

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI

CP/IB/141/CHE/2022

(filed under Section 9 Rule 6 of the Insolvency and Bankruptcy (Application to
adjudicating Authority) Rules, 2016)

In the matter of *True Value Homes (India) Private Limited*

REENA JOSHI

Proprietor of M/s Sanch
At 383, Nilgiri Apartments,
Alankanda, New Delhi – 110 019
Through her SPA holder Sh. Alok Joshi

... Operational Creditor

– Vs –

TRUE VALUE HOMES (INDIA) PRIVATE LIMITED

Having its Registered Office at:
TVH Triveni, 21 C.V. Raman Road,
Alwarpet, Chennai – 600 018

... Corporate Debtor

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Petitioner : *Ankur Singhal, Advocate*

For Respondent : *ARL Sundaresan, Senior Advocate*
E. Om Prakash, Senior Advocate
Aparjitha Viswanath, Advocate

Order pronounced on 5th January 2024



ORDER

(Heard through hybrid mode)

Under Adjudication is an Application filed by **Reena Joshi** (hereinafter referred to as '*Operational Creditor*') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'IBC 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **True Value Homes (India) Private Limited** (hereinafter referred to as '*Corporate Debtor*'), to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare a moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out the details of the Applicant which states that the Operational Creditor is an Individual. Part-II of the Application states that the Corporate Debtor is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 and the registered office of the Corporate Debtor as per the Application is stated to be situated at TVH Triveni, 21, C.V. Raman Road, Alwarpet, Chennai – 600 018. In Part III of the Application, the Operational Creditor has not proposed the name of the IRP and left it to the discretion of this Tribunal to appoint the IRP.



3. In Part IV of the Application, the Operational Creditor has claimed a total sum of Rs.5,00,62,000/- (Rupees Five Crore and Sixty-Two Thousand Only) as the default amount which is due and payable by the Corporate Debtor.

4. FACTS OF THE CASE

4.1. M/s Sanch is a proprietorship firm and is into the consultancy business of financial advisory and investment consultancy which includes consultancy related to restructuring of debts / loans, assistance in negotiations and other allied services. The Operational Creditor herein is the proprietor of M/s Sanch whereas Sh. Alok Joshi is the Vice – President in the said firm. Sh. Alok Joshi and Smt. Reena Joshi are legally wedded couple.

4.2. Smt. Reena Joshi vide special power of attorney has appointed Sh. Alok Joshi as her attorney to file the instant petition against the Corporate Debtor.

4.3. The Corporate Debtor is into the business of real estate. It is stated that for its business needs and requirements, the Corporate Debtor availed loan from the various lenders



namely LIC Housing Finance Limited, Piramal Housing Finance, Ratnakar Bank and Punjab National Bank. However, due to certain reasons, the Corporate Debtor was unable to repay the instalments which were due to these financial institutions.

4.4. The Corporate Debtor approached the Operational Creditor viz. Reena Joshi and Sh. Alok Joshi in the month of February, 2017 seeking consultancy and advisory services in relation to their needs and requirements. After negotiations and discussions with the Corporate Debtor, an exclusive Agreement / Mandate was executed on 11.02.2017 wherein the Operational Creditor and group company M/s Akaar were appointed as “**Arranger**” for providing the services to the Corporate Debtor for arranging LRD / Term Loan Facility from Indiabulls or any similar NBFC / Financial Institution.

4.5. After the execution of the Agreement / Mandate, Smt. Reena Joshi and Sh. Alok Joshi started providing services to the Corporate Debtor. Thus, on the basis of said services, Indiabulls Housing Finance Limited agreed to take over all the existing loans and grant top-up loan to the Corporate Debtor. Accordingly, e-mail dated 17.02.2017 was issued to the Corporate Debtor along with the term sheets seeking the comments to finalize the terms sheets.



4.6. After the mutual concurrence, Indiabulls Housing Finance Limited entered into the agreement for the total sum of Rs. 390 Crores with the Corporate Debtor. It is submitted that the same was only because of the services rendered by Smt. Reena Joshi and Sh. Alok Joshi. The e-mails were duly exchanged between the parties, and only thereafter the Corporate Debtor signed and sent the term sheets to Indiabulls Housing Finance Limited.

4.7. It is submitted that in the month of March 2017, the Corporate Debtor asked the Operational Creditor to arrange short term loan for Rs.195 Crores for a period not exceeding 144 months and accordingly the Operational Creditor arranged short term loan from one M/s. Star Agri Finance Limited for the Corporate Debtor. In terms of the said Agreement / Mandate dated 11.02.2017, the Corporate Debtor had to pay the fee @ 2.25% on the funds raised plus government taxes.

4.8. It is submitted that the Operational Creditor and Sh. Alok Joshi based upon the instructions of the Corporate Debtor raised the Invoices and the details are as follows:

- (a) For M/s Akaar, invoice no. 098 for Rs.4,48,50,000/- [Consultancy Fee + Rs.67,27,500 (Service Tax)]. Totalling to



Rs.5,15,77,500/- (Invoice no. 098 dated 01.04.2017 is appended as Annex II (G)).

(b) For M/s Sanch, invoice no. 157 for Rs.1,95,00,000/- [Consultancy Fee] + Rs.29,25,000 [Service Tax]. Totalling to Rs.2,24,25,000- (Invoice no. 157 dated 01.04.2017 is appended as Annex II (H)).

4.9. Further, the Operational Creditor raised the Invoice No.158 dated 01.04.2017 for a sum of Rs.28,50,000/- [Consultancy Fee] + Rs.4,27,500 [Service Tax] Totalling to Rs.32,77,500/- towards the additional work assigned in the month of March' 2017. (Invoice no. -158 dated 01.04.2017 is appended as Annex II(I)). It is submitted that all the above-mentioned invoices were sent through email on 01.04.2017 and the same were duly received by the Corporate Debtor.

4.10. It is submitted that the Corporate Debtor made the entire payment towards the invoice No.098 issued by M/s. Akaar and the details of the said payment are as follows:

DATE	MODE	AMOUNT IN RS.
07.04.2017	Bank Transfer	3,00,00,000/-
12.04.2017	Bank Transfer	1,70,92,500/-
TOTAL		4,70,92,500/-

It is submitted that the Corporate Debtor deducted a TDS of Rs.44,85,000/- while making the payments to the Operational Creditor in April 2017, but the Corporate



Debtor did not deposit the TDS amount with the Income Tax Department.

4.11. It is stated that the Corporate Debtor made a partial payment of Rs.25,00,000/- through bank transfer on 10.07.2017 towards the Invoice No.158 issued by the Operational Creditor. Although the Corporate Debtor deducted the TDS of Rs.2,85,000/- while making the payment to the Operational Creditor in July 2017 but the Corporate Debtor did not deposit the TDS amount with the Income Tax Department.

4.12. It is stated that the Corporate Debtor did not make any payment in respect of Invoice No.157, although it was promised and assured by the Corporate Debtor to Sh. Alok Joshi. It is stated that Sh. Alok Joshi started pursuing and requesting the Director of the Corporate Debtor for making payments, however the Corporate Debtor every time avoided to make payments by making lame excuses.

4.13. It is stated that after the introduction of GST, the Director of the Corporate Debtor requested Sh. Alok Joshi to issue the Invoice for the entire amount of Rs.4,29,00,000/- along with GST. Accordingly, the Operational Creditor issued the Invoice No. 157 dated 01.02.2018 for a sum of Rs.4,29,00,000/- [Consultancy Fee] + Rs.77,22,000 [GST],



totalling to a sum of Rs.5,06,22,000/-. It is stated that the Operational Creditor sent the said Invoice to the Corporate Debtor through email on 12.02.2018 and the same was received by the Corporate Debtor.

4.14. It is stated that in the meantime, only after the consistent pursual by Sh. Alok Joshi, the Corporate Debtor deposited the TDS amount of Rs. 44,85,000/- on 03.07.2018 against the PAN of M/s Akaar in respect of Invoice No. 098. Similarly, Corporate Debtor deposited the TDS amount of Rs.2,85,000/- on 03.07.2018 against the PAN of Operational Creditor in respect of Invoice No.158.

4.15. It is stated that Sh. Alok Joshi demanded the payment from the Director of the Corporate Debtor towards the said Invoice No. 157 by writing e-mails, sending WhatsApp messages, making calls and meeting personally. Although the Director of the Corporate Debtor had acknowledged, promised and assured to make the payment, but till date no payment has been made to the Operational Creditor by the Corporate Debtor.

4.16. It is stated that the Corporate Debtor has not made any complaint about the services rendered by the Operational Creditor, neither any show cause was issued to the Operational Creditor in respect of its services nor any



deficiency or issue was highlighted which was not resolved or completed by the Operational Creditor.

4.17. It is stated that the Operational Creditor issued the Demand Notice under Section 8 of IBC, 2016 to the Corporate Debtor at its Registered office address through Speed Post and email dated 26.02.2022 and the same was duly served upon the Corporate Debtor. The Corporate Debtor had replied to the said Demand Notice on 19.03.2022 alleging false, frivolous and moonshine defences. It is stated that the same have been made only to avoid the debt which is admittedly due and payable and there is no bonafide dispute with regard to the debt due.

4.18. It is stated that the unpaid Invoice No.157 is dated 01.02.2018 and as per the Limitation Act, 1963, the period of limitation is three years. The present Application has been filed before this Tribunal on 28.04.2022. The Learned Counsel for the Operational Creditor referred to the order of the Hon'ble Supreme Court dated 10.01.2022 in Suo Motu Writ Petition (Civil) No. 3 of 2020 wherein it stated that *"In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is*



greater than 90 days, that longer period shall apply". Therefore, there is no delay in filing the present application as the same is within the period of limitation.

5. **REPLY OF THE CORPORATE DEBTOR**

5.1. The Corporate Debtor has filed its reply and stated that the allegations and statements made in Section 9 of IBC, 2016 are fictitious, false and without any merit.

5.2. It is stated that the Corporate Debtor had approached M/s. Akaar for availing their financial advisory services. After discussions, the Corporate Debtor and M/s. Akaar entered into an oral understanding in the year 2017. The Corporate Debtor and the Operational Creditor agreed for a consideration of Rs.4,95,92,500/- (Rupees Four Crore Ninety – Five Lakhs Ninety-Two Thousand and Five Hundred Only) for the services rendered. It is stated that for the above said amount, the Corporate Debtor has already made payments in three tranches which are as follows;

DATE OF PAYMENT	AMOUNT PAID	PAYMENT MADE TO	MODE OF PAYMENT
07.04.2017	Rs.3,00,00,000/-	Akaar, 383, Nilgiri Apartment, Alakanda, New Delhi	SBI Ch. No. 998893 dated 07.04.2019 – RTGS
12.04.2017	Rs.1,70,92,500/-	Akaar, 383, Nilgiri Apartment, Alakanda, New Delhi	PNB Ch. No. 229568 dated 12.04.2017 – RTGS



10.07.2017	Rs.25,00,000/-	Sanch, 383, Nilgiri Apartment, Alakanda, New Delhi	Axis Bank – Ch No. 610180 dated 21.06.2017 – RTGS
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5.3. It is stated that all the monies agreed between M/s. Akaar and the Corporate Debtor were cleared and paid out as early as on July 2017. Though the relation of the Corporate Debtor was only with M/s. Akaar, the Corporate Debtor made one payment in favour of M/s. Sanch on the instructions from M/s. Akaar and therefore the last tranche of Rs.25,00,000/- was paid in the name of M/s. Sanch.

5.4. It is stated that all the monetary obligations arising out of their agreement with M/s. Akaar were completed as early as 2017 and they do not owe any amount to M/s. Akaar. The obligation to pay to M/s Sanch is in fact *non-existent* as the Corporate Debtor does not have any relationship with M/s. Sanch. It is reiterated that the Corporate Debtor has no relationship with M/s. Akaar since the closure of the accounts in 2017. However, to the shock and surprise of the Corporate Debtor, they received Form 3 Demand Notice dated 26.02.2022 from the Operational Creditor demanding a sum of Rs.5,06,22,000/- (Rupees Five Crores Six Lakhs Twenty-Two Thousand Only) and that too from one Ms. Reena Joshi representing M/s Sanch.



5.5 It is stated that the Demand Notice dated 26.02.2022 sent by Operational Creditor is malafide and a crooked attempt by the Operational Creditor to extort money from the Corporate Debtor. The Corporate Debtor had sent a detailed reply to the same dated 19.03.2022 explaining the same. It is stated that the Corporate Debtor clearly disputes even the existence of the invoice dated 01.02.2018 and puts the Operational Creditor on strict proof of the same. The Corporate Debtor had no relationship with the Operational Creditor except having made payment of Rs.25,00,000/- as per the instructions of M/s.Akaar during the year 2017. It is stated that, at the time the reply was given, the Corporate Debtor did not even know the existence of the agreement dated 21.02.2017. It is stated that the purported agreement dated 21.02.2017 is nothing but a forged document and has been created with no other intent but to file this Section 9 application to extort monies from the Corporate Debtor.

5.6. It is stated that no person was authorized by the Corporate Debtor through a Board Resolution to enter into any such Agreement with the Operational Creditor. The signature available on the Agreement is not the signature of the Director of the Corporate Debtor and the seal of the Corporate Debtor is also not the correct seal. It is stated that the signature of Sh. Alok Joshi is available on all the pages and the alleged signature of the Director of the Corporate



Debtor is found only on the last page of the Agreement. It is stated that the Corporate Debtor has also filed a Criminal Complaint on 06.09.2022 before the Central Crime Branch, Avadi and First Information Report has been registered vide FIR No. 30/2022 dated 06.09.2022 against Ms. Reena Joshi and Mr. Alok Joshi for creating a false and fabricated document and the same is pending before the Central Crime Branch, Avadi.

- 5.7. It is stated that the Corporate Debtor had no relationship with M/s. Sanch nor they have entered into any Agreement with M/s. Akaar and all the amounts which was due were settled with M/s. Akaar way back in July 2017 itself and the present Application which has been filed by the Operational Creditor is false and is being made to coerce and extort money from the Corporate Debtor.

6. FINDINGS OF THIS TRIBUNAL

- 6.1. We have heard the Learned Counsel for the Operational Creditor and the Learned Senior Counsels for the Corporate Debtor and also perused the file including the documents placed on record.
- 6.2. The primary contention of the Learned Senior Counsel for the Corporate Debtor is that the purported Agreement dated



11.02.2017 was never entered into by the Corporate Debtor and the same is a fabricated document. It was also submitted that the sign and seal of the Director of the Corporate Debtor in the said agreement is a forged one. The purported Agreement dated 11.02.2017 is extracted hereunder:

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SANCH

FINANCIAL ADVISORS & INVESTMENT CONSULTANTS

383, NILGIRI APPARTMENTS, ALAKNANDA, NEW DELHI - 110019
Tel. 26239785, 9811383445

To, 11th February 2017
The Chairman - Mr. Narayanan Ravichandran
True Value Homes Pvt. Ltd
TVH Beliclaa Towers, Tower 2
9th Floor, Block No. 94,
MRC Nagar, Chennai,
India - 600 028

Sub: To Arrange LRD/ Term Loan Facility from Indiabulls or any similar NBFC/Financial Institution

Dear Sir,
We understand that True Value Home India (P) Ltd, is a one of the leading player in Real Estate Sector. The company is based out of Chennai

> Transaction : To Arrange LRD/ Term Loan Facility from Indiabulls or any similar NBFC/Financial Institution.

The Company hereby appoints SANCH & THE GROUP COMPANY AKAAR as the arranger ("SANCH & THE GROUP COMPANY AKAAR" or "Arranger") for providing the services as contemplated herein in relation to the proposed Transaction. The Company desires to confirm the terms and conditions under which Arranger is engaged by the Company to render services as Arranger for the proposed Transaction. This mandate will remain valid till 3 months from signing of this engagement letter, unless terminated earlier by written notice as allowed under the terms of this engagement letter or amended by mutual consent. This date of validity of mandate will be relevant only for achieving sanctions from the investors and any documentation and disbursement of facilities may take place after this date.

The Arranger may provide such services through, or in conjunction with, one or more of their associates / affiliates.

Scope of Services

The Arranger shall, inter alia, endeavor to raise resources required for the Transaction from Indiabulls or any similar NBFC/Financial Institution willing to fund the Transaction. During the term of the engagement, as contemplated herein, following Services in connection with the Transaction are expected to be provided by the Arranger :-

- i. Review and analysis of all pertinent information made available on the financial and operational details of the Company and its future business plans;
- ii. Advise in evaluation of offers received in terms of facility Structuring along with other terms & conditions;
- iii. Assist in negotiations and signing of definitive agreements

The detailed terms of the Transaction will evolve in discussion with the Indiabulls or any similar NBFC/Financial Institution and the Company. The Company will be responsible for taking necessary authorizations and / or approvals internal, external regulatory, statutory or otherwise prior to executing the above Transaction.

For SANCH

Authorized Signatory
TRUE VALUE HOMES

**Exclusivity of Mandate**

Arranger will advise Company on the Transaction and Scope agreed upon and undertake to work with Company on an exclusivity basis for 3 months. This assignment can be extended for a further mutually agreed time period and with renegotiated terms and conditions.

Whilst there is a prospect of a deal with Indiabulls or any similar NBFC/Financial Institution being introduced by Arranger, Company will not have the right to directly deal or choose alternative financial advisors with the same bank, irrespective of the fact that this agreement may have expired by elapse of time for next 12 (twelve) months period from the date of expiry of this agreement.

In case if the agreement may have expired by elapse of time, for next 12 (twelve) months period from the date of expiry of this agreement if company tries to directly approaches or takes assistance of any other firm or alternative financial advisors, the Arranger will be kept informed and the Company will ensure the fees as decided between the company & the Arranger is no way diluted.

Fees and Expenses

The Arrangement Fee ("Fee") payable by the Company would for the financial assistance to be raised by Arranger for the transaction. The following would be the fee structure and payment terms.

Upfront Fee	Nil would be provided towards upfront fee for raising funds at the time of execution / acceptance of the mandate letter on a non-refundable basis.
Milestone Fees	Nil would be provided towards milestone fee at the time of execution / acceptance of the term sheet by the Company on a non-refundable basis.
Total Fee	A fee of 2.25% + all Applicable Government Taxes will be charged on the total amount of funds raised for the Company. These fees would be charged towards the total amount raised in the form of LRD/Term Loan through Arranger. Nil of fee to be paid at the time of acceptance of sanction letter & the remaining 100% to be paid at the time of first disbursement of the facility. Upfront fee & Milestone Fees paid would be adjusted against the total fee for the assignment.
Default Payment Penalty	If the company fails to honour the commitment & unable to pay the committed fees on decided terms to the Arranger then the company will be liable to pay a penalty @ 24% p.a. for the delayed period.

All amounts payable to Arranger under the terms of this engagement are exclusive of Value Added Tax (including service tax) and/or any other similar taxes, not being Income tax and the same shall be invoiced together with the fees. The Company shall reimburse Service Tax at the prevailing rates in force and the same shall be invoiced together with the fees. The Company shall deduct Income Tax at source on Fees as per the prevailing rates for which the Company shall issue certificates within the statutory time limit.

For SANCH

Authorized Signatory

7/2/2022



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Declarations of the Arranger

The Arranger states that it has the necessary skills and expertise to provide the Services as contemplated herein and states that it will exert its best effort to ensure the success of the Transaction.

This letter constitutes valid and legally binding rights & obligations of the parties to this engagement for the actions done or undertaken by them in pursuance of provision of or relating to the Services enforceable in accordance with its terms and the performance hereof and does not contravene, violate or constitute a default of, or require any consent or notice under any provision of any agreement or other instrument to which Arranger is a party or by which Arranger is, or may be bound.

It is clarified here that this letter does not constitute an agreement or commitment by the Arranger to fund the resources required for the Transaction or for arranging resources, as may be required at any point of time, either in part or full, for the Transaction. The Arranger shall not be obliged to any party herein or otherwise for its inability to arrange for such funds as may be required for the Transaction.

Confidentiality

Any advice or opinions provided by the Arranger under or pursuant to this engagement shall not be disclosed to any third party or referred to, publicly except with the prior written consent from the Arranger or where the same is required to be disclosed to competent regulatory authority or required to do so in pursuance of any applicable law.

The terms of this engagement shall be kept confidential and no public announcement or communication relating to the subject matters of this engagement shall be made otherwise than by mutual consent of the Arranger and Company.

The Arranger acknowledges that in course of the provision of Services for the Transaction, it will have access to such information regarding the Company as may not be in the public domain. It agrees to treat such information with the utmost confidentiality and agrees not to disclose the same to any third party except where the same is required to be disclosed to competent regulatory authority or required to do so in pursuance of any applicable law or where the same is required to be disclosed to persons for carrying out activities as contemplated herein.

Any information available in public domain shall not be treated as confidential information for the purposes of this engagement and the Services to be provided, as contemplated hereunder. The Arranger may however disclose to any extent any information, advice, opinion provided to it in terms hereof or otherwise in relation to provision of Services, where it is required to disclose the same pursuant to any law or order of any court/judicating for or pursuant to any request or requirement of any governmental or other regulatory authority, bank examiner or statutory auditors or any other competent regulatory/statutory authority.

Company's Responsibilities

The Company shall assist and co-operate with the Arranger in all respects in carrying out the Services contemplated under this engagement, shall act in accordance with all applicable laws, statutes, rules, regulations, guidelines, notifications, circulars and directions including, without limitation, the rules of the National Stock Exchange and The Stock Exchange, Mumbai and of Securities & Exchange Board of India and the Reserve Bank of India, and shall supply all information materials and documents required to be included or disclosed in any announcement, prospectus, Transaction memorandum or circular or which Arranger may reasonably require in connection with the Services to be provided.

For SANGH

Authorized Signatory

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Termination

The Arranger shall have the right to withdraw from this engagement, by giving 30 days' notice in writing. The Company shall be obligated to pay the Arranger for any compensation accrued and due to and expenses incurred by the Arranger upto the date of termination and provided that the provisions of indemnification and governing law shall survive such termination. The Company confirms that any invoice, bill or demand raised by the Arranger in respect of any expenses as stated herein shall be final and binding on the Company and the Company undertakes to pay any such amount to the Arranger forthwith on demand without any dispute or demur. If not terminated on completion of 3 months post signing of this engagement letter, the engagement shall be automatically extended for another 3 months.

Applicable Laws & Jurisdiction

All disputes, differences and / or claim arising out of this engagement or in any way touching or concerning or relating hereto, or as to constructions, interpretation thereof or otherwise in relation hereto, or as to the right and liabilities or any term, condition or provision herein mentioned or the construction or interpretation, shall be settled by arbitration in accordance with the provisions of the Arbitration & Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force and shall be referred to the arbitrator to be appointed by mutual consent and in the absence of an agreement on the arbitrator to a panel of three arbitrators, one to be appointed by each party and such arbitrators shall then appoint a third arbitrator. The award of the arbitrator shall be final and conclusive and binding upon the parties herein. The arbitration proceedings shall be held in Delhi. This letter shall be construed and enforced in accordance with the laws of the Republic of India. The Arranger and, by its counter signature on this letter the Company, hereto consent to the jurisdiction of the Courts of Delhi.

Please sign and return a copy of the letter enclosed and retain the original for your records in token of your acceptance of the terms contained in the letter.

We look forward to working with you on this important assignment.

Agreed & Accepted: -

For SANCH & Group Company AKAAR For True Value Homes Pvt. Ltd.

(Alok Joshi)
Vice President/Prop.

Mr. Narayanan Ravichandran
Chairman/Authorized Signatory

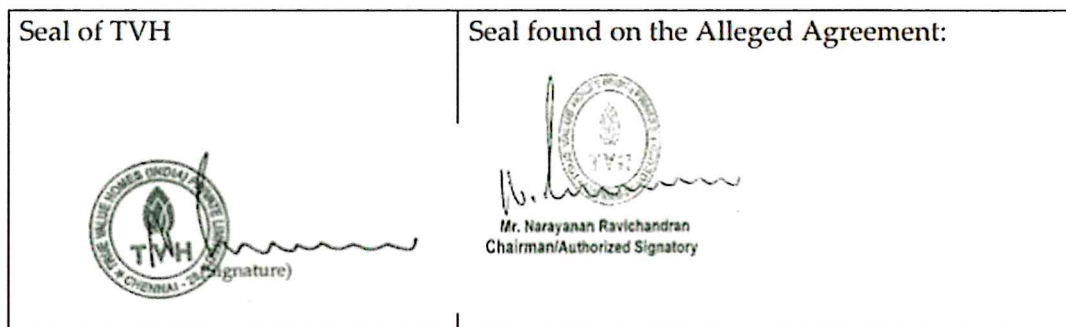
For SANCH
Authorized Signatory

TRU VALUE HOMES



6.3. Upon perusing the aforesaid document, it is seen that the alleged Agreement dated 11.02.20217 is executed on the letter head of M/s. Saanch and the same is addressed in the form of a letter and cannot be construed as an Agreement *per se*. The first paragraph of the alleged Agreement, starts with the phrase “*The Company hereby appoints SANCH & THE GROUP COMPANY AKAAR as the arranger.....*”,. The alleged Agreement fails to denote the term “Company”. We are also unable to comprehend as to how an agreement can be entered into a letter head of the Operational Creditor which is addressed in the form of a letter.

6.4. The Learned Senior Counsels for the Corporate Debtor has also stated that the signature available on the Agreement is not the signature of the Director of the Corporate Debtor and the seal of the Corporate Debtor is also not the correct seal. In order to substantiate the said statement, a comparative table of the seal of the Corporate Debtor and the seal found in the alleged agreement is filed before this Tribunal and the same is captured hereunder:-





6.5. A primary perusal of the aforesaid table would show that there is a dissimilarity in the size of the seal of the Corporate Debtor and also in the signature of the Director of the Corporate Debtor. We are also made aware of the fact that the Criminal Complaint has been lodged after the receipt of the Demand Notice by the Corporate Debtor. It is to be noted that the Corporate Debtor has pleaded in the reply that only after the receipt of the Demand Notice, they came to know of the alleged Agreement dated 11.02.2017 and hence after the receipt of the Demand Notice, the Corporate Debtor filed the Complaint with the Commissioner of Police on 02.09.2022 and also an FIR is registered to enquire into the said complaint.

6.6. Upon perusing the Invoice raised by the Operational Creditor, we observe that there are lot of discrepancies in relation to the dates mentioned on these Invoices. The inconsistencies in the dates are formulated hereunder:-

NATURE OF DOCUMENT	DATE	AMOUNT	ISSUED BY
Invoice No.98	01.04.2017	5,15,77,500/-	Akaar
Invoice No.157	01.04.2017	2,24,25,000/-	Saanch
Invoice No.157	01.02.2018	5,06,22,000/-	Saanch
Invoice no.158	01.04.2017	32,77,500/-	Saanch
Invoice no.158	21.06.2017	32,77,500/-	Saanch

6.7. The Learned Senior Counsel for the Corporate Debtor has contended that the Invoice No. 157 was never served upon



the Corporate Debtor. For the first time, only in the present Application the Operational Creditor has filed the Invoice No.157.

- 6.8. In reply to the said stand, the Learned Counsel for the Operational Creditor has not placed on record any document to show that the said Invoice No. 157 was delivered to the Corporate Debtor.
- 6.9. The Operational Creditor has also referred to the WhatsApp chat and the emails exchanged between the parties on 08.10.2018, 10.01.2018, 17.01.2018, 29.01.2018, 30.01.2018 and 12.02.2018. Perusal of the said WhatsApp chat and the emails would show that there is no categorical admission by the Corporate Debtor in respect of the amount which is due and payable.
- 6.10. Thus, in the present case, the issue as to whether the alleged Agreement dated 11.02.2017 is genuine or not and the signature of the Director of the Corporate Debtor was forged or not, is required to be decided by the Civil Court after adducing evidence. This Adjudicating Authority whose proceedings are summary in nature cannot make any roving enquiry into aforesaid issue. Further, in relation to the Invoice no.157 which is the subject matter of the present Application, the Operational Creditor has not placed on



record any document to show that the same was delivered to the Corporate Debtor. Also there are two Invoice No. 157 issued by M/s. Sanch which are dated 01.04.2017 for a sum of Rs. 2,24,25,000/- and another dated 01.02.2018 for a sum of Rs. 5,06,22,000/- which have been placed on record and as such we are unable to decode which one is genuine.

6.11. We are of the view that there exists a plausible dispute between the parties. Further the Operational Creditor has miserably failed to prove the existence of 'operational debt' which is due and payable by the Corporate Debtor. Hence, in the absence of 'operational debt', there cannot be any 'default' on the part of the Corporate Debtor.

6.12. The Hon'ble Supreme Court in **Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited**; 2017 1 SCC Online SC 353 has held that the 'existence of dispute' and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the Demand Notice or Invoice as the case may be and observed as follows;

"33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e. on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and



Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be [Section 8(1)]. Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute [Section 8(2)(a)]. What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be..”

At paragraph 51 it is held:

“51.Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence.”

6.13. The Hon’ble Supreme Court in **M/s. S. S. Engineers Vs. Hindustan Petroleum Corporation Limited & Ors; 2022 SCC Online SC 1385** has held that in para 31 and 32 as follows;

31. The NCLT, exercising powers under Section 7 or Section 9 of IBC, is not a debt collection forum. The IBC tackles and/or deals with insolvency and bankruptcy. It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor.

32. There are noticeable differences in the IBC between the procedure of initiation of CIRP by a financial creditor and initiation of CIRP by an operational creditor. On a



reading of Sections 8 and 9 of the IBC, it is patently clear that an Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed.

7. In view of the dispositive reasoning stated above, the present Application filed by the Operational Creditor under Section 9 of IBC, 2016 seeking initiation of CIRP as against the Corporate Debtor is liable to be dismissed and accordingly stands **dismissed**. No order as to costs.

— sd —

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

— sd —

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond