



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - IV**

C.P. (IB) No. 123/MB/2024

*[Under Section 9 of the Insolvency and
Bankruptcy Code, 2016]*

In the matter of

Fraser and Company Limited

(CIN: L51100MH1917PLC272418)

...Operational Creditor

V/s.

Shraddha Landmark Private Limited

(CIN: U45209MH2005PTC156281)

...Corporate Debtor

Pronounced: 22.08.2025

CORAM:

SHRI ANIL RAJ CHELLAN

HON'BLE MEMBER (TECHNICAL)

SHRI K. R. SAJI KUMAR

HON'BLE MEMBER (JUDICIAL)

Appearances: Hybrid

For the Operational Creditor : Adv. Devul Dighe

For the Corporate Debtor : Sr. Adv. Gaurav Joshi a/w Adv. Piyush
Raheja, Adv. Samarth Patel and
Adv. Santosh Thakur



ORDER

Per: Anil Raj Chellan, Member (Technical)

1. This Company Petition was filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 on 24.01.2024 by **Fraser and Company Limited**, (Operational Creditor/Applicant) through its director as authorised by the Board Resolution dated 14.11.2023. The Applicant seeks initiation of Corporate Insolvency Resolution Process (CIRP) in the case of **Shraddha Landmark Private Limited** (Corporate Debtor) for the debt of Rs.7,07,06,829 /- (Seven Crore Seven Lakh Six Thousand Eight Hundred and Twenty-Nine Rupees) due and payable to the Operational Creditor. The date of default, with respect to each invoice ranges from 27.6.2022 to 11.11.2022, as mentioned in Part IV, read with Annexure C of the Application.

2. Submissions of Operational Creditor

2.1 The Operational Creditor is a company engaged in the business of trading and/or supply of various building materials and raw materials used for the purpose of construction of infrastructural projects. The Corporate Debtor is engaged in the business of undertaking and executing real estate projects, particularly residential and commercial projects.

2.2 The Corporate Debtor placed orders from time to time with the Operational Creditor for the supply of AAC Blocks, Joint Mortar, Cement, TMT Bars, Binding Wires, and other materials ('goods') for the construction of buildings and/or infrastructure as per its requirement. As against the sale and supply of goods, the Operational Creditor raised various invoices against the Corporate Debtor from time to time, out of which the following invoices remain outstanding:

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| Sr. No. | Invoice No. | Date of Invoice | Invoice Amount | Date on which debt Amount under Invoice became due | Date of Default |
|----------------|--------------------|------------------------|-----------------------|---|------------------------|
| 1. | 22-23/OM/04/44 | 28.04.2022 | 6,67,179.00 | 27.06.2022 | 27.06.2022 |
| 2. | 22-23/OM/04/45 | 28.04.2022 | 3,39,894.00 | 27.06.2022 | 27.06.2022 |
| 3. | 22-23/CE/04/20 | 30.04.2022 | 1,12,435.00 | 29.06.2022 | 29.06.2022 |
| 4. | 22-23/BL/05/1 | 01.05.2022 | 1,80,567.00 | 30.06.2022 | 30.06.2022 |
| 5. | 22-23/BL/05/2 | 01.05.2022 | 26,252.00 | 30.06.2022 | 30.06.2022 |
| 6. | 22-23/BL/05/6 | 02.05.2022 | 1,81,063.00 | 01.07.2022 | 01.07.2022 |
| 7. | 22-23/CE/05/1 | 03.05.2022 | 86,903.00 | 02.07.2022 | 02.07.2022 |
| 8. | 22-23/CE/05/2 | 03.05.2022 | 55,561.00 | 02.07.2022 | 02.07.2022 |
| 9. | 22-23/OM/05/2 | 07.05.2022 | 4,01,742.00 | 06.07.2022 | 06.07.2022 |
| 10. | 22-23/OM/05/3 | 07.05.2022 | 1,03,040.00 | 06.07.2022 | 06.07.2022 |
| 11. | 22-23/OM/05/4 | 08.05.2022 | 4,29,430.00 | 07.07.2022 | 07.07.2022 |
| 12. | 22-23/BL/05/9 | 08.05.2022 | 1,79,332.00 | 07.07.2022 | 07.07.2022 |
| 13. | 22-23/TMT/05/1 | 08.05.2022 | 25,82,685.00 | 07.07.2022 | 07.07.2022 |
| 14. | 22-23/TMT/05/2 | 08.05.2022 | 25,85,590.00 | 07.07.2022 | 07.07.2022 |
| 15. | 22-23/OM/05/5 | 09.05.2022 | 31,612.00 | 08.07.2022 | 08.07.2022 |
| 16. | 22-23/OM/05/6 | 09.05.2022 | 2,10,114.00 | 08.07.2022 | 08.07.2022 |
| 17. | 22-23/CE/05/6 | 10.05.2022 | 1,19,808.00 | 09.07.2022 | 09.07.2022 |
| 18. | 22-23/BL/05/10 | 10.05.2022 | 1,71,912.00 | 09.07.2022 | 09.07.2022 |
| 19. | 22-23/OM/05/12 | 13.05.2022 | 20,434.00 | 12.07.2022 | 12.07.2022 |
| 20. | 22-23/TMT/05/4 | 14.05.2022 | 24,28,932.00 | 13.07.2022 | 13.07.2022 |
| 21. | 22-23/BL/05/17 | 15.05.2022 | 26,252.00 | 14.07.2022 | 14.07.2022 |
| 22. | 22-23/BL/05/18 | 15.05.2022 | 1,85,006.00 | 14.07.2022 | 14.07.2022 |
| 23. | 22-23/TMT/05/5 | 21.05.2022 | 22,19,460.00 | 20.07.2022 | 20.07.2022 |
| 24. | 22-23/TMT/05/6 | 21.05.2022 | 22,09,535.00 | 20.07.2022 | 20.07.2022 |
| 25. | 22-23/BL/05/27 | 22.05.2022 | 1,94,951.00 | 21.07.2022 | 21.07.2022 |
| 26. | 22-23/BL/05/28 | 23.05.2022 | 1,91,762.00 | 22.07.2022 | 22.07.2022 |
| 27. | 22-23/BL/05/31 | 24.05.2022 | 1,93,408.00 | 23.07.2022 | 23.07.2022 |
| 28. | 22-23/BL/05/32 | 26.05.2022 | 1,80,720.00 | 25.07.2022 | 25.07.2022 |
| 29. | 22-23/BL/05/33 | 26.05.2022 | 26,252.00 | 25.07.2022 | 25.07.2022 |

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| 30. | 22-23/ELC/05/1 | 26.05.2022 | 24,07,200.00 | 25.07.2022 | 25.07.2022 |
| 31. | 22-23/TMT/05/9 | 27.05.2022 | 22,62,287.00 | 26.07.2022 | 26.07.2022 |
| 32. | 22-23/TMT/05/10 | 27.05.2022 | 1,09,032.00 | 26.07.2022 | 26.07.2022 |
| 33. | 22-23/BL/05/34 | 28.05.2022 | 1,97,523.00 | 27.07.2022 | 27.07.2022 |
| 34. | 22-23/OM/05/19 | 28.05.2022 | 8,537.00 | 27.07.2022 | 27.07.2022 |
| 35. | 22-23/CE/05/13 | 29.05.2022 | 1,19,808.00 | 28.07.2022 | 28.07.2022 |
| 36. | 22-23/OM/05/23 | 31.05.2022 | 18,899.00 | 30.07.2022 | 30.07.2022 |
| 37. | 22-23/TMT/06/1 | 01.06.2022 | 23,14,311.00 | 31.07.2022 | 31.07.2022 |
| 38. | 22-23/TMT/06/2 | 01.06.2022 | 53,478.00 | 31.07.2022 | 31.07.2022 |
| 39. | 22-23/TMT/06/3 | 02.06.2022 | 21,77,368.00 | 1.08.2022 | 1.08.2022 |
| 40. | 22-23/TMT/06/4 | 02.06.2022 | 23,02,409.00 | 1.08.2022 | 1.08.2022 |
| 41. | 22-23/TMT/06/5 | 02.06.2022 | 53,997.00 | 1.08.2022 | 1.08.2022 |
| 42. | 22-23/BL/06/1 | 03.06.2022 | 1,98,346.00 | 2.08.2022 | 2.08.2022 |
| 43. | 22-23/TMT/06/7 | 03.06.2022 | 55,035.00 | 2.08.2022 | 2.08.2022 |
| 44. | 22-23/BL/06/7 | 07.06.2022 | 1,64,774.00 | 6.08.2022 | 6.08.2022 |
| 45. | 22-23/BL/06/8 | 07.06.2022 | 26,252.00 | 6.08.2022 | 6.08.2022 |
| 46. | 22-23/BL/06/11 | 10.06.2022 | 91,560.00 | 9.08.2022 | 9.08.2022 |
| 47. | 22-23/BL/06/15 | 13.06.2022 | 1,94,814.00 | 12.08.2022 | 12.08.2022 |
| 48. | 22-23/TMT/06/11 | 14.06.2022 | 22,98,587.00 | 13.08.2022 | 13.08.2022 |
| 49. | 22-23/TMT/06/12 | 14.06.2022 | 21,51,052.00 | 13.08.2022 | 13.08.2022 |
| 50. | 22-23/CE/06/8 | 14.06.2022 | 1,44,000.00 | 13.08.2022 | 13.08.2022 |
| 51. | 22-23/BL/06/16 | 17.06.2022 | 1,86,378.00 | 16.08.2022 | 16.08.2022 |
| 52. | 22-23/BI/06/17 | 19.06.2022 | 1,55,976.00 | 18.08.2022 | 18.08.2022 |
| 53. | 22-23/CE/06/16 | 19.06.2022 | 1,19,808.00 | 18.08.2022 | 18.08.2022 |
| 54. | 22-23/OM/06/12 | 20.06.2022 | 4,36,939.00 | 19.08.2022 | 19.08.2022 |
| 55. | 22-23/CE/06/21 | 21.06.2022 | 1,15,200.00 | 20.08.2022 | 20.08.2022 |
| 56. | 22-23/OM/06/13 | 22.06.2022 | 4,36,939.00 | 21.08.2022 | 21.08.2022 |
| 57. | 22-23/OM/06/14 | 22.06.2022 | 1,53,084.00 | 21.08.2022 | 21.08.2022 |
| 58. | 22-23/OM/06/15 | 22.06.2022 | 3,89,711.00 | 21.08.2022 | 21.08.2022 |
| 59. | 22-23/OM/06/16 | 22.06.2022 | 1,10,141.00 | 21.08.2022 | 21.08.2022 |
| 60. | 22-23/CE/06/22 | 23.06.2022 | 1,49,760.00 | 22.08.2022 | 22.08.2022 |
| 61. | 22-23/OM/06/19 | 24.06.2022 | 1,65,961.00 | 21.08.2022 | 21.08.2022 |
| 62. | 22-23/OM/06/20 | 24.06.2022 | 3,84,127.00 | 23.08.2022 | 23.08.2022 |
| 63. | 22-23/OM/06/21 | 24.06.2022 | 3,35,215.00 | 23.08.2022 | 23.08.2022 |
| 64. | 22-23/OM/06/22 | 26.06.2022 | 58,985.00 | 25.08.2022 | 25.08.2022 |
| 65. | 22-23/CE/06/26 | 27.06.2022 | 1,15,200.00 | 26.08.2022 | 26.08.2022 |
| 66. | 22-23/BL/06/22 | 27.06.2022 | 89,503.00 | 26.08.2022 | 26.08.2022 |

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| 67. | 22-23/BL/06/23 | 27.06.2022 | 88,337.00 | 26.08.2022 | 26.08.2022 |
| 68. | 22-23/TMT/06/14 | 28.06.2022 | 21,15,286.00 | 27.08.2022 | 27.08.2022 |
| 69. | 22-23/OM/06/23 | 28.06.2022 | 50,253.00 | 27.08.2022 | 27.08.2022 |
| 70. | 22-23/OM/06/24 | 29.06.2022 | 1,40,619.00 | 28.08.2022 | 28.08.2022 |
| 71. | 22-23/OM/06/25 | 30.06.2022 | 2,58,804.00 | 29.08.2022 | 29.08.2022 |
| 72. | 22-23/OM/06/26 | 30.06.2022 | 10,325.00 | 29.08.2022 | 29.08.2022 |
| 73. | 22-23/CE/07/2 | 04.07.2022 | 1,15,200.00 | 2.09.2022 | 2.09.2022 |
| 74. | 22-23/CE/07/3 | 04.07.2022 | 1,19,808.00 | 2.09.2022 | 2.09.2022 |
| 75. | 22-23/TMT/07/1 | 05.07.2022 | 23,18,172.00 | 03.09.2022 | 03.09.2022 |
| 76. | 22-23/OM/07/1 | 05.07.2022 | 73,898.00 | 03.09.2022 | 03.09.2022 |
| 77. | 22-23/TMT/07/2 | 06.07.2022 | 11,21,241.00 | 04.09.2022 | 04.09.2022 |
| 78. | 22-23/TMT/07/3 | 06.07.2022 | 11,19,494.00 | 04.09.2022 | 04.09.2022 |
| 79. | 22-23/OM/07/2 | 07.07.2022 | 12,79,869.00 | 05.09.2022 | 05.09.2022 |
| 80. | 22-23/OM/07/3 | 07.07.2022 | 5,43,932.00 | 05.09.2022 | 05.09.2022 |
| 81. | 22-23/TMT/07/4 | 07.07.2022 | 1,04,567.00 | 05.09.2022 | 05.09.2022 |
| 82. | 22-23/BL/07/4 | 08.07.2022 | 1,85,692.00 | 06.09.2022 | 06.09.2022 |
| 83. | 22-23/OM/07/4 | 08.07.2022 | 22,450.00 | 06.09.2022 | 06.09.2022 |
| 84. | 22-23/OM/07/5 | 08.07.2022 | 4,01,720.00 | 06.09.2022 | 06.09.2022 |
| 85. | 22-23/OM/07/6 | 08.07.2022 | 15,488.00 | 06.09.2022 | 06.09.2022 |
| 86. | 22-23/OM/07/8 | 12.07.2022 | 88,807.00 | 10.09.2022 | 10.09.2022 |
| 87. | 22-23/OM/07/7 | 12.07.2022 | 23,48,512.00 | 10.09.2022 | 10.09.2022 |
| 88. | 22-23/OM/07/9 | 13.07.2022 | 5,25,937.00 | 11.09.2022 | 11.09.2022 |
| 89. | 22-23/CE/07/7 | 13.07.2022 | 1,20,000.00 | 11.09.2022 | 11.09.2022 |
| 90. | 22-23/TMT/07/8 | 17.07.2022 | 22,41,089.00 | 15.09.2022 | 15.09.2022 |
| 91. | 22-23/OM/07/10 | 19.07.2022 | 5,25,954.00 | 17.09.2022 | 17.09.2022 |
| 92. | 22-23/OM/07/11 | 20.07.2022 | 30,149.00 | 18.09.2022 | 18.09.2022 |
| 93. | 22-23/CE/07/15 | 23.07.2022 | 1,19,808.00 | 21.09.2022 | 21.09.2022 |
| 94. | 22-23/TMT/07/9 | 25.07.2022 | 2,14,949.00 | 23.09.2022 | 23.09.2022 |
| 95. | 22-23/CE/07/18 | 27.07.2022 | 96,000.00 | 25.09.2022 | 25.09.2022 |
| 96. | 22-23/TMT/07/10 | 30.07.2022 | 14,10,849.00 | 28.09.2022 | 28.09.2022 |
| 97. | 22-23/TMT/07/12 | 31.07.2022 | 9,34,829.00 | 29.09.2022 | 29.09.2022 |
| 98. | 22-23/CE/08/2 | 04.08.2022 | 1,15,200.00 | 03.10.2022 | 03.10.2022 |
| 99. | 22-23/OM/08/1 | 04.08.2022 | 7,23,493.00 | 03.10.2022 | 03.10.2022 |
| 100. | 22-23/OM/08/2 | 04.08.2022 | 13,364.00 | 03.10.2022 | 03.10.2022 |
| 101. | 22-23/TMT/08/1 | 07.08.2022 | 22,49,301.00 | 06.10.2022 | 06.10.2022 |
| 102. | 22-23/BL/08/1 | 08.08.2022 | 1,80,034.00 | 07.10.2022 | 07.10.2022 |
| 103. | 22-23/TMT/08/3 | 08.08.2022 | 14,47,795.00 | 07.10.2022 | 07.10.2022 |

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| 104. | 22-23/TMT/08/4 | 08.08.2022 | 9,12,714.00 | 07.10.2022 | 07.10.2022 |
| 105. | 22-23/CE/08/4 | 08.08.2022 | 1,19,808.00 | 07.10.2022 | 07.10.2022 |
| 106. | 22-23/CE/08/5 | 08.08.2022 | 1,15,200.00 | 07.10.2022 | 07.10.2022 |
| 107. | 22-23/TMT/08/5 | 09.08.2022 | 54,516.00 | 08.10.2022 | 08.10.2022 |
| 108. | 22-23/TMT/08/6 | 09.08.2022 | 53,997.00 | 08.10.2022 | 08.10.2022 |
| 109. | 22-23/OM/08/5 | 10.08.2022 | 5,020.00 | 09.10.2022 | 09.10.2022 |
| 110. | 22-23/TMT/08/9 | 14.08.2022 | 22,82,407.00 | 13.10.2022 | 13.10.2022 |
| 111. | 22-23/BL/08/4 | 14.08.2022 | 1,29,624.00 | 13.10.2022 | 13.10.2022 |
| 112. | 22-23/OM/08/8 | 14.08.2022 | 35,282.00 | 13.10.2022 | 13.10.2022 |
| 113. | 22-23/OM/08/9 | 14.08.2022 | 295.00 | 13.10.2022 | 13.10.2022 |
| 114. | 22-23/OM/08/10 | 16.08.2022 | 90,349.00 | 15.10.2022 | 15.10.2022 |
| 115. | 22-23/OM/08/13 | 18.08.2022 | 67,732.00 | 17.10.2022 | 17.10.2022 |
| 116. | 22-23/CE/08/10 | 24.08.2022 | 1,15,200.00 | 23.10.2022 | 23.10.2022 |
| 117. | 22-23/CE/08/11 | 24.08.2022 | 96,000.00 | 23.10.2022 | 23.10.2022 |
| 118. | 22-23/OM/08/14 | 24.08.2022 | 4,318.00 | 23.10.2022 | 23.10.2022 |
| 119. | 22-23/TMT/08/10 | 26.08.2022 | 22,50,355.00 | 25.10.2022 | 25.10.2022 |
| 120. | 22-23/CE/08/15 | 27.08.2022 | 1,20,000.00 | 26.10.2022 | 26.10.2022 |
| 121. | 22-23/BL/08/9 | 28.08.2022 | 1,94,282.00 | 27.10.2022 | 27.10.2022 |
| 122. | 22-23/CE/08/16 | 29.08.2022 | 96,000.00 | 28.10.2022 | 28.10.2022 |
| 123. | 22-23/CE/08/17 | 29.08.2022 | 48,000.00 | 28.10.2022 | 28.10.2022 |
| 124. | 22-23/CE/09/3 | 07.09.2022 | 1,15,200.00 | 06.11.2022 | 06.11.2022 |
| 125. | 22-23/MISC/09/1 | 12.09.2022 | 8,866.00 | 11.11.2022 | 11.11.2022 |
| | | Total (in Rs.) | 6,74,80,417.00 | | |

2.3 The invoices specifically provide that goods once sold will not be taken back and are not refundable. The invoices became due and payable after expiry of the credit period as stipulated under each invoice, which was generally a period of 60 days. If the payment is not made within the due date, the Operational Creditor shall be entitled to charge interest at the rate of 24% per annum on the outstanding amount due under the invoice.

2.4 It is stated that the total debt due is Rs. 7,07,06,829 /- (Seven Crore Seven Lakh Six Thousand Eight Hundred and Twenty-Nine Rupees) which comprises of (a) principal amount of Rs. 6,74,80,417/- (Six Crore Seventy-Four Lakh



Eighty Thousand Four Hundred and Seventeen Rupees) as on 30.09.2023; Interest Amount of Rs.32,26,412/- (Thirty-Two Lakh Twenty-Six Thousand Four Hundred and Twelve Rupees). The Operational Creditor further states that further interest at 24% is chargeable from 01.10.2023.

- 2.5 The Operational Creditor submits that the Corporate Debtor issued certain cheques in discharge of the outstanding dues, but they were not presented on their request. The Corporate Debtor made part payment of Rs. 50,00,000/- on 06.04.2023 and Rs. 1,00,44,799 on 21.04.2023 in part discharge of its liability. The Corporate Debtor also acknowledged its liability for the amount of Rs.4,35,10,280.72/- by issuing a balance confirmation dated 10.08.2023 issued by the director and accounts head, which the Corporate Debtor does not deny.
- 2.6 In view of the defaults in making the payments, the Operational Creditor issued and duly served Demand Notice in the prescribed Form-3 dated 16.10.2023 under Section 8 of the Code for an amount of Rs. 7,07,06,829 /-. Despite the receipt of the Demand Notice, the Corporate Debtor has failed to make payment of its outstanding debt owed to the Operational Creditor. Hence, the present Application.
- 2.7 In support of the Application, the Operational Creditor has submitted (a) copies of 125 Invoices raised by the Operational Creditor upon the Corporate Debtor and delivery challans; (b) copy of GST returns filed by the Operational Creditor with respect to supply of goods to the Corporate Debtor; (c) copy of bank accounts statements of the Operational Creditor; (d) Balance Confirmation Letter dated 10.08.2023 issued by the Corporate Debtor; (e) copies of cheques and dishonour memos; (f) copy of ledger statement maintained by the Operational Creditor; (g) copy of demand notice dated 16.10.2023 along with speed post receipt, tracking report and proof of service; and (h) copy of certain correspondences between the parties.



3 Contentions of Corporate Debtor

- 3.1 The Corporate Debtor filed its Affidavit in Reply through its director as authorised by a resolution dated 11.03.2024 passed in the meeting of the Board of Directors. The Corporate Debtor opposed the application and denied the averments made in the Application.
- 3.2 The Corporate Debtor states that the Operational Creditor has approached this Tribunal with unclean hands, engaging in *suppressio veri* and *suggestio falsi*. The Operational Creditor has concealed vital and material facts, including the arrangements and understandings between the parties, and relevant documents, despite being fully aware of them. Furthermore, the Operational Creditor has manipulated and distorted the factual matrix to mislead this Tribunal and improperly benefit from the provisions of the Code.
- 3.3 Corporate Debtor is the parent company of 'Shraddha Group', engaged in the business of real estate construction and providing guidance to the group companies. The Corporate Debtor introduced the Operational Creditor to various suppliers of materials with an understanding that the Operational Creditor shall procure materials from these suppliers and supply them to the Corporate Debtor and other group companies, as and when required, on a commission basis. The Corporate Debtor guaranteed payment to these suppliers, as outlined in the Operational Creditor's letter dated 09.10.2019, and further formalised the arrangement in a Memorandum of Understanding (MOU) dated 29.05.2018.
- 3.4 In May 2019, the Corporate Debtor realised that the rates quoted by the Operational Creditor for Ready-Mix Concrete (RMC) were 16-18% higher than market rates. This concern was communicated to the Additional Director of the Operational Creditor via letter dated 09.05.2019, and requested to issue revised quotations with a lesser margin not more than 5% above market rates. In response, by a letter dated 10.05.2019, the Operational Creditor clarified



that the higher rates were towards the extended credit facility of 6 months, given the understanding captured in Clause 3 of the MOU that no interest would be charged. The Operational Creditor acknowledged the agreement and acted in accordance with the terms.

- 3.5 Subsequently, due to the COVID-19 pandemic and the resulting national lockdown, which severely impacted the real estate business, the parties entered into a Revised Memorandum of Understanding (Revised MOU) dated 03.12.2021. The Revised MOU reaffirmed several terms, including an extended credit period from 60 days to 6 months, waiver of interest on outstanding dues, and the adjustment of outstanding amounts against flats in any available projects of the Respondent's group companies.
- 3.6 The parties were conducting business smoothly under the MOUs until 10.10.2022, when the Corporate Debtor received a letter dated 10.10.2022 from one group of directors of the Operational Creditor, through their Advocate, alleging siphoning and misappropriation of funds exceeding Rs.8 crore in the Operational Creditor. Consequently, the Corporate Debtor was requested to withhold payments to the Operational Creditor.
- 3.7 Subsequently, the Corporate Debtor received another letter dated 13.10.2022, from the Operational Creditor's Advocate, alleging that the Shivare group (Mr. Omkar R. Shivare and Mr. Vaibhav R. Shivare) engaged in fraudulent legal actions to pressure the Company and obstruct legal proceedings. The Operational Creditor requested the Corporate Debtor to disregard the letter dated 10.10.2022 issued by the other group and proceed with the payment.
- 3.8 Furthermore, the Corporate Debtor received another letter dated 14.08.2023, from Mrs. Slesha Ghosh and Mrs. Beatrice Antony, former directors of the Operational Creditor. They claimed that they were removed as directors of the Operational Creditor effective from 12.12.2022, and a new management has taken over the Operational Creditor by manipulating the EGM voting process. They further informed that the matter is still under dispute and advised the



Corporate Debtor to withhold payments until the ongoing police investigation and court proceedings are resolved.

- 3.9 Given the uncertainty and confusion, the Corporate Debtor stopped carrying out business with the Operational Creditor. The Operational Creditor did not demand any outstanding payments, acknowledging the terms of the Revised MOU that, in the event of default, payments would be settled through flats in Shraddha Group projects. It is also pertinent to note that the Operational Creditor had received over ₹100 crore from the Shraddha Group since commencing business with the group.
- 3.10 Corporate Debtor further submits that a Demand Notice/Invoice dated 16.10.2023 was received under Rule 5 of the Insolvency and Bankruptcy (Application of Adjudicating Authority) Rules, 2016, from the Operational Creditor, claiming Rs. 7,07,06,829 /- under the Code related to invoices for the materials supplied to the Corporate Debtor. The Corporate Debtor responded to the Demand Notice on 08.12.2023, disputing the claim and referencing the MOU terms regarding waiver of interest and non-initiation of litigation.
- 3.11 The Corporate Debtor asserts that the Operational Creditor's claim is based on suppressed MOUs that outline settlement terms, specifically that payments should be settled with flats at market rates. This understanding precludes the initiation of insolvency proceedings. The Operational Creditor's claim does not qualify as "operational debt" under the Code as it pertains to a contractual arrangement rather than a claim for goods or services. The claim arises from the MOU dated 29.05.2018 and the revised MOU dated 03.12.2021, which provides for specific performance remedies under the Indian Contract Act and Specific Relief Act. Thus, any dispute should be resolved in a civil court, not before this Tribunal. The Supreme Court has repeatedly held that insolvency proceedings are not a recovery mechanism and that "operational debt" should not be broadly interpreted to include claims covered by specific contractual arrangements. Therefore, the Company Petition is not maintainable under the Code and should be dismissed with costs.



- 3.12 It is also contended that the alleged invoices were raised by the Operational Creditor falsely by putting the rate of the material at their whim without the approval of the Respondent. The Corporate Debtor repeatedly objected to the quality, quantity, and rates of the goods supplied by the Operational Creditor and requested quotations, which were not provided. Since the Corporate Debtor never agreed to the invoiced rates and the invoices are thus deemed faulty, void, and invalid, the Corporate Debtor is not liable to make the payments claimed in the Petition.
- 3.13 Due to the guarantee and responsibility assumed by the Shraddha Group for the Operational Creditor's outstanding payments to the suppliers introduced by it, various suppliers have pressured the Corporate Debtor to settle these liabilities amounting to Rs.5,58,92,279/-.
- 3.14 The Corporate Debtor submits that the MOU prohibits the initiation of any legal proceedings, and any amounts owed by the Corporate Debtor are to be settled through flats at market rates, as mutually agreed. The new management of the Corporate Debtor is attempting to avoid the contractual commitments made by the previous directors. Consequently, the Operational Creditor's claim in this petition is not maintainable under the terms of MOU and the Revised MOU.

4 Rejoinder of Operational Creditor

- 4.1 The Operational Creditor submits that the MOU dated 29.05.2018 and the Revised MOU 03.12.2021 produced by the Corporate Debtor are forged and fabricated. The MOU dated 29.05.2018 was stated to be executed by one Mr. Jignesh Bhatt, who held neither directorship nor any official position in the Operational Creditor as on the date of the execution. There is neither any Board Resolution nor authorisation in favour of Mr. Jignesh Bhatt to execute the MOU. The stamp paper on the MOU appears to be for an affidavit and not an agreement/MOU



- 4.2 Clauses 3 and 10 make it evident that the contract is unconscionable in law, whereby on default by the Corporate Debtor to make payment within 6 months, the Operational Creditor under the alleged MOU rewards them with no interest ever chargeable for lifetime and no legal proceedings to be taken by the Operational Creditor.
- 4.3 The Operational Creditor further submits that the MOU dated 03.12.2021 was executed on behalf of the Operational Creditor by Ms. Beatrice Antony and Mr. Slesha Ghosh (erstwhile directors). The erstwhile directors, along with Mr. Jignesh Bhatt, had siphoned off monies of the Operational Creditor, and therefore, shareholders had resolved to remove the said erstwhile directors at the EGM on 10.12.2022.
- 4.4 The Operational Creditor states that neither is there any board resolution of the said MOU nor the execution of the MOUs was disclosed to the shareholders under Regulation 30(2) of Securities and Exchange Board of India (Listing and Disclosure Requirements) Regulations, 2015, or in the AGM, or to the Statutory Auditors, or to the Board of Directors. The revised MOU dated 03.12.2021 was not notarised and executed on the stamp paper.
- 4.5 The Operational Creditor further states that the letter dated 10.05.2019, which refers to the MOU dated 29.05.2018, was signed by Mr. Jignesh Bhatt, who held no directorship with the Company.
- 4.6 The Operational Creditor submits that the Corporate Debtor, through its Director, Mr. Sudhir Mehta, executed a letter dated 10.08.2023, wherein the Corporate Debtor had admitted that the business was done with the Operational Creditor directly and without any third or immediate broker, agent, or facilitator being involved directly or indirectly.
- 4.7 The Operational Creditor further submits that Shraddha Landmark Private Limited, being the principal group company of the Corporate Debtor, which had allegedly executed the MOU and Revised MOU, never asserted any right



of adjustment of the default amount against the flats. On persistent follow up by the old management it had issued cheques in discharge of its debts and on follow up by the new management of Operational Creditor, it has not only issued balance confirmation letter dated 10.08.2023 but also made further payments to the tune of Rs. 50,00,000/- on or about 06.04.2023, and Rs. 1,00,01,506/- on or about 18.09.2023, just before the service of the demand notice. The Operational Creditor further submits that the erstwhile management also charged interest on delayed payments to the Corporate Debtor and all the group companies.

5 Sur-Rejoinder of Corporate Debtor

5.1 The Corporate Debtor states that the Operational Creditor, on the one hand, contends that Mr. Jignesh Bhatt executed the MOU, though he held no official position with the company, or had a valid board resolution or authorisation. On the other hand, the Operational Creditor alleges that Mr. Jignesh Bhatt, along with the erstwhile Directors of the Company, had siphoned off funds of the Operational Creditor, which, *ipso facto*, demonstrates the association and involvement of the said Mr. Bhatt with the Operational Creditor and the fact that he was in a position of authority in the Applicant Company.

5.2 The Corporate Debtor has brought on record a copy of the resolution dated 13.11.2021, passed by the Operational Creditor, recording the board decision to enter into an agreement with the Shraddha Group at the time of execution of the Revised MOU.

6 Analysis and Findings

6.1 We have heard both the Ld. Counsel for the parties and carefully examined the documents on record.


6.2 The parties agree that the Operational Creditor was procuring construction materials from various suppliers and supplying them to the Corporate Debtor,



which is engaged in the construction of real estate projects. The Operational Creditor claims that an amount of Rs.6,74,80,417/- under 125 invoices raised between 28.04.2022 and 12.09. 2022 has become due after the expiration of the credit period stated therein and remains outstanding. Additionally, the Operational Creditor is claiming interest at the rate of 24% per annum on the outstanding amount from the respective due dates, aggregating Rs. 32,26,412/-. Therefore, the total debt claimed by the Operational Creditor amounts to Rs.7,07,06,829/-, which forms the basis of the present Application.

- 6.3 The Corporate Debtor contends that, as per the MOU and the Revised MOU, the role of Operational Creditor was to procure goods from various suppliers upon payment and then supply those goods to the Corporate Debtor on a commission basis, with a credit period concession of 6 months. Therefore, this transaction does not qualify as an operational debt. Furthermore, the MOU and the Revised MOU stipulate that the Operational Creditor shall never charge interest and in the case of delay in payment beyond the credit period, the only remedy available to the Operational Creditor is to seek an amicable settlement for the outstanding payment in exchange for flats in any available projects of the Shraddha Group as per the prevailing market rate.
- 6.4 We also notice that the Operational Creditor vehemently disputes the MOU and the Revised MOU, claiming that they are forged and fabricated. Instead, the Operational Creditor relies on the terms of the invoices to support this application. Before we consider those contentions, it is appropriate to determine whether the claim in this application is an 'operational debt' under the Code.
- 6.5 An operational creditor and operational debt are defined in Sections 5(20) and 5(21) of the Code, as under:

'(20) "operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;



(21) “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;’

- 6.6 The Corporate Debtor argues that for any claim to be treated as an operational debt, the claimant must have a right to seek payment from the other party in the event of a breach of contract. To support this argument, the Ld. Sr. Counsel for the Corporate Debtor relies on several judgements of the Hon’ble NCLAT including *Real Estate Regulatory Authority v. M/s. D. B. Corp Ltd.* [(Company Appeal (AT) (Insolvency) No. 1172, 1173 & 1321 of 2022)]; *J C. Flowers Asset Reconstruction Pvt. Ltd. v. Laxmi Oil and Vanaspati Pvt. Ltd.* [(2024) ibclaw.in 267.NCLAT]; *Maulik Kirtibhai Shah v. United Telecoms Ltd.*, [(2023) ibclaw.in 595 NCLAT]; and *Trafigura India Pvt. Ltd. v. TDT Copper Ltd.* [(2022) ibclaw.in 714 NCLAT]. The Corporate Debtor contends that the outstanding amount should be settled against flats, indicating that there is no entitlement to payment.
- 6.7 It has been observed that in the case of *Real Estate Regulatory Authority* (supra), the Hon’ble NCLAT was considering the barter component as the cash component had already been paid. In other cases, payments under the settlement agreement were being considered. However, in the present case, the obligation for the supply of goods is clearly tied to payment, as indicated by the invoices stating that payment is required after the credit period. It is also relevant to notice that the Corporate Debtor made certain payments on 06.04.2023 and 21.04.2023 during the default period instead of offering to exchange the flat. Furthermore, even if there is a provision for settlement in the event of default by exchanging the flat, this does not alter the nature of the debt. Therefore, the decisions relied upon by the Corporate Debtor do not apply to the facts of the present case. Thus, we are of the considered view that the debt claimed in the application qualifies as operational debt within the meaning of



the Code.

- 6.8 The next issue arising for our consideration pertains to the payment terms for the goods supplied by the Operational Creditor to the Corporate Debtor. The Applicant relies on the terms and conditions of invoices, which specify that the due date is 40/60 days from the date of the invoice, and that interest is payable at the rate of 24% if the amount is not paid within the due date. In contrast, the Corporate Debtor heavily relies on the terms of the MOU and the Revised MOU, which state that the credit period is 6 months and that no interest is chargeable.
- 6.9 The Applicant contends that both the MOU and the Revised MOU are forged and fabricated documents. It is claimed that the MOU dated 29.05.2018 was executed by one Mr. Jignesh Bhatt, who held no directorship or any official position in the Operational Creditor as on the date of the execution. As far as the Revised MOU is concerned, it is contended that although the directors (Ms. Beatrice Antony and Mr. Slesha Ghosh) executed the same, they were subsequently removed from directorship for allegedly siphoning off monies of the Corporate Debtor.
- 6.10 It is pertinent to notice the correspondence between the parties placed on record, particularly the ledger Statement (Exhibit E) submitted with the application and Exhibits B and D to the reply affidavit (Letters of the Operational Creditor), and Exhibit E to the reply affidavit (Letter of the Operational Creditor). Additionally, the copy of the resolution annexed with the Sur-rejoinder indicates that the parties were doing business from 2018 based on the MOU and Revised MOU, and the executants of the MOU and Revised MOU were directly involved in the business dealings. After carefully going through the correspondence and other documents placed on record, we are not persuaded by the arguments advanced by the Operational Creditor alleging that the MOU and the Revised MOU are forged or fabricated.
- 6.11 On the plea raised by the Corporate Debtor that there are pre-existing disputes, such as disputes in respect of the quality of goods, unilateral terms being



imposed in invoices raised by the Applicant, the existence of MOUs, and the failure of Operational Creditor to various suppliers who demanded these payments from the Respondent, it is observed that there is nothing on record to show that a notice of dispute was ever raised by the Corporate Debtor or the amounts under the invoices were withheld for any of these reasons. The facts of the case do not present any plausible argument that would warrant further investigation. Consequently, the arguments concerning pre-existing disputes are rejected.

- 6.12 The Corporate Debtor asserted that the interest of Rs. 32,26,412/- claimed by the Operational Creditor cannot be charged, given the specific provisions in the MOU and the Revised MOU. The fact that the principal debt under the invoices exceeds the monetary threshold of Rs. 1,00,000.00/- (One Crore Rupees) prescribed under Section 4 of the Code renders this argument irrelevant for this Application.
- 6.13 Based on the above discussions, we conclude that both debt and default have been established. The application is complete and has been filed in the prescribed form. In view of the above, we find that the requisite conditions necessary to trigger CIRP in respect of the Corporate Debtor are fulfilled. Therefore, the application filed by the Applicant/Operational Creditor in respect of the Corporate Debtor needs to be admitted under Section 9(5) of the Code.

ORDER

In view of the foregoing, this **C.P.(IB) No.123/MB/2024** filed under Section 9 of the Code by Fraser and Company Limited, the Operational Creditor, for initiating CIRP in respect of Shraddha Landmark Private Limited, the Corporate Debtor, is hereby **admitted**.

We further declare moratorium under Section 14 of the Code with consequential directions as mentioned below:



- I. We prohibit:
 - a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor, including the 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated, suspended, or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the IBC or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made immediately as specified under Section 13 of the IBC read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- V. The Operational Creditor had proposed **Mr. Manish Motilal Jaju**, having Registration No. **IBBI/IPA-001/IP-P00034/2016-2017/10087**, as the IRP, e-mail ID mmjaju76@gmail.com, having valid Authorisation for Assignment up to



30.06.2026 as the IRP to carry out the functions under the IBC.

- VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.
- VII. That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of IBC. The officers and managers of the Corporate Debtor are directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish all information within their knowledge to the IRP/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the IBC. Coercive steps will follow against them under the provisions of the IBC, read with Rule 11 of the NCLT Rules, for any violation of law.
- VIII. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Operational Creditor is directed to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Operational Creditor on priority upon the funds becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.
- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
- XI. A copy of the Order shall also be forwarded to the IBBI for record; dissemination on their website; and for maintaining data.



- XII. The Registry is directed to immediately communicate this Order to the Operational Creditor, the Corporate Debtor, and the IRP by way of Speed Post, e-mail, and WhatsApp.
- XIII. The compliance report of the order by the Designated Registrar is to be submitted today.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-

K. R. SAJI KUMAR
MEMBER (JUDICIAL)