- 400 055.

….. **Financial Creditor**

Vs.

SKIL Infrastructure Limited
(CIN: L36911MH1983PLC178299)
Having its Registered Office at: SKIL House, 209, Bank Street Cross Lane, Fort, Mumbai, Maharashtra- 400 023.

….. **Corporate Debtor**

Order delivered on: 10.02.2023

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)
Hon'ble Member (Technical) : Shri Shyam Babu Gautam

Appearances:

For the Financial Creditor : Adv. Ankit Lohia
For the Corporate Debtor : Sr. Adv. Vikram Nankani a/w Sr. Adv. Ashish Kamat

ORDER

Per: Shyam Babu Gautam, Member Technical

1. This Company Petition is filed by ***Reliance Commercial Finance Limited*** (hereinafter called "Financial Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against ***SKIL Infrastructure Limited*** (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the Financial Creditor. This Petition has been filed by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called "IBC") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The present Petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of an **aggregate amount** of **Rs. 123,24,89,773/-** (Rupees One Hundred and Twenty-Three Crores Twenty-Four Lakhs Eight-Nine Thousand Seven Hundred and Seventy-Three Only) including the **Principal amount** of **Rs. 98,02,00,000/-** (Rupees Ninety-Eight Crores Two Lakhs Only) and **interest** at the rate of 13.5% p.a. amounting to **Rs. 25,22,89,773/-** (Rupees Twenty-Five Crores Twenty-Two Lakhs Eighty-Nine Thousand Seven Hundred and Seventy-Three Only) till **22nd May 2019** forming part of the Financial Debt.

3. The Financial Creditor submits that they had disbursed the Principal amount to the Corporate Debtor under a **Facility Agreement dated 30.01.2018**. Thereafter, the Corporate Debtor failed to make the payments of the loan facility and accordingly the Financial Creditor demanded / recalled from the Corporate Debtor the entire Principal amount along with interest aggregating to Rs. 1,21,61,80,651/- (Rupees One Hundred and Twenty-One Crores Sixty-One Lakhs Eighty Thousand Six Hundred and Fifty-One Only) vide **Demand Notice date 09.05.2019**. Since the same remained unpaid, the Financial Creditor has presented the instant Petition.

4. The Financial Creditor submits that the Financial Creditor and the Corporate Debtor entered into a Facility agreement dated 30 January 2018 ("Facility Agreement") setting out the various terms and conditions governing the term loan facility of Rs. 98,02,00,000/- (Rupees Ninety-Eight Crores and two lakhs only) ("Loan facility") availed by the Corporate Debtor from the Financial Creditor and that the Corporate Debtor had agreed to repay the said loan facility along with interest at the rate of 13.5% p.a. by 1st February 2019. Since the Corporate Debtor failed to make the said payments, the Financial Creditor sent a Notice of default dated 09.05.2019 recalling the entire outstanding amounts immediately. The Financial Creditor relies upon the Balance sheet of the Corporate Debtor and further submits that the said loan amount is reflected in the Balance sheet of the Corporate Debtor and thus the same

amounts to admission/acknowledgement of debt on part of the Corporate Debtor.

5. The Corporate Debtor filed a **Reply dated 10th October 2019** and submits that the Petitioner is a non-banking finance company. For there to be a disbursement, the Petitioner ought to have demonstrated that on 9th March 2018, a sum of Rs. 98.02 Crores was credited into a bank account of the Corporate Debtor from its own bank account. That is the only manner in which the Financial Creditor could have proved the disbursal of the outstanding debt.

6. Further, the Corporate Debtor submits that for the Petitioner to assert a debt and a default, it was incumbent for them to have produced Bank Statements which would have reflected from the Petitioner's bank account, disbursal of Rs. 98.02 crores from the Petitioner's bank account to the Corporate Debtors' bank account either on 30.01.2018 or on 09.03.2018 for the same alleged loan. In fact, the Corporate Debtor has harped upon the fact that the said discrepancy is from the documents presented by the Financial Creditor himself and the Financial Creditor has not been able to establish the reason for the said discrepancy. The Corporate Debtor submits that the Financial Creditor has completely failed in demonstrating disbursement on either of these two dates.

7. Dealing with the annual reports and the balance sheet presented before us, the Corporate Debtor submits that the Corporate Debtor had, in the balance sheet for the year ending 31st March

2019, denied acknowledging any liability in respect thereof by way of a caveat by way of notes in the annual report wherein the specific claim which is a subject matter of the Petition is qualified as not being a liability accepted by the Corporate Debtor.

8. The Corporate Debtor has further challenged the authority of the personnel filing the present petition since Petition is signed by one Punit V. Thakkar who is stated to be the legal manager of the Financial Creditor and Punit V. Thakkar is himself not authorised to file the Petition since the Board Resolution dated 1st March 2019 purportedly authorises one Dhananjay Tiwari (Executive Director of the Financial Creditor) to file proceedings on behalf of the Financial Creditor. However, there is nothing in the resolution which specifically authorises him to file a petition in the National Company Law Tribunal especially under the Insolvency and Bankruptcy Code, 2016 ("IBC"). Also, the Board Resolution does not indicate any resolution / decision on the part of the Petitioner's board to file proceedings against the Corporate Debtor and there is no board resolution in favour of Mr. Punit Thakkar. Further, the Corporate Debtor has also challenged that the instrument on the basis of which the present petition is filed is insufficiently stamped and deserves to be impounded.

9. The Financial Creditor has filed a **Rejoinder dated 5th November 2019**. While dealing with the contention of the Corporate Debtor that the loan facility is not a financial

transaction, the Financial Creditor submits that the same is wholly irrelevant for determination of the present application and that the facility agreement entered into between the Applicant and the Corporate Debtor has no reference whatsoever of the purported arrangement between the Corporate Debtor and other entities party to the said purchase agreements referred to by the Corporate Debtor.

FINDINGS

10. We have heard the submissions of the Counsel appearing for the Financial Creditor and the Corporate Debtor at length. The Financial Creditor has produced account statement of the Corporate Debtor in the books of the Financial Creditor for the period from 22.05.2000 to 22.05.2019. The said account statement reflects entry dated 09.03.2018 for Rs. 98,02,00,000/- (Rupees Ninety-Eight Crores and two lakhs only). However, the bench observes that the mode and manner in which the disbursement was done to the Corporate Debtor is not reflected in the said account statement. The said Account statement seems to be from the year 2000, however, the Financial Creditor has claimed that the disbursement was made in the year 2018 and the Corporate Debtor has challenged that the Corporate Debtor was not even known to the Financial Creditor in the year 2000. The same is not rebutted by the Financial Creditor.

11. Since the disbursement of the principal amount is itself not shown, the question of the interest component demanded by the

Financial Creditor does not arise in our view. The Corporate Debtor has by way of an additional affidavit placed on records the bank account statements of the Corporate Debtor of the two active bank accounts maintained by the Corporate Debtor for the periods concerning 30.01.2018 and 09.03.2018 and has drawn our attention to the transaction concerning for the said period. We have perused the same and are satisfied that disbursement of the Principal amount has not been made as far as the said two active accounts are concerned by the Financial Creditor.

12. The Bench had sought from the Financial Creditor the details of the mode and manner in which the said claimed disbursement was made. Despite this, the Financial Creditor has not brought on record a single document to show the disbursement of the said loan facility to the Corporate Debtor. The Bench further observes that the Demand notice dated 09.05.2019 issued by the Financial Creditor recalling the entire loan facility reflects that the date of disbursement as per the demand notice was 30.01.2018 which is contrary to the account statement of the Corporate Debtor in the books of the Financial Creditor wherein the date of disbursement was reflected as 09.03.2018. The bench has not been satisfied on the actual date of disbursement since there cannot be multiple dates of disbursement for the said loan facility. Only in event of disbursement in tranches, there is a possibility of multiple dates, however, the same does not apply to the present case as the documents produced by the Financial Creditor and the

submissions advanced by the Financial Creditor has sought to establish that the disbursement was made in a single tranche.

13. The Bench further observes that the Facility Agreement dated 30.01.2018 which has been made at Delhi, despite both the parties (i.e. the Financial Creditor and the Corporate Debtor having their registered offices at Mumbai, records that the Corporate Debtor expressly agrees and undertakes that the Term Loan facility of upto Rs. 98,02,00,000/- (Rupees Ninety-Eight Crores and two lakhs only) shall be utilised exclusively for the purpose i.e. to meet its short-term working capital requirements. On the other hand, the Account statement produced by the Financial Creditor under Asset description mention balancing equipments/balancing equipment. The Corporate Debtor has vehemently argued that the Corporate Debtor is not engaged in the business of balancing equipment and the alleged loan is not even stated to be an equipment financed loan. Not only this but the Corporate Debtor has drawn our attention that in the said account statement it is stated that the tenure of the loan facility is 11 months and the frequency of payment of the instalments is monthly by way of Equated monthly instalments (EMI) whereas Schedule II (Repayment schedule) under the facility agreement mentions Bullet Principal and interest repayment at the end of the tenure. We have gone through the said documents and observe that there are various inconsistencies in the documents, which have been further arrayed by the Corporate Debtor in its additional Affidavit and the same not been refuted by the Financial

Creditor. We thus opine that the said disbursement was never made and hence there cannot be any question of repayment sought by the Financial Creditor.

14. At this stage, it is pertinent to refer to Section 7 of the Code which comes into play when a Corporate Debtor commits "default". Section 7, consciously uses the expression "default" - not the date of notifying the loan account of the corporate person as NPA. Further, the expression "default" has been defined in Section 3(12) to mean non-payment of "debt" when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or a corporate debtor, as the case may be. In the present case, the Financial Creditor has failed to prove the disbursement made and has further failed to prove the commission of default. We have perused Part IV of the Application and the relevant documents attached, however, the same mentions Date of Commencement of Default in Repayment of interest and Date of Commencement of Default in Repayment of Principal is 01.02.2019. Be that as it may, the Demand notice was issued by the Financial Creditor only on 09.05.2019 and no description of as to how and when the Corporate Debtor was declared as NPA is provided by the Financial Creditor in the said notice. Ordinarily, only when an account is declared as NPA the date of NPA can be taken as a date of default and accordingly action under Section 7 of the Code can be initiated by the Financial Creditor. In the present case, the Financial Creditor has even failed to satisfy the bench the date of default/date of NPA,

which is the second important criteria for a section 7 application after disbursement. Notwithstanding what we stated (supra) pertaining to the date of default, the fundamental factum remains that there is no disbursement and since there is no debt there cannot be any date of default in our view. As such the claim of Financial Creditor fails to fulfil the criteria of a financial debt under section 5(8) of IBC.

15. The Bench holds that the Financial Creditor has not only failed to demonstrate the disbursement made to the Corporate Debtor despite the same been sought by the bench but also has failed to establish the date of default. Not only this as far as the documents are concerned the same has plethora of inconsistencies which speaks for itself and thus, the Financial creditor has failed to satisfy the bench on the basic requirements for a section 7 Application i.e. disbursement from the Financial Creditor and the date of default.

16. The said proposition has been set by the Hon'ble Supreme Court in ***Pioneer Urban Land and Infrastructure Pvt. Ltd. & Anr. Vs. Union of India & Ors***. MANU/SC/1071/2019: (2019) 8 SCC 416 in the following paras:

"68. Thus, in order to be a "debt", there ought to be a liability or obligation in respect of a "claim" which is due from any person.

"Claim" then means either a right to payment or a right to payment arising out of breach of contract, and this claim can be made whether or not such right to payment is reduced to judgment. Then comes "default", which in

turn refers to non-payment of debt when whole or any part of the debt has become due and payable and is not paid by the corporate debtor. Learned counsel for the Petitioners relied upon the judgment in Union of India v. Raman Iron Foundry MANU/SC/0005/1974 : (1974) 2 SCC 231, and, in particular relied strongly upon the sentence reading:

"11....Now the law is well settled that a claim for unliquidated damages does not give rise to a debt until the liability is adjudicated and damages assessed by a decree or order of a court or other adjudicatory authority."

69. It is precisely to do away with judgments such as Raman Iron Foundry (supra) that "claim" is defined to mean a right to payment or a right to remedy for breach of contract whether or not such right is reduced to judgment. What is clear, therefore, is that a debt is a liability or obligation in respect of a right to payment, even if it arises out of breach of contract, which is due from any person, notwithstanding that there is no adjudication of the said breach, followed by a judgment or decree or order. The expression "payment" is again an expression which is elastic enough to include "recompense", and includes repayment. For this purpose, see Himachal Pradesh Housing and Urban Development Authority and Anr. v. Ranjit Singh Rana MANU/SC/0207/2012 : (2012) 4 SCC 505 (at paragraphs 13 and 14 therein), where the Webster's Comprehensive Dictionary (International Edn.) Vol. 2 and the Law Lexicon by P. Ramanatha Aiyar (2nd Edn., Reprint) are quo ted.

70. The definition of "financial debt" in Section 5(8) then goes on to state that a "debt" must be "disbursed" against the consideration for time value

of money. "Disbursement" is defined in Black's Law Dictionary (10th ed.) to mean:

"1. The act of paying out money, commonly from a fund or in settlement of a debt or account payable.

2. The money so paid; an amount of money given for a particular purpose."

74. What is clear from what Shri Venugopal has read to us is that a wide range of transactions are subsumed by paragraph (f) and that the precise scope of paragraph (f) is uncertain. Equally, paragraph (f) seems to be a "catch all" provision which is really residuary in nature, and which would subsume within it transactions which do not, in fact, fall under any of the other sub-clauses of Section 5(8).

75. And now to the precise language of Section 5(8)(f). First and foremost, the sub-clause does appear to be a residuary provision which is "catch all" in nature. This is clear from the words "any amount" and "any other transaction" which means that amounts that are "raised" under "transactions" not covered by any of the other clauses, would amount to a financial debt if they had the commercial effect of a borrowing. The expression "transaction" is defined by Section 3(33) of the Code as follows:

(33) "transaction" includes an agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corporate debtor;

As correctly argued by the learned Additional Solicitor General, the expression "any other transaction" would include an arrangement in writing for the transfer of funds to the corporate debtor and would thus clearly include the kind of financing arrangement by allottees to real estate

developers when they pay installments at various stages of construction, so that they themselves then fund the project either partially or completely.

76. Sub-clause (f) Section 5(8) thus read would subsume within it amounts raised under transactions which are not necessarily loan transactions, so long as they have the commercial effect of a borrowing. We were referred to Collins English Dictionary & Thesaurus (Second Edition, 2000) for the meaning of the expression "borrow" and the meaning of the expression "commercial". They are set out herein below:

"borrow-vb 1. to obtain or receive (something, such as money) on loan for temporary use, intending to give it, or something equivalent back to the lender. 2. to adopt (ideas, words, etc.) from another source; appropriate.

3. Not standard. to lend.

4. (intr) Golf. To put the ball uphill of the direct path to the hole: make sure you borrow enough." commercial.-adj.

1. of or engaged in commerce.

2. sponsored or paid for by an advertiser: commercial television.

3. having profit as the main aim: commercial music.

4. (of chemicals, etc.) unrefined and produced in bulk for use in industry.

5. a commercially sponsored advertisement on radio or television."

77. A perusal of these definitions would show that even though the Petitioners may be right in stating that a "borrowing" is a loan of money for temporary use, they are not necessarily right in stating that the transaction must culminate in money being given back to the lender. The expression "borrow" is wide enough to include an advance given by the home buyers to a real estate developer for "temporary use" i.e. for use in the construction project so long as it is intended by the agreement to give "something equivalent" to money back to the home buyers. The "something equivalent" in these matters is obviously the flat/apartment. Also of importance is the expression "commercial effect". "Commercial" would generally involve transactions having profit as their main aim. Piecing the threads together, therefore, so long as an amount is "raised" under a real estate agreement, which is done with profit as the main aim, such amount would be subsumed within Section 5(8)(f) as the sale agreement between developer and home buyer would have the "commercial effect" of a borrowing, in that, money is paid in advance for temporary use so that a flat/apartment is given back to the lender. Both parties have "commercial" interests in the same - the real estate developer seeking to make a profit on the sale of the apartment, and the flat/apartment purchaser profiting by the sale of the apartment. Thus construed, there can be no difficulty in stating that the amounts raised from allottees under real estate projects would, in fact, be subsumed within Section 5(8)(f) even without adverting to the explanation introduced by the Amendment Act.

78. However, Dr. Singhvi strongly relied upon the report of the Bankruptcy Law Reforms Committee of November, 2015 and in particular paragraph 3 of 'Box 5.2 - Trigger for IRP' which states that financial creditors are

persons where the liability to the debtor arises from a "solely" financial transaction. This Committee report, which led to the enactment of the Code, is an important guide in understanding the provisions of the Code. However, where the provisions of the Code, as construed in the light of the objects of the Code, are clear, the fact that from a huge report one word is picked up to indicate that all financial creditors must have debtors who owe money "solely" from financial transactions cannot possibly have the effect of negating the plain language of Section 5(8)(f) of the Code. In fact, what is important is that the threshold limit to trigger the Code is purposely kept low - at only one lakh rupees - making it clear that small individuals may also trigger the Code as financial creditors (as financial creditors include debenture holders and bond holders), along with banks and financial institutions to whom crores of money may be due.

79. That this amendment is in fact clarificatory is also made clear by the Insolvency Committee Report, which expressly uses the word "clarify", indicating that the Insolvency Law Committee also thought that since there were differing judgments and doubts raised on whether home buyers would or would not be included within Section 5(8)(f), it was best to set these doubts at rest by explicitly stating that they would be so covered by adding an explanation to Section 5(8)(f). Incidentally, the Insolvency Law Committee itself had no doubt that given the 'financing' of the project by the allottees, they would fall within Section 5(8)(f) of the Code as originally enacted."

17. The Corporate Debtor relied upon ***Budhpur Buildcon Pvt. Ltd. vs. Abhay Narayan Manudhane***, RP of Corporate Debtor Housing Development and Infrastructure Limited (09.09.2022 -

NCLAT) : MANU/NL/0697/2022 which mentions ***Pioneer Urban Land and Infrastructure Pvt. Ltd. & Anr. (supra)*** and holds that :-

"Para m - All the above citations reflect one thing categorically and clearly that there must be a disbursal of fund by the Creditor to the Debtor purely in the form of release of fund as a "borrowing" and must have a "time value of money". The method may be different but the nature must be borrowing and in extended terminology even the liability in respect of guarantee is also covered. There must be a "Financial Debt" which is owed by the other side i.e. the Debtor. It should be amply clear that the CD owe the "Financial Debt" to the Creditor. There is a difference between the levy of liquidated damages or penal interest for default and the financial debt per se. Hence, we cannot borrow unrelated concept from unrelated judgments to prove that wherever a word "interest" is there it means corresponding to a "Financial Debt" and we accordingly confirm that "Financial Debt" will always carry an interest towards time value of money. However, interest per se in any business contract cannot be termed to make the "debt" as a "Financial Debt", if it is in the nature of liquidated damages or in the nature of penal interest, which is a result of compensation for breach of contract which is stipulated for penalty. Hence, while examining the case, whether the Appellant is a Financial Creditor or not we are now arriving at a conclusion based on above said discussions both on law & on facts and the citations produced by the parties, some of which have been explicitly cited as above reveals that the Appellant is not a "Financial Creditor" and hence, we are upholding the order of the Adjudicating Authority."

18. The said proposition has been followed by us in ***Sudhir T. Deshpande vs. Dhanada Corporation Limited*** (26.08.2022 - NCLT - Mumbai) : MANU/NC/4702/2022 wherein this corum concluded that the Financial Creditor has not established that the money was disbursed to the Corporate Debtor and hence the question of default on the part of the Corporate Debtor does not arise. In another case ***Axis Bank Ltd. vs. Nageswara Rao*** (07.10.2022 - NCLT - Mumbai) : MANU/NC/6180/2022 which was passed by the same coram while applying the principles ***Pioneer Urban Land & Infrastructure Ltd.*** case (supra), we had held the following:

"42. We also Applied the principles enunciated in Anuj Jain (supra) and Pioneer Urban Land & Infrastructure Ltd. case (supra). It is apparent that no 'financial debt' is owed to the Applicant under section 5(8) of the Code since;

i. There has been no disbursal to the Corporate Debtor against consideration for the time value of money.

ii. Disbursal has been made to independent juristic person, i.e. RHFL under the Commercial Papers.

iii. No money has been lent to the Corporate debtor for 'temporary use.' In other words, there has been no borrowing by the Corporate Debtor.

iv. RHFL had a 'commercial interest' in the Commercial papers since the same was subscribed by the Applicant. The Corporate Debtor did not have a 'Commercial interest' in the same."

The Corporate Debtor has placed reliance on both the aforesaid orders.

19. The Corporate Debtor has also relied upon ***Vejas Power Project Pvt Ltd vs Vaayu Infrastructure LLP,*** **Company Appeal Insolvency 815 of 2022** wherein the Tribunal's order of rejection of the Section 7 application was upheld by the Hon'ble NCLAT wherein the Corporate Debtor questioned the very nature of the transaction pleading that it was not a financial debt not disbursed for time value of the money. The Hon'ble NCLAT analysed the transaction and was pleased to uphold that the said transaction was not a financial debt. In the present case as well, we are satisfied that there has been no disbursement of financial debt for time value of the money.

20. Considering all that is mentioned herein we are of the view that in the present case there has been no disbursement of any amount and thus, no default can arise in absence of any disbursement against the time value of money. Not only this but we are also of the considered view taking into consideration the various judgments relied by the Corporate Debtor that no default can arise in absence of disbursement. In light of what is mentioned aforesaid, we are of the opinion that the present application filed by the Financial Creditor is liable to be rejected.

21. However, before that we shall consider the other submission made by the Financial Creditor that the said loan facility since reflected in the balance sheet of the Corporate Debtor, the same

amounts to admission of debt. Dealing with the said submission, the Corporate Debtor has strongly opposed the same. The Bench has considered both the submissions and further is inclined to consider the balance sheet of the Corporate Debtor for the year ending 31st March 2019 which contains sufficient stipulation in the note of the balance sheet, and in light of the said same we are of the view that the said reflection in the balance sheet has to be read in consonance to the stipulation placed by the Corporate Debtor in the note to the Balance Sheet the extract of which been reproduced hereunder:-

"Standalone Account – Note 16.1 (x)

An amount of Rs. 9,802.00 lakhs lakhs shown as received from Reliance Commercial Finance Limited, a part of ADAG Group Company, promoted, owned and controlled by Sri Anil Dhirubhai Ambani are not payable till such time as sum of Rs. 50,653.15 lakhs shown as receivable/ recoverable under the head "Other advances in schedule "Other Current Financial Assets" from ADAG Group Company, promoted, owned and controlled by Sri Anil Dhirubhai Ambani are received and the obligations in accordance with the purchase agreement dated 4th March 2015 signed between the company, SKIL Shipyard Holdings Pvt. Ltd. & others with the ADAG Group Company, promoted, owned and controlled by Sri Anil Dhirubhai Ambani viz, Reliance Infrastructure ltd and Reliance Defence Systems Pvt ltd are fulfilled by ADAG group companies. It's a part of composite transactions emanating from and in connection with the sale of Pipav defence project to ADAG group in accordance with the said purchase agreement and also based on the facts, circumstances and documents

available on record. In view of above the company do not acknowledge or accept the liability of reliance commercial finance limited."

The Hon'ble Supreme Court in ***Asset Reconstruction Company (India) Limited vs. Bishal Jaiswal and Ors***. MANU/SC/0279/2021 while dealing with the proposition whether an entry made in a balance sheet of a corporate debtor would amount to an acknowledgement of liability under Section 18 of the Limitation Act held that a balance sheet has to be read as a whole including the notes and the auditor's report and thus a balance sheet shall not amount to an unequivocal acknowledgement if the caveats have been entered by way of notes in the auditor's report.

22. The present case is a fit case in light of the ***Bishal Jaiswal*** judgement (supra) and thus we do not accede to the arguments referred by the Financial Creditor that the balance sheet shall amount to an acknowledgement of debt since the note (supra) categorically caveats the said loan amount and further opine that the underlying emphasis of the holistic consideration is revealed by the word "whole" in the judgement and thus the entry relied by the Financial Creditor in the Balance sheet cannot be considered in isolation. We have considered the report of the auditor and view that the aforesaid note has nowhere been contradicted. We thus hold that the said entry cannot amount to any admission of debt on part of the Corporate Debtor in accordance with the law laid down by the Hon'ble Supreme Court.

23. The Corporate Debtor has further drawn our attention to the fact that instruments on the basis of which the Petition is filed are insufficiently stamped and cannot be acted upon. In our view, the Facility Agreement dated 30.01.2018 which is for a monetary value of Rs. 98,02,00,000/- shall attract the provisions of Articles 5(h)(A)(iv) of the Maharashtra Stamp Act, 1958 and ought to be stamped accordingly. We further observe that the said Agreement thus deserves to be impounded. However, since in the present petition we are required to act in a limited manner as desired by the code and either admit or reject the company petition, we are not keen on impounding the said agreement and shall deliver our order based on admission and or rejection of the Company Petition.

24. Further, the Corporate Debtor has relied upon ***Garware Wall Ropes Vs Coastal Marine Construction & Engineering Ltd.*** (2019 SCC Online SC 515 – Order dated 10th April 2019 – Supreme Court (Paras 22, 23, 26, 29, 42-46) and N.N. Global Mercantile Pvt Ltd. v/s Indo Unique Flame Ltd. & Ors. [Civil Appeal Nos.3802-3803 of 2020] dealing with the issue of document which is insufficiently stamped. However, since we have already mentioned above that in the present petition we are required to act in a limited manner as desired by the code and either admit or reject the company petition and thus the same is not required at the present stage. Furthermore, even the Hon'ble NCLAT in its Judgment dated 16th September, 2022 passed in the case of ***Citi Securities & Financial Services Pvt. Ltd. v Sudip Bhatacharya and Anr.*** has held that the NCLT is duty

bound to consider the objection of insufficiency of stamp duty on the concerned instrument whilst considering the claim of a financial creditor in a CIRP.

25. Thus, in view of the above, we hold that the present petition fails to establish the disbursement of the Financial debt, default and date of default. On the basis of the foregoing facts, we conclude that this Petition is liable to be dismissed.

Accordingly, this Petition being **C.P. No. (IB) 2104/ MB/ 2019 is dismissed**. Consequently, **I.A. No. 2191 of 2021 is rendered infructuous.**

The Registry is hereby directed to communicate this order to both the parties immediately.

Sd/-	**Sd/-**
SHYAM BABU GAUTAM	**JUSTICE P. N. DESHMUKH**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**