

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III**

C.P.(IB)-302 (MB)/C-III/2023

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

In the matter of

**K SERA SERA & Vikram Bhatt Studio
Virtual World Private Limited**

Having Head Office at:

Unit No.101A and 102, 1st Floor, Plot No. B-17, Morya Landmark II, Andheri (West), Mumbai 400053.

....Financial Creditor/Petitioner

Vs

Hare Krishna Media Tech Pvt Limited

Having Registered Office at:

Unit No 1201, Aston Building, Sundervan Complex, Lokhandwala Road, Andheri (West) Mumbai- 400053.

.... Corporate Debtor/Respondent

Order Pronounced on: 12.12.2024

CORAM:

Ms. Lakshmi Gurung, Member (Judicial)



Sh. Charanjeet Singh Gulati, Member (Technical)

APPEARANCES:

For the Financial Creditor: Adv. Nausher Kolhi, Adv.Sarang Patak,
Adv.Lalit Joshi, Adv.Muttaha Khan, Adv,
Abhishek Rane, Adv.Pooja C.Kamble.

For the Corporate Debtor: Adv.Shikhar Khandelwal, i/b. Siddiquee &
Associates.

PER: SH. CHARANJEET SINGH GULATI, MEMBER (TECHNICAL)

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1. The Present Company Petition (IB) 557(MB)/2024 is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“**IBC/Code**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **K SERA SERA & Vikram Bhatt Studio Virtual World Private Limited (“Financial Creditor/Petitioner”)** for initiating Corporate Insolvency Resolution Process (“**CIRP**”) against **Hare Krishna Media Tech Pvt Limited (“Corporate Debtor/Respondent”)** for a default amount of **Rs.1,60,36,716/-** (Rupees One Crore, Sixty Lakhs, Thirty Six Thousand Seven Hundred and Sixteen).

Brief Facts as per Petition:

2. A Term Sheet dated 01.03.2022 was executed between K Sera Sera Box Office Private Limited (KSSBOPL) and Loneranger Productions Private Limited (presently known as Hare Krishna Media Tech Private Limited).
3. As per Term Sheet dated 01.03.2022, the Corporate Debtor and KSSBOPL jointly formed two different companies namely “K Sera Sera & Vikram Bhatt Studio Virtual World Private Limited” on 21.04.2022 i.e. (“**Petitioner**”) and “K Sera Sera & Vikram Bhatt Productions Private Limited” on 20.05.2022 for carrying out all production related activities.



4. The Corporate Debtor had requested for an infrastructure and financial loan. As per the request of the corporate debtor the financial creditor entered in the agreement in the form of Minutes of the Meeting dated 02.05.2022.
5. The Loan amount of Rs.1,39,30,999 was disbursed between the period of 03.06.2022 to 24.08.2022 in the account of the corporate debtor with the condition that Corporate debtor will repay the loan amount to financial creditor from the income generated from studio for any kind of work performed. The Corporate Debtor agreed for repayment of outstanding dues to the Financial Creditor from the profit share of the Corporate Debtor.
6. On 03.09.2022 the Petitioner sent a legal notice to Corporate Debtor and asking for repayment of amount within 7 days from the receipt of the legal notice.
7. Subsequently, the Corporate Debtor's through its various replies and various emails exchanges from 08.09.2022,20.09.2022, 21.09.2022 and 04.10.2022 admitted the debt and has given confirmation to repay the loan.
8. In view of the recurring default the Financial Creditor further sent a Demand notice dated 13.01.2023 to the Corporate Debtor and called upon to repay the said loan amount of Rs. 1,39,30,999/- along with 24% interest p.a. till the realization of the said loan amount within 15 days from the receipt of the said demand notice.

Submissions by the Petitioner:

9. The Term sheet dated 01.03.2022 was executed in two identical copies. One copy of the same is already with the Corporate Debtor. The Copy of the term sheet was shared by the Corporate Debtor through its reply dated 11.10.2022.
10. The Corporate Debtor through their Advocate Siddiquee & Associates have replied to the said notice on 20.01.2023, wherein no dispute of whatsoever in nature has been raised on the loan amount.



Reply by the Corporate Debtor

11. The Respondent states that it is engaged in the business of producing films and web-series. The Respondent had started a joint venture business with the Petitioner.


12. The Respondent submits that the Petition filed by the Petitioner is not maintainable inter alia on the following grounds: -
 - 12.1 The Demand Notice dated 13.01.2023 (wrongly dated 13.01.2022) is not in accordance with the prescribed Form 3 (clause (a) of sub-rule (1) of rule (5) as stipulated in the Insolvency and Bankruptcy Code, 2016, and on this ground alone, this Petition deserves to be dismissed.

 - 12.2 The Demand Notice dated 13.01.2023 is issued by an unlawfully appointed Director Ms. Karishma Rattanshi, without authorization of the Respondent who is a 50% Shareholder and Director of the Petitioner.

 - 12.3 Various Board Resolutions including the Board Resolution to allow Mr. Satish Panchariya one of the Directors of the Petitioner, to file the present Petition against the Respondent, have been passed through illegal, unlawful and unfair means.

 - 12.4 The Petitioner has never transferred the amount of Rs.1,39,30,999/- The Petitioner has malafidely and mischievously concealed the fact that an amount of Rs. 15,00,000/- out of the total claim amount was in fact actually transferred by another unknown company named Micro Capital.

 - 12.5 The Bank Statement and the Letter dated 03.09.2022 clearly establish that an amount of Rs.1,39,30,999/- (Rupees One Crore Thirty-Nine Lakh Thirty Thousand Nine Hundred and Ninety-Nine Only) was never in fact transferred into the bank account of the Respondent by the




Petitioner and therefore, the aforecaptioned Petition is not maintainable. The Respondent has only received a sum of Rs. 1,04,42,949/- from the bank account of the Petitioner.

12.6 No timeline was given in which the amount given by the Petitioner was to be returned.

12.7 The Respondent states that Mr. Vikram Bhatt is the, owner, Director and 50% Shareholder of the Petitioner.

12.8 The true and correct are enumerated as hereunder: -


- a) During the period of Covid-19 its director Mr. Vikram Bhatt figured out a unique way to create films virtually in a Single Studio by using LED walls through a Software called "Unreal Engine".
- b) That Mr. Satish Panchariya being the Director of K Sera Sera Box Office Pvt. Ltd. approached Mr. Vikram Bhatt with a business proposal, that he would like to get into a joint venture business wherein he should be allowed to use (a) Mr. Vikram Bhatt's personal name, (b) personal reputation in the Bollywood industry and (c) Mr. Vikram Bhatt's technology, to get new projects for his company being K Sera Sera Box Office Pvt. Ltd., and that accordingly, he would share the benefits with Mr. Vikram Bhatt on agreed basis. However, Mr. Vikram Bhatt rejected Mr. Satish Panchariya's business proposal.
- c) Subsequently, Mr. Satish Panchariya again proposed to set up two new different companies with Mr. Vikram Bhatt's existing company being the Respondent, as its equal joint venture partner.
- d) Accordingly, two new companies being the Petitioner and K Sera Sera and Vikram Bhatt Productions Private Limited hereinafter referred to as the "Other Company") came into existence. The two "Joint-venture companies" namely (1) Ms. K Sera Sera & Vikram



Bhatt Productions Pvt. Ltd. and (2) Ms. K Sera Sera & Vikram Bhatt Studio Virtual World Pvt. Ltd. being the Petitioner Both companies shall jointly be referred to as "Joint Venture Companies" was proposed to be set up, which would be owned by Mr. Satish Panchariya's Company and the Respondent in equal proportion;


- e) The Petitioner being K Sera Sera & Vikram Bhatt Studio Virtual World Pvt. Ltd., was proposed to be set up to produce feature films, web shows, television content, advertisement shows, music videos, etc. and the Other Company was proposed to be set up to do studio business;
- f) Mr. Satish Panchariya's company being K Sera Sera Box Office Pvt. Ltd. would be responsible for financing all the projects and the Respondent's Director Mr. Vikram Bhatt in "his personal capacity" would be responsible for the creative and technical aspects of production, for which he would personally be entitled to a fixed fee';
- g) The Mr. Satish Panchariya through his company being K Sera Sera Box Office Pvt. Ltd., had agreed to (i) structure the liabilities of the Respondent which would be paid off through the profits earned in the said Joint Venture Companies from future business and projects; (ii) Pay Respondent's Vendors and Employee Salaries and (iii) Set up new Offices and Studio in the Joint Venture Companies wilfully and intentionally failed and neglected to fulfil any of the aforementioned representations, promises and assurances.
- h) In absence of any headway in the Joint Venture Companies and the failure and neglect of Mr. Satish Panchariya to fulfil any promises the Respondent approached Mr. Satish Panchariya to confront him.
- i) Accordingly, a meeting was held on the 02.05.2022 wherein it was decided that the Petitioner would bear the recurring costs of the (i) monthly rental cost of a Studio (ii) monthly rental of LED Set ups (iii) salaries of unreal Engine Personnel and also. (iv) make one time

investment in unreal Engine and cost of N Cam Camera from 01.05.2022 to 31.07.2022.

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- j) During the meeting, it was also decided that, the aforementioned recurring costs would be charged to the Projects of the Respondent titled '1920' and 'Wicked' and the costs would be recovered from Respondent's profit share in the Joint Venture Companies.
- k) Pursuant to the said meeting, Mr. Amar Thakkar, being the ex-employee of the Respondent, sent an email dated 02.05.2022, therein capturing the Minutes of the Meeting.
- l) Mr. Satish Panchariya malafidely and mischievously through the bank account of the Petitioner, transferred an amount of Rs. 1,04.42,949/- (from the bank account of the Petitioner and he transferred an amount of Rs. 15,00,000/- through the bank account of another company being Micro Capital.
- m) The Respondent categorically states that as per the minutes of the meeting held on 02.05.2022, the abovementioned amounts were originally sought to be adjusted with Respondent's profit share in the two new Joint Venture Companies. However, the Petitioner is now deceitfully trying to claim the whole amount of Rs. 1,39,30,999
- n) The Respondent was shocked to receive an email from one of its clients, therein stating that it had received an email from Petitioner alleging breach on part of the Respondent of an allegedly signed (Rupees Fifteen Lakhs Only) through the bank account of another company being Micro Capital.
- o) The Respondent demanded to inspect the alleged Term Sheet dated 01.03.2022. Despite several requests from the Respondent the Petitioner has failed and neglected to send the signed copy of the alleged Term Sheet dated 01.03.2022.



- p) Mr. Vikram Bhatt received a Summons dated 24.12.2022 by Amboli Police Station to appear in cheating complaint filed against the Respondent and it's directors, being Ms. Krishna Bhatt, Mr. Vikram Bhatt as well as the ex-employee of the Respondent being Mr. Amar Thakkar.
- q) Subsequently a Demand Notice dated 13.01.2023 was sent to it in the Petitioner's name signed by Ms. Karishma Rattanshi in the capacity of a director of the Petitioner.
- r) The Rejoinder dated 03.02.2023, in clear and unequivocal terms admitted that there was "no any formal MOA or AOA" which existed between the Respondent and the Petitioner for the purpose of incorporation of the 2 (two) new joint venture companies.
- s) The appointment of additional director being Ms. Karishma Rattanshi in the Joint Venture Companies was done by Mr. Satish Panchariya autonomously and without the express authorization, permission and consent of the Petitioner's other 50% Shareholder and Director being Mr. Vikram Bhatt.
- t) Mr. Satish Panchariya has been engaging in fraudulent and deceptive practices by leveraging the name and reputation of Mr. Vikram Bhatt to secure numerous projects.
- u) Mr. Satish Panchariya being the other 50% Shareholder and Director of the Petitioner, has fraudulently appointed 2 (two) new directors being Ms. Karishma Rattanshi and Mr. Vikrant Anand in the said new joint venture companies thereby usurping the management and control of the Petitioner.
- v) As per the Bank Statement annexed as Exhibit-K in this Petition filed by the Petitioner, it is evident that Mr. Satish Panchariya with the help of Ms. Karishma Rattanshi and Mr. Vikrant Anand have



been misappropriating huge amounts of monies from the bank account of Petitioner into the bank account of K Sera Sera Box Office Pvt. Ltd without knowledge and consent of Petitioner's other director being Mr. Vikram Bhatt for their own wrongful gains'.

- w) The Copy of Minutes of Meeting dated 05.05.2022 is forged and fabricated document was not printed on any Letterhead, which makes the authenticity of the said document questionable.
- x) Mr. Satish Panchariya had access to Respondent's round stamp. The Respondent's round stamp has been fraudulently used on each page of the said forged and fabricated document without the knowledge and consent of Respondent's director Mr. Vikram Bhatt.
- y) The Respondent has filed a Police Complaint dated 20.05.2023 against Mr. Satish Panchariya, Ms. Karishma Rattanshi and Mr. Vikrant Anand under Sections 403,405, 415, 418, 463, 464, 468, 471, 499 and 120A read with Sections 406, 417, 465, 500 and 120B of the Indian Penal Code 1860.
- z) No Term Sheet dated 01.03.2022 was signed and / or executed by and between the Petitioner and the Respondent forming a legally enforceable contract as falsely alleged and claimed.
- aa)The Respondent does not recall signing any such Term Sheet dated 01.03.2022 as is sought to have been alleged by the Petitioner. One of the ex- employees of the Respondent being Mr. Amamr Thakkar had also sent an Email dated 25.08.2022 bearing Time Stamp of 16:34 to Mr. Satish Panchariya and Ms. Karishma Rattanshi, wherein he clarified that there was no pre-existing deal of the Respondent and the Petitioner.
- bb) The Petitioner has also time and again asked for inspection of the original copy of Term Sheet dated 01.03.2022, However, the

Petitioner has miserably failed and neglected to give inspection of the Original Term Sheet.

cc) The Term Sheet dated 01.03.2022 has not been referenced anywhere in the Memorandum of Association as well as Article of Association of the said two new joint venture companies.

dd) The Respondent categorically denies requesting for any infrastructural and financial loan from the Petitioner. The Respondent has only received an amount of Rs.1,04,42,949/- from the bank account of the Petitioner.

ee) The Respondent denies that the allegedly signed Term Sheet dated 01.03.2022 was executed in 2 (two) identical copies and that one of the copies of the alleged Term Sheet is with the Respondent.

Additional Affidavit dated 27.10.2023 by the Petitioner:

13. The Term Sheet dated 01.03.2022 is a legally enforceable contract binding on both the Financial Creditor and Corporate Debtor pursuant to which Loan was disbursed.

14. The Board Resolution annexed as Exhibit-A to the Reply by the Corporate Debtor does not specifically state, mentions and / or authorize Mr. Vikram Bhatt to file Reply. The said Board Resolution does not bear the seal/ stamp of the Corporate Debtor Company. The said board resolution is printed on the letterhead of Mr. Vikram Bhatt which again is not in the name of corporate debtor company.

15. The Petitioner has filed the master data printed from the website of Ministry of Corporate Affairs (Exhibit A) which reflect the legal and bonafide appointment of Ms. Karishma Rattanshi as director of the Petitioner's Company.



16. An amount of Rs. 1,39,30,999/- was never transferred by the Financial Creditor to the Corporate Debtor. On 02.05.2022, the Corporate Debtor had requested for infrastructure and financial loan from the Financial Creditor and based on Corporate Debtor's request, the Financial Creditor had provided the financial loan of Rs. 1,39,30,999/- with the condition that Corporate Debtor will repay the loan amount. The Corporate Debtor has also admitted the Debt vide emails and letter dated 08.09.2022, 20.09.2022, 21.09.2022 and 04.10.2022 addressed to the Financial Creditor Moreover, the Corporate Debtor have also admitted this fact in the Statement dated 11.01.2023 given to Amboli Police Station.
17. The Petitioner also addressed an Email dated 20.09.2022 to the advocate of respondent, wherein the Petitioner reproduced the agreed schedule of repayment suggested by the Corporate Debtor, to which the Corporate Debtor vide their email dated 21.09.2022 accepted to return the outstanding loan in the agreed schedule of repayment, The Petitioner submits that the respondent also assured to settle the issue with the respondent, however; the respondent only approached the Petitioner to kill the time and thereafter backed off and refused to pay back and breached the clauses of the term sheet dated. 01.03.2022 and Minutes of meeting dated 02.05.2022.
18. There are Four Directors of the Financial Creditor namely Mr. Satish Ramswaroop Panchariya, Mr. Vikram Pravin Bhatt, Mr. Vikrant Parvez Anand and Ms. Karishma Bhupendra Rattanshi. The Financial Creditor denies that Mr. Vikram Bhatt is the 50% Shareholder of the Financial Creditor and is put to strict proof thereof.
19. The contradictory and afterthought allegations made by the Corporate Debtor can be seen from the below mentioned which are as follows - The Respondents are raising false allegations with reference to appointment of Ms. Karishma Rattanshi as Director of the Petitioner and on the other hand the Respondents themselves are admitting Ms. Karishma Rattanshi as one of the Directors.



20. The Respondents never disputed the existing Debt in respect to loan provided by the Petitioner to the Respondent and therefore the denial of the existence of the term sheet is afterthought and belated to evade legal contractual obligation and to cause wrongful loss to the Petitioner.

21. No two different companies being “K Sera Sera and Vikram Bhatt Studio Virtual World Private Ltd” and K Sera Sera & Vikram Bhatt Productions Private Limited” were formed in accordance to the term sheet dated 01.03.2022..

Reply to Additional Affidavit by the Respondent:

22. The additional contentions made by the Respondent in its Additional Affidavit dated 12.01.2024 are as follows:

22.1 It was agreed by and between the Petitioner and the Respondent that whatever money, which was paid to the vendors of the Respondent and the Respondent, would be returned to the Petitioner from the share of the Profit earned by the Respondent in the Petitioner Company and it is the categorical submission of the Respondent that to date, the Respondent has shown willingness to pay off the dues, from his share in the profits earned by the Respondent No.1 Company.

22.2 The contents of the Additional Affidavit filed by the Petitioner are beyond the scope of the Order dated 30.08.2023 and hence cannot and should not be taken on record.

22.3 The Petitioner is needlessly trying to create controversy out of the statement allegedly obtained through RTI and there is nothing material in the statement.

Written submission on the Behalf of Petitioners:

23. The Petitioner has submitted following cases stating that interest free loan where no time is fixed for repayment shall also qualify as financial debt which are as follows:



- i. ***Orator Marketing Private Limited vs. Samtex Desinz, Pvt. Ltd. (2021 SCC Online SC, 513)***
- ii. ***Shivam Agriols Pvt. Ltd. vs. Shree Krishna Vanaspati Industries Pvt. Ltd (2023 SCC OnLine NCLAT 233)***
- iii. ***Shailesh Sangani vs. Joel Cardoso & Ors (2019 SCC OnLine NCLAT 52) held that***
- iv. ***Mukesh Kumar Aggarwal v. Anurag Gupta (2020 SCC OnLine NCLAT 1038).***
- v. ***Mahmod Alam Khan v. Ahmed Alam Khan & Anr. (2023, SCC OnLine NCLAT 475).***
- vi. ***Karan Goel vs. M/s Pashupati Jewellers & Anr. (2019 SCC OnLine NCLAT 934).***

24. The Corporate Debtor's Reply Cannot Be Relied Upon:

The Corporate Debtor has filed a forged and fabricated back dated Board of Meeting Resolution before this Court. Pertinently, as per the said Board Resolution the Board Meeting was held on 15.06.2023 however, the purported Board Resolution filed by the Corporate Debtor is dated 6.06.2023 i.e. prior to the date of the Board Meeting.

25. The Corporate Debtor has not authorized Mr. Vikram Bhatt to file the Reply as the Corporate Debtor is M/s Hare Krishna Media Tech Private Limited and the Board Resolution is on the letter head of Vikram Bhatt. The perusal of the same reveals that Mr. Vikram Bhatt is authorizing himself to file the present Reply before this Tribunal.

26. Mr. Satish Panchariya is authorized to file the present Petition against the Corporate Debtor vide Board Resolution dated 10.02.2023 and the said Board Resolution is signed by Karishma Bhupendra Rattanshi, the Director of the Financial Creditor.



Written Submissions on behalf of the Respondent:

27. The case of the Petitioner revolves around two (2) documents being (i) Term Sheet and (ii) Minutes of the Meeting, on the basis of which the Petitioner claims to have transferred to the Respondent a sum of Rs. 1,39,30,999/-.
28. The Petitioner being a party to the Term Sheet dated 01.03.2022, was under an obligation to ensure that the studio, where movies were to be shot and produced, was set up as agreed upon in the Term Sheet and further, also under an obligation to look after the financial aspects of the Company.
29. It was only upon the Petitioner's failure to set up the studio in a time bound agreed upon manner, that the Respondent required financial operational support, which was in any case the responsibility of KSS as per Term Sheet. Admittedly, the only recoupment of the said sum transferred to the Respondent, was supposed to be by the way of profit share of Mr. Vikram Bhatt in the Petitioner Company and therefore, a financial default in terms of Section 7 read with Section 3(12) of the IBC could have never possibly occurred, warranting initiation of Corporate Insolvency Resolution Process (CIRP).
30. In any case, the Petitioner has miserably failed to show that the money transferred to the Respondent was ever disbursed against the consideration for the time value of money and therefore, there is no question of the Petitioner falling under the definition of Financial Creditor.
31. The Corporate Debtor submitted following cases stating that for a debt to be considered as financial debt it should have interest component and if there has been disbursement it should be made against consideration for the time value of money:
- i. ***Vishwa Nath Singh vs Visa Drugs & Pharmaceuticals Pvt. Ltd Company Appeal (AT) (Insolvency) No.234-235 of 2017.***
 - ii. ***Dr. BVS Lakshmi vs Geometrix Laser Solutions Private Limited, 2017 SCC Online NCLAT 531.***



- iii. ***Divyasnsnsh Pratham Infracon Pvt Ltd.Vs Dwarika Infocom Pvt.Ltd and Ors MANU/NC/2892/2019.***
- iv. ***Ravindra Pal Singh Lamba vs. Satkar Air Cargo Services Private Limited NCLT in CP.361 (PB) 2018 held***

Other Cases:

- v. ***M/s Invent Asset Securitization and Reconstruction Pvt Ltd Vs M/s Girnar Fibres Ltd, Civil Appeal No.3033 of 2022.***
- vi. ***Ms.Rita Malhotra and Ors Vs M/s. Orris Infrastructure Pvt Ltd decided by NCLT (C.P)(IB)234-PB of 2019.***

Analysis & Findings

32. Heard the Ld. counsel for the parties and perused the records.

33. It is submitted by the Petitioner that the Respondent had requested for infrastructure and financial loan and therefore an amount of Rs.1,39,30,999/- was transferred in the account of the Respondent with the condition that Respondent will repay the same. However, the Respondent failed to do so and therefore a demand notice dated 13.01.2023 was issued to the Corporate Debtor calling upon to repay the said loan amount of Rs. 1,39,30,999/- along with 24% interest p.a.

34. It is submitted that the loan amount was disbursed on the following dates:

Date of Disbursement	Amount
03.06.2022	Rs.47,13,437/-
13.06.2022	Rs.15,00,000/-
21.06.2022	Rs.56,000/-
23.06.2022	Rs.8,00,000/-
11.07.2022	Rs.23,47,512/-
21.07.2022	Rs.25,00,000/-
28.07.2022	Rs.8,50,000/-
06.08.2022	Rs.8,26,000/-



06.08.2022	1,00,000/-
19.08.2022 to 24.08.2022	2,38,050/-

35. Further the Term Sheet dated 01.03.2022 is a document on basis of which the Financial Creditor disbursed the questioned loan to the Corporate Debtor.
36. The Respondent submitted that the Petitioner has never transferred the amount of Rs.1,39,30,999/- and that the Petitioner has malafidely and mischievously concealed the fact that an amount of Rs. 15,00,000/- out of the total claim amount was in fact transferred by another unknown company named Micro Capital.
37. It is contended that the Petitioner has miserably failed to show that the money transferred to the Respondent was ever disbursed against the consideration for time value of money therefore the Petitioner does not fall within the definition of Financial Creditor.
38. It is also contended that the Demand Notice dated 13.01.2023 is issued by an illegally and unlawfully appointed Director being Ms. Karishma Rattanshi, without authorization of the Respondent who is a 50% Shareholder and the same is not in prescribed form.
39. It is further contended that no Term Sheet dated 01.03.2022 was signed and / or executed by and between the Petitioner and the Respondent forming a legally enforceable contract as falsely alleged and claimed.
40. In regard to the above, we note that the Petitioner has annexed Copy of the ledger account of the Corporate Debtor to the Petition to show disbursement of the said debt to the Respondent.
41. We also note that the Petitioner has annexed term sheet dated 01.03.2022 duly executed between the Petitioner and the Respondent. On perusal of the same we note that the term sheet is duly signed by both the parties on basis which the questioned financial assistance to the Corporate Debtor was



extended. We also note that pursuant to order dated 06.09.2024 the Petitioner also produced the original minutes of the meeting held on 02.05.2022 duly signed by all the parties on 05.05.2022.

42. We further note that the Petitioner sent a legal notice dated 03.09.2022 requesting the Respondent to repay an amount of Rs.1,39,30,999/- along with interest of 24% till the date of realization, Rs.5,00,000/- towards business and reputational losses and 15,000/- as notice fee. The Respondent vide its reply to legal notice dated 08.09.2022 has duly acknowledged the debt which is reproduced herein under:

“1. That as per the conversation held between you and my client Mr. Amar Thakkar the amounts of Rs.1,39,30,998/- has been agreed to be returned.”

43. Further the Corporate Debtor through its advocate sent an email dated 04.10.2022 wherein the Corporate Debtor has once again acknowledged the debt in the following terms:

5. Now in the said matter apart from the above, I have continuously informed to your clients that my clients have never denied he return of outstanding loaned amounts being an amount of Rs.1,39,30,999/- (Rupees One Crore Thirty-Nine Lacs Thirty Thousand Nine Hundred and Ninety-Nine) to your clients. That I, for and on behalf of my clients have upheld my clients bonafide intentions to repay your client the said loan amounts which is evident from my letter dated 8th September, 2022 and the Subsequent emails which was addresses by me to your clients.

44. It is clear from the reply to legal notice and email dated 04.10.2022 reproduced above that the Corporate Debtor has acknowledged debt of owes



a sum of Rs. 1,39,30,998/- to the Financial Creditor. The admitted debt which is above the threshold of 1 crore, as prescribed u/s 4(1) of the Code.

45. We also note that the Respondent has stated that it was agreed by and between the Petitioner and the Respondent that whatever money, which was paid to the vendors of the Respondent and the Respondent, would be returned to the Petitioner from the share of the Profit earned, however, there is no document submitted establishing the same. However, despite issuing a legal notice dated 03.09.2022 and demand notice dated 13.01.2023 no payment has been made by the Respondent thereof, establishing default in repayment.

46. Respondent has also contended that the Petitioner has never transferred the amount of Rs.1,39,30,999/- and that the Petitioner has malafidely and mischievously concealed the fact that an amount of Rs. 15,00,000/- out of the total claim amount was in fact transferred by another unknown company named Micro Capital. In this regard we say that despite an amount of 15,00,000/- which may have been received from Mirco Capital the Respondent vide its reply to legal notice dated 08.09.2022 has duly acknowledged the debt and agreed to return the same. Therefore, the Respondent cannot blow hot and cold at the same time and in any case even without considering this amount the debt is above the threshold limit prescribed u/s 4(1) of the Code.

47. In regards to the contention that the Petitioner has miserably failed to show that the money transferred to the Respondent was ever disbursed against the consideration for time value of money, the Respondent has placed reliance on the following cases stating that a financial debt should have interest component and disbursement should be made against the consideration for time value of money.

- i. **The National Company Law Appellate Tribunal (NCLAT) in the case of Vishwa Nath Singh vs Visa Drugs & Pharmaceuticals Pvt. Ltd**



Company Appeal (AT) (Insolvency) No.234-235 of 2017 while setting aside order of admitting the Corporate Debtor to CIRP held that mere loan taken by a Corporate Debtor would not mean that such amount can be termed as money borrowed against the payment of interest.

ii. **In the case of Dr. BVS Lakshmi vs Geometrix Laser Solutions Private Limited, 2017 SCC Online NCLAT 531 held that:**

"For coming under the definition of 'Financial Debt' as defined under subsection 8 of Section 5, the Claimant is required to show that (i) there is a debt alongwith interest, if any, which has been disbursed and (ii) such disbursement has been made against the 'consideration for the time value of money'...

iii. **Divyasnsh Pratham Infracon Pvt Ltd.Vs Dwarika Infocom Pvt.Ltd and Ors MANU/NC/2892/2019 the NCLT PB held that:**

6.The basic issue to be decided in this case is whether the amount paid by the Applicant comes under the definition of Financial Debt should have two components i) Interest or consideration against time value.

iv. **Ravindra Pal Singh Lamba vs. Satkar Air Cargo Services Private Limited NCLT in CP.361 (PB) 2018 held that:**

In the present case there is no document to show that the Respondent company either accepted or undertook to repay loan with interest. The applicant has failed to justify as to how without any provision of interest the debt claimed in the application can be termed as a financial debt.

However, we are unable to agree with respondent's arguments or case laws relied upon in view of the following discussions.

48. In regards to the issue raised regarding questioned money being not financial debt u/s 5(8) of the Code, we note that the agreement between the parties recorded in the minutes of the meeting held on 02.05.2022 duly signed the Financial Creditor and Corporate Debtor state as follows:



III. That during the meeting an request for Infrastructure and Financial Support on behalf of Loneranger Productions Pvt. Ltd has been made by Mr. Amar Thakkar for meeting the expenses for its ongoing Movie Production tentatively named "1920" & "Wicked" from Virtual World Pvt Ltd., wherein it was clarified that as the Virtual World Pvt Ltd is yet to start its Business Commencement as the formalities pertaining to it are under progress, therefore it **was agreed that Virtual world Pvt Ltd., will provide the financial support by bearing the costs for the period of 2.5 Months starting from 1" May, 2022 to 15th July, 2022** towards Movie Project tentatively named as "1920" and "Wicked".

V. Loneranger Productions Pvt. Ltd., and Virtual World Pvt. Ltd, hereby agrees and confirms that the Capital **required towards aforesaid Capital Investment for purchasing the above mentioned equipment's will be funded by KSSBOPL in form of loan which shall be recoverable along with interest** from the Virtual World Pvt. Ltd.

It is further agreed between that parties that the abovementioned / **financial support for the aforesaid projects of "1920" and "Wicked" for the period of 2.5 months** is exclusively provided by Virtual World Pvt. Ltd. in this exceptional scenario.

(Emphasis Provided)

Therefore, we note that transaction between the parties is termed on a financial support loan given and the said loan was recoverable with interest and was paid for a period of 2.5 months.

49. We further refer to Section **Section 5(8) (f)** of the Code, which is reproduced herein under:

“Financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and

includes—

- f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

50. A debt under Section 5(8) of the Code can be interest free. **The Hon'ble Supreme Court in M/s Orator Marketing Pvt. Ltd. vs. M/s Samtes Desinz Pvt. Ltd. [AIR 2021 SC 4040]** observed as follows:

"22. Financial debt means outstanding principal due in respect of a loan and would also include interest thereon, if any interest were payable thereon. If there is no interest payable on the loan, only the outstanding principal would qualify as a financial debt. Both NCLAT and NCLT have failed to notice clause (f) of Section 5(8), in terms whereof **financial debt includes any amount raised under any other transaction, having the commercial effect of borrowing. The definition of Financial Debt in Section 518) of BC does not expressly exclude an interest free loan. Financial Debt would have to be construed to include interest free loans advanced to finance the business operations of a corporate body.**"

(Emphasis Provided)

51. In regards to the issue of time value of money, we rely on the judgement of **The Hon'ble NCLAT in the matter of Shivam Agriols Pvt. Ltd. vs. Shree Krishna Vanaspati Industries Pvt. Ltd (2023 SCC OnLine NCLAT 233) wherein it was held that:**

"26. Briefly stated, we see that in Pioneer Urban (supra) it has been held that any debt to be treated as financial debt, there must happen disbursal of money and the disbursal must be against consideration for time value of money. **The concept of time value of money has been further explained to also include a transaction which does not necessarily culminate into money being returned to the lender or interest being paid in respect of money that has been**



borrowed. Holding Section 5(8) as a residuary provision which has a catch-all nature, it held that it can include anything which is equivalent to the money that has been loaned as long as commercial effect of borrowing or profit as the aim is discernible. In the Company Appeal (AT) (Insolvency) No.982 of 2022 matter of Anuj Jain (*supra*), the Hon'ble Supreme Court articulated that the essential condition of financial debt is disbursement against the consideration for time value of money. Further in the most recent judgment of Hon'ble Supreme Court in Orator (*supra*), it has been clearly held that financial debt does **not expressly exclude an interest free loan. It has also emphasized that financial debt includes any amount raised under any other transaction having the commercial effect of borrowing.**

28. In the present facts of the case, that money had been disbursed by the Appellant on behalf of Corporate Debtor to SBI towards loan repayment is undisputed. It is also an admitted fact that no interest was either claimed by the Appellant nor paid by the Corporate Debtor. That the component of interest is not a *sine qua non* for bringing a debt within the fold of financial debt has been clearly held by the Hon'ble Supreme Court in Orator (*supra*). **We are, therefore, not able to accept the misconceived finding of the Adjudicating Authority that simply because the instant transaction was bereft of loan component and no time was fixed for repayment, it did not qualify to be a financial debt.**

(Emphasis Provided)

52. In view of the facts of the case and discussions hereinabove, in our considered view the amounts disbursed and reflected at Para 34 constitutes a financial debt and since the same has not been paid default has occurred in the present case.



53. The Respondent has relied on the following cases to submit that IBC cannot be used as a money recovery tool:


- i. ***M/s Invent Asset Securitization and Reconstruction Pvt Ltd Vs M/s Girnar Fibres Ltd, Civil Appeal No.3033 of 2022.***
- ii. ***Ms.Rita Malhotra and Ors Vs M/s. Orris Infrastructure Pvt Ltd decided by NCLT (C.P)(IB)234-PB of 2019.***

54. We note that this petition is filed under Section 7 of IBC in which the Adjudicating Authority has to see whether there is a debt and default. In the present case the debt and default has been established and the default amount is above the threshold limit. Further no case has been made out that the case has been filed for recovery as it is not shown that the respondent's financial capacity is sound and is capable of discharging the debt. Therefore, we say that the present petition is not filed for recovery but for resolution of the Corporate Debtor.

55. Further It is a well-settled position that the Adjudicating Authority has to determine whether there is debt and default and if it is satisfied that a default has occurred, then the application under section 7 of the Code must be admitted unless it lacks other necessities as mandated thereunder. We are supported by the decision of Hon'ble Supreme Court in ***Innovative Industries Limited vs. ICICI Bank and Anr [(2018) 1 SCC 407]*** wherein it was held as follows:

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

30.....On the other hand, as we have seen, in the case




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

56. In view of the discussions above, this Tribunal is of considered view that debt and default have been established by the Financial Creditor and the default amount is in excess of Rs. 1 Crore and thus above the threshold limit mandated in Section 4(1) of the Code. Accordingly, we are satisfied that the present Petition is maintainable.

57. Given the facts and circumstances of the case and discussions hereinabove, the Company Petition bearing no.302 of 2023 is **admitted** and ordered as follows:

ORDER

- i. The above Company Petition No. (IB) 302 (MB)/2023 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Pasad Impex Private Limited.
- ii. The Petitioner has proposed the name of **Ms. Bharati Manoj Daga** Registration No. IBBI/IPA-001/IP-P01963/2020-21/13070 to be appointed as an Interim Resolution Professional (IRP) of the Corporate Debtor. The proposed IRP has filed his Written Communication dated



14.02.2023 in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Written Communication is accompanied by AFA which is valid upto 17.03.2023. However, upon verification we note that AFA is valid upto 31.12.2025. Accordingly, we appoint **Ms. Bharati Manoj Daga as the Interim Resolution Professional (IRP)** to carry out the functions as per the Insolvency & Bankruptcy Code, 2016.

- iii. The Financial Creditor shall deposit an amount of Rs. 5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favor of the Interim Resolution Professional (IRP) appointed herein, immediately upon communication of this Order.
- iv. There shall be a moratorium under section 14 of the Code prohibiting the following:
 - a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.



- v. The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- vi. The provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii. The order of moratorium shall have effect from the date of pronouncement of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of section 31 or passes an order for Liquidation of Corporate Debtor under section 33, as the case may be.
- viii. The public announcement of the Corporate Insolvency Resolution process shall be made immediately as specified under section 13 of the Code.
- ix. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of section 17 of the Code. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- x. The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- xi. The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.



- xii. The Registry is also directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for their record.
- xiii. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- xiv. Accordingly, this Petition is **Admitted**.

SD/-

Charanjeet Singh Gulati
Member (Technical)

Apurva, LRA

SD/-

Lakshmi Gurung
Member (Judicial)