NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.3
IA/303(MP)2023
in
C.P.(IB)/56(MP)2021

Proceedings under Section 60(5) r.w. Rule 11

IN THE MATTER OF:

Hrithik Roshan ....**Applicant**
V/s
Chhaya Gupta, RP of JSM Devcons Pvt Ltd ....**Respondent**

Order delivered on 05/04/2024

Coram:

P. Mohan Raj, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

IA/303(MP)2023

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/- *Sd/-*

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

P. MOHAN RAJ
MEMBER (JUDICIAL)

Neeraj Gupta/Stenographer

ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
BENCH AT INDORE

IA/303(MP)2023
in
C.P.(IB)/56(MP)2021

IA/303(MP)2023
[*An application filed under Section 60(5) r.w. Rule 11 of NCLT Rules, 2016]*

Hrithik Roshan
S/o Mr. Rakesh Roshan,
the Power of Attorney Holder of
Hrithik Roshan (Applicant)
9th Floor, Plot No. 53, Palazzo,
12th North South Road, JVPD Scheme
Juhu, Mumbai-400049

.........Applicant

Versus

Chaya Gupta
Resolution Professional
of JSM Devcons Pvt Ltd
911, Apollo Premier, Near
Vijay Nagar Square,
Indore, Madhya Pradesh-452010
Email-cirp.jsm@gmail.com

.... Respondent

In the main matter of: C.P.(IB)/56(MP)2021
[An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016]

Motel Rahans Private Limited
Chatak Arch, F-1, 1st Floor, 7 MG Road,
Indore, Madhya Pradesh-452001

.........Financial Creditor

Versus

JSM Devcons Pvt Ltd
306, Orbit Mall, Scheme No. 54,
A.B. Road, Indore-Madhya Pradesh-452001

..........Corporate Debtor

Order Pronounced on 05.04.2024

Coram: P. Mohan Raj, Hon'ble Member (J)
Kaushalendra Kumar Singh, Hon'ble Member (T)

Appearance:

For Applicant	: Ld. Adv. Mr. Rakesh Mishra (Online) a.w. Ld. Adv. Mr. Karpe Prakhar Mohan & Ld. Adv. Mr. Yash Agrawal (Physical)
For the RP	: Ld. Adv. Mr. Sumesh Dhawan a.w. Ld. Adv. Mr. Abhishek Naik (Online) Ld. Ms. Chaya Gupta (in person)
For the SRA	: Ld. Sr. Adv. Mr. Vikram Nankani a.w. Ld. Adv. Mr. Kunal Kanungo (Online)

O R D E R

1. This is the application filed by the **Applicant-Hrithik Roshan** for issuing direction to the Respondent-RP of **JSM Devcons Private Limited** to consider his claim as a Financial Creditor in a class (Real Estate Allottee) rather than as an **(Unsecured Financial Creditor)** in the CIRP, which was initiated against the Corporate Debtor- JSM Devcons Private Limited on an application under **Section 7 of the IBC, 2016** filed by **Motel Rehans Private Limited.** The CIRP against the Corporate Debtor JSM Devcons Private Limited was initiated vide order dated 17.03.2022. The Applicant had filed his claim in 'Form-C' as an **"Unsecured Financial Creditor"** and had participated in the proceedings as the CoC member and also voted in favour of the Resolution Plan, which was approved by the CoC by 87.22% vote. Now by the present application, the Applicant is seeking re-categorization of his claim from "Unsecured Financial Creditor" to Homebuyers i.e. Financial Creditor in a class.

2. The facts of the case are that following the public announcement, that was made by the IRP, Mr. Sanjay Kumar Singh, calling for the claims in the matter of CIRP against the Corporate Debtor- JSM Devcons Private Limited, the Applicant had filed his claim vide e-mail dated 13.04.2022 in the prescribed Form-C which is meant for (Financial Creditor). The Applicant had

also enclosed therewith a copy of the Memo of Understanding (MoU) dated 28.10.2015 with JSM Devcons Private Limited as well as the two letters dated 29.10.2015 & 26.05.2017 issued by the JSM Devcons Private Limited to the Applicant. For ready reference, the content of the said MoU and letters are given here as under:

MoU dated 28.10.2015: -

A Memorandum of Understanding ("MoU") is made at Mumbai and entered into on this 28th Day of October, 2015.

M/s JSM Devcons Private Limited, a company duly registered under the Companies Act, 1956, having its Office at 306, Orbit Mall, A.B. Road, Indore (M.P.) represented through its authorized Director *Shri Ashish Dass*, hereinafter referred to as **"the Promoter"** (which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors and assigns) of the one part;

AND

Shri Hrithik Roshan S/o Shri Rakesh Roshan, having address at B-27, Commerce Centre, 1st Floor, Off New Link Road, Andheri (West), Mumbai-400053 (Maharashtra) hereinafter collectively referred to as the **"Investor"** (Which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include his heirs, executors and administrators) of the other part;

The **PROMOTER** and the **ALLOTTEE** are hereinafter, wherever the context 50 requires referred to collectively as 'Parties' and individually as 'Party'.

WHEREAS:

a. The **PROMOTER** is developing a high-rise residential township known as ***"Pinnacle d' Dreams"*** situated at Pipliya Kumar, Indore (M.P.) (hereinafter referred to as the "Said Township").

b. The **INVESTOR** is desirous of investing Rs 5, 54, 13, 000/- (Rupees Five Crores Fifty Four Lacs and Thirteen Thousand only) in the said building and the **PROMOTER** with an intention to secure the aforesaid amount of the **INVESTOR** has agreed to allot the 5 flats admeasuring

18471 Sq. Ft. as mentioned in Annexure -1, as per the Allotment Letter dated 27.10.2015 separately issued, given herein below in the said Township known as ***"Pinnacle d' Dreams"*** situated at Pipliya Kumar, Indore (M.P.) (hereinafter referred to as the "Said Flats") against the said amount invested by the **INVESTOR** on the terms and conditions appearing hereinafter;

The PRINCIPAL UNDERSTANDING AGREED BETWEEN THE PARTIES HEREIN IS AN FOLLOWS:

1. The **INVESTOR** will invest Rs 5, 54, 13,000/- (Rupees Five Crores Fifty Four Lacs and Thirteen Thousand only) against the said flats admeasuring 18471 Sq. Ft. in the said Township known as ***"Pinnacle d' Dreams"*** (hereinafter called and referred to as the **"Said Flats").**

2. That it has been agreed and confirmed between the parties herein as under:

   (i) That the promoter will ***Buy Back*** the said Flats on the completion of a period of 6 months.

   (ii) That the promoter will pay total consideration of Rs 7,54,13,000/- (Seven Crores Fifty Four Lacs Thirteen Thousands only) for the said Flats admeasuring 18471 Sq. Ft. towards the Buy Back of the said Flats. Cheque No. 277111 dated 28.04.2016 for Rs 7,54,13,000/- drawn upon Union Bank of India, Kandivali (E), Mumbai-400 101 is enclosed herewith.

3. That in case of any default by the Promoter in payment of Buy Back of the said Flats on the due date, the Investor shall have to get the said Flats registered in his or any other person's name. However, the Investor shall be entitled to exercise this right in proportion to the amount of default. That no transfer will be levied on the transfer of said Flats.

4. That the Promoter shall have no right to sell said Flats as mentioned in Annexure-I without permission from the Investor.

5. This Memorandum of Understanding will be binding on the parties herein and their legal heirs, representatives and assigns.

6. This Memorandum of Understanding shall be granted by and construed in accordance with the Law of India and the Courts of Mumbai alone shall be Courts of competent jurisdiction.

In witness whereof the parties have put their hands the day and year first hereinabove written.

SIGNED SEALED AND DELIVERED
BY THE WITHIN-NAMED PROMOTER
Shri Ashish Dass Director
Of M/s. JSM DEVCONS PVT LMT
In the presence of.............
1.
2.

SIGNED SEALED AND DELIVERED
BY THE WITHIN-NAMED INVESTOR
Shri Hrithik Roshan
In the presence of.............
1.
2.

M/S JSM DEVCONS PVT LMT
Project Name: *“PINNACLE d’ DREAMS”*
(Refer to Allotment Letter dated 27.10.2015)

Annexure “I”

1.	SHRI HRITHIK ROSHAN	SPT-1	1701 (4BHK)	3693
2.	SHRI HRITHIK ROSHAN	SPT-1	1702 (4BHK)	3693
3.	SHRI HRITHIK ROSHAN	SPT-1	301 (4BHK)	3693
4.	SHRI HRITHIK ROSHAN	SPT-1	302 (4BHK)	3693
5.	SHRI HRITHIK ROSHAN	SPT-1	202 (4BHK)	3699
			TOTAL	18471

<u>The content of the Letter dated 29.10.2015</u>: -

JSM Devcons Pvt Ltd

To

Mr. Hrithik Roshan,
B-27, Commerce Centre, 1st Floor,
Off New Link Road,
Andheri (West)
Mumbai-400 053.

Sub: MoU dated 28.10.2015 read together with Agreement for sale Dated 28.10.2015 in respect of Investment in Flat No. 1701, 1702, 202, 301 & 302 in Super Premium Tower 1 in Pinnacle 'd' Dreams, situated in Village: Pipliya Kumar, Tehsil and Distt. Indore-Confirmation Regarding.

Dear Sir,

Please refer to MoU dated 28.10.2015, read together with the Agreement for Sale dated 28.10.2015 in respect of Investment in Flat No. 1701, 1702, 202, 301 & 302 in Super Premium Tower 1 in *"Pinnacle d' Dreams"*, situated in Village: Pipliya Kumar, Tehsil & Dist. Indore.

We hereby confirm that the PRINCIPAL UNDERSTANDING OF THE MOU AND AGREEMENT IS REFUND OF YOUR INVESTMENT OF RS 5,54,1300/- (Five Crore Fifty-Four Lacs Thirteen Thousand Only) along with the profit of RS. 2 Crore against which the above properties i.e. Flat No. 1701, 1702, 202, 301 & 302 in Super Premium Tower 1 in *"Pinnacle d' Dreams",* situated in Village: Pipliya Kumar, Tehsil & Dist. Indore, as **SECURITY** and **COLLATERAL**.

We hereby affirm, confirm, state and declare that the refund of money will be independent on the Sale of the above property and as such we hereby affirm, confirm, state and declare that we shall unconditionally refund you the investment money alongwith profit as above without attaching any terms or conditions whatsoever.

The content of the Letter dated 26.05.2017: -

JSM DEVCONS PVT LMT

To,

Shree Hrithik Roshan Ji
Mumbai
Maharashtra

Dear Sir,
This is with regard to the loan taken from you. Sir, due to the adverse market conditions prevalent in the economy, crash in the All India Real Estate Sector and Demonetization etc. we have been unable to pay your dues which we regret deeply. One of our projects was also supposed to start in January that got delayed and is in the final stages now. Sir, we humbly request you to kindly provide us with time of about 45 days on humanitarian ground to fulfil our commitment of Rs 9,54,00,000/- and accept with this letter the cheques for the same. Sir, this favour on your part will be of a great support to us. The association and relationship that we hold with you is most valuable to us.

Thanking You for Your Continued Support and Cooperation.

3. **As per the Regulation 8 of the IBBI Board of India (Insolvency Resolution Plan for Corporate Persons) Regulations, 2016,** the Financial Creditors are to submit their claim in Form-C. The Applicant did file that Form (dated 12.04.2022). The particulars as given in para 4 in the said form are also given here under for ready reference:

Relevant Particulars – Para 4 - Form C		
4.	Details of claims, if it is made against Corporate Debtor as principal borrower: (i) Amount of claim	**Point-wise detail:** (i) Principal amount of Rs 5,54,13,000/- (Rupees Five Crores

	(ii) Amount of claim covered by security interest, if any (please provide details of security interest, the value of security interest, the value of the security, and the date it was given) (iii) Amount of claim covered by guarantee, if any (please provide details of guarantee held, the value of the guarantee, and the date it was given) (iv) Name and address of the guarantor(s).	Fifty-Four Lacs Thirteen Thousand only) (ii) Rs 9,54,00,000/- (Rupees Nine Crores Fifty-Four Lacs only) The Claim amount with Interest is Rs 7,54,13,000/- (Rupees Seven Crore Fifty–Four Lacs Thirteen Thousand only), vide MoU dated 28th October, 2015, which was further enhanced to Rs 9,54,00,000/- (Rupees Nine Crores Fifty-Four Lacs only) vide letter dated 26th May, 2017. (iii) N.A. (iv) N.A.

3.1 Erstwhile, Resolution Professional Mr. Sanjay Kumar Singh vide reply email dated 18.04.2022 sought clarification from the Applicant as to how he falls under the category of Financial Creditor. The Respondent vide e-mail dated 20.04.2022 replied that he has given "Business Advance" to the Corporate Debtor under the MoU dated 28.10.2015 read together with a letter dated 29.10.2015 and letter dated 26.05.2017. The Applicant further stated that the transaction declaration between him and the Corporate Debtor has been shown as "Business Advance" under the head 'current assets, loans and advances' in his balance sheet. Consequently, the Applicant's claim was admitted as "Unsecured Financial Creditor". For ready reference: The content of e-mail dated 18.04.2022 & 20.04.2022 is given herein under:

E-mail dated 18.04.2022 (Sent from Sanjay Kumar Singh IRP to the Applicant): -

Dear Sir,

Kindly explain how this transaction falls under the ambit of Financial debt given to a private limited company. As per the Companies Act, 2013, providing a loan to a private Company by any outsider individual is absolutely prohibited. Also, kindly share the Board Resolution, if any passed by the JSM Devcons Private Limited for acceptance of the loan. Also, kindly explain how you have shown this transaction in your books of accounts.

Thank you
Sanjay Kumar Singh
IRP JSM Devcons Private Limited

E-mail dated 20.04.2022 (reply of the Applicant to Sanjay Kumar Singh IRP): -

Dear sir,

I thank you for your reply e-mail dated 18.04.2022, in response to my submission of claim by Financial Creditors in the prescribed Form C dated 12th April 2022.

As desired by your good self, I give a pointwise reply to the queries raised in your captioned mail:

1. Kindly explain how this transaction falls under the ambit of financial debt given to a private limited company.

"*With reference to my "Claim", I have given a "Business Advance" to JSM Devcons Private Limited under a valid and subsisting MoU dated 26.10.2015, read together with a letter dated 29.10.2015, and further read together with a letter dated 26.05.2017, the contents of the MoU and the said letters are self-explanatory".*

2. As per the Companies Act, 2013, providing loan to a private company by any considered individual is absolutely prohibited.

I humbly submit that an individual is not prohibited.

3. Also kindly share the Board Resolution if any passed by the JSM Devcons Private Limited for acceptance of the loan.

I humbly submit that, this is a matter of compliance of and by the Company and not the individual.

4. Also kindly explain how you have shown this transaction in your books of accounts.

This transaction is shown as "Business Advance" under the head "Current Assets, Loan & Advances" in my Balance Sheet.

4. The Learned counsel, Mr. Rakesh Mishra Advocate appeared for the Applicant. While advancing the argument in support of the application, he submitted that the Applicant had purchased five flats Nos. 1701, 1702, 202, 301 & 302 in Super Premium Tower- I in "Pinnacle 'D' Dreams", from M/s JSM Devcons Pvt Ltd (Promoter, Developer, Corporate) on 28.10.2015 for which total consideration of Rs 5,54,13,000/- was paid through RTGS and the Letters for Allotment of Flats dated 28.10.2015 and the agreement for Sale dated 28.10.2015 were duly signed and executed between JSM Devcons Pvt Ltd and the Applicant for each of the 5 Flats separately.

Learned counsel, Mr. Rakesh Mishra also submitted that a Memorandum of Understanding (MoU) was executed between the Corporate Debtor and the Applicant on the very same date i.e. 28.10.2015; and that the 5 Flats are mentioned in Clause b of page 2 of the MoU and also in Annexure 'I' therewith and the total payment details of Rs 5,54,13,000/- are also mentioned therein. He has also drawn our attention onto clause (2) on page-2 of MoU and submitted that as per that clause, the promoter was to **Buy Back** the said flats on the completion of period of 6 months and to pay total consideration of Rs 7,54,13,000/- and that a **Cheque No. 027111 dated 28.04.2016 for Rs 7,54,13,000/-** drawn upon Union Bank of India, Mumbai was handed over by the Corporate Debtor to the Applicant. He further submitted that the Corporate Debtor vide Letter dated 29.10.2015 had confirmed the Principal understanding of MoU and the Agreement and for refunding of Rs 5,54,13,000/- along with profit of Rs 2 Crore. He also submitted that vide another Letter dated 26.05.2017, the Buy Back amount was enhanced to Rs 9,54,13,000/-, as due to market conditions the project was delayed; however, neither the Buy Back took place nor the amount of Rs 7,54,13,000/- or Rs 9,54,13,000/- was received by the Applicant from the Corporate Debtor.

4.1 The Learned Counsel, Mr. Rakesh Mishra further submitted that the claim of the Applicant was classified by the IRP as an "Unsecured Financial Creditor", **however, as against the claimed amount of Rs 9,54,13,000/-, the claim was admitted for Rs 7,54,13,000/- only;** that on 3rd November, 2022, the erstwhile RP was changed as he was suspended by the IBBI Ms. Chaya Gupta, was appointed at his place as IRP/RP. He further submitted that the Applicant being busy with his professional activities, had executed a **Power of Attorney** dated 27th May, 2018 in favour of his father Shri Rakesh Roshan for handling the day-to-day matter of the claim against the Corporate Debtor; and that he in turn, appointed an AR (Authorised Representative) to represent the applicant in the various proceedings of the CoC; that after approval of the Resolution Plan by the CoC, **the Applicant came to know that he had not been treated as a Homebuyer, therefore as per advice received, he filed a revised claim under Form-CA.** However, the RP did not admit the revised claim and therefore, the Applicant has filed the present Interlocutory Application under Section 60(5) of the IBC, 2016 r.w. Rule 11 of the NCLT Rules, 2016 seeking correction in the categorisation as Financial Creditors in the Class of Homebuyers as against the category of an Unsecured Financial Creditor.

4.2 The Learned Counsel while advancing his argument also referred to the order dated 16.06.2006 of the "***Hon'ble Supreme Court in the case of Mayuram Subramanian Srinivasan Vs. C.B.I"***, wherein in para 13 it was held that "*to perpetuate an error is no heroism, to rectify it is the compulsion of the Judicial Conscience*".

Learned counsel took the plea that the RP is expected to act as a facilitator and therefore, should be neutral and not a litigant or play an adversial role. In order to support the claim of the Applicant to be categorised as a Homebuyer i.e. a Financial Creditor in a Class, he heavily relied upon the relevant Clauses (3) & (4) of the MoU, which states that in case of any default by the Promoter in payment of **Buy Back** of the said Flats on due date, the investor shall have right to get the said Flats registered in his or any other person's name. However, the investor shall be entitled to exercise this right in proportion to the amount of default. That no transfer charges will be levied on the transfer of said flats; that the promoter shall have no right to sale said flats as mentioned in Annexure (I) without payment from the investor.

Learned counsel also referred to as **Regulations 7, 8 & 8A of the Insolvency and Bankruptcy Board of India (IBBI) (Insolvency Resolution Process from Corporate Persons) Regulations, 2016,** which provides for the required proof of claim under various categories of the creditors and submitted that as regards claims by Creditor in class the existence of debt may be proved on the basis of (a) the records available information utility, if any; or (b) other, relevant documents including any………

(i) Agreement for sale;
(ii) Letter of allotment;
(iii) Receipt of payment made;
(iv) Such other document, evidencing the existence of debt.

The Learned counsel submitted that in view of the agreement of Sale and the Letter of allotment, the claim of the applicant ought to be categorised as that of a Homebuyer i.e. a Creditor in a class and not simply as an "Unsecured Financial Creditor".

5. On behalf of the RP, the Learned counsel, Mr. Abhishek Naik submitted that the letters of allotment and agreement to sell were not filed when the claim was made initially by filing a Form-C. He further submitted that even otherwise, the case of the Applicant on its merit deserves to be categorised as "Unsecured Financial Creditor" only. To support his assertion, he had also drawn our attention to the content of the Letter dated 29.10.2015 from JSM Devcons PVT LTD, which was written on the very next date after signing the said MoU dated 28.10.2015, wherein in Para 2, the intent and the purpose of the Principal Understanding of the MoU and the agreement for sale has been stated to be the refund of their investment along with the profit of Rs 2 crore and that the Flats, that were referred to in the MoU and an agreement of sale were simply as "Security and Collateral". The said para is reproduced again herein under:

From the content of the Letter dated 29.10.2015:

"We hereby confirm that the PRINCIPAL UNDERSTANDING OF THE MOU AND AGREEMENT IN REFUND OF YOUR INVESTMENT OF RS 5,54,13000/- (Five Crore Fifty-Four Lacs Thirteen Thousand Only) along with the profit of RS. 2 Crore against which the above properties i.e. Flat No. 1701, 1702, 202, 301 & 302 in Super Premium Tower 1 in *"Pinnacle d' Dreams",* situated in Village: Pipliya Kumar, Tehsil & Dist. Indore, as **SECURITY** and **COLLATERAL**".

The Learned Counsel, Mr. Abhishek Naik also referred to the content of the letter dated 26.05.2017 from JSM Devcons PVT LTD to support his contention that the investment as referred to in the MoU was nothing but the loan extended by the applicant to the Corporate Debtor. For ready reference, the content of the relevant part of that Letter is reproduced here under:

From the letter dated 26.05.2017:

"This is with regard to the loan taken from you. Sir, due to the adverse market conditions prevalent in the economy, crash in the All India Real Estate Sector and Demonetization etc. we have been unable to pay your dues which we regret deeply".

6. In his rejoinder the Learned Counsel, Mr. Rakesh Mishra reiterated his submissions and further relied upon the decisions of the Hon'ble Supreme Court (SC) in the following cases:

(i). *Mayuram Subramanian Srinivasan vs. CBI in Criminal Appeal No. 687 of 2006 order dated 16.06.2006.*

(ii). Regen Powertech Private Limited Vs Giriraj Enterprises & Anr Civil Appeal Nos. 5985-600/2023 order dated 29.09.2023.

(iii) Tottempudi Salalith Vs. State Bank of India & Ors in Civil Appeal No. 2348 of 2021 order dated 18.10.2023.

(v) Director of Elementary Education, Odisha & Ors. Vs. Pramod Kumar Sahoo in Civil Appeal No. 7577 of 2019 vide order dated 26.09.2019.

(vi) M/s Hero Motocorp Ltd. Vs. Union of India & Ors. Order dated 17.10.2022.

(vii) Ghanshaym Mishra & Sons (P.) Ltd Vs. Edelweiss Asset Reconstruction Co. Ltd (2021) 126 taxmann.com 132(SC).

(viii) Vishal & Ors. Vs. Debashis Nanda Civil Appeal No. 3806 of 2023 order dated 06.10.2023.

(ix) Hotel Balaji & Ors Etc. Vs State of Andhra Pradesh Writ Petition (c) Nos. 655-69 of 1983 order dated 22.10.1992.

The Learned counsel also relied upon the judgment of the Hon'ble NCLAT (New Delhi) in Amit Goel through Power of Attorney Holder Ms. Pooja Chaudhary, Versus Piyush Shelters India Private Ltd and Ors Company Appeal (AT) (Ins) No. 700 of 2021 and also other connected appeals order dated 18.01.2022.

7. We have considered, the submission made from both sides, and perused the relevant documents placed on record. We note that the main emphasis of the Learned Counsel appearing for the Applicant has been upon the agreement to sell and the allotment letters.

In the facts of the case, the said MoU and the Letters dated 29.10.2015 & 26.05.2017 are very relevant to reach a conclusion as regards the nature and intent of the investment. These two letters have been enclosed in Form-C while submitting the claim before the IRP. These two letters categorically refer to the investment made by the Applicant in the **'Real Estate Project'** as nothing but the "loan" and the allotment of the Flats were made as a Security and Collateral. Not only that, the Applicant also reflected the transactions in his Financial books of accounts as simply the **"Business Advance".** While his claim was examined by the erstwhile IRP, the Applicant vide their e-mail dated 20.04.2022 has categorically stated that he had given a **"Business Advance"** to JSM Devcons PVT LTD under a valid and subsisting MoU dated 26.10.2015 read together with letter dated 29.10.2015 and 26.05.2017. The Applicant had also clearly stated that the contents of the MoU and the said letters are self-explanatory. After having examined, the relevant documents as enclosed in Form-C and the explanation given thereon, the erstwhile IRP had considered the claim of the Applicant as an "**Unsecured Financial Creditor".** We are of the considered view that the Applicant had filed its claim correctly as "**Unsecured Financial Creditor"** in Form- C, and the erstwhile IRP had taken a correct view thereon, and had accepted the claim of the Applicant as an "**Unsecured Financial Creditor"**. The Applicant had also participated in the CoC meetings in the capacity of "**Unsecured Financial Creditors**" and had voted in favour of the Resolution Plan. It's only after that the Applicant filed its claim before the present RP in the **Form-CA** which is meant for filing a claim by the Financial Creditor in a class i.e. for Homebuyers. The RP has made no error in rejecting its claim for re-categorising as a homebuyer. We are of the view that even after, considering the allotment letters and agreement letter, which were not submitted earlier along with Form-C, the claim of the applicant will have to be admitted in the category of **"Unsecured Financial Creditors"** only and not of the Homebuyers. It is not a case that some error has been committed while admitting the claim and that was required to be corrected. Therefore, in the facts of the case, the various case laws as relied upon by the Learned Counsel are not at all applicable. As such the plea taken by the Applicant in the present application is quite misplaced and deserves to be rejected.

8. As a result, **IA/303(MP)2023** stands **dismissed**.

Sd/- *Sd/-*

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

P. MOHAN RAJ
MEMBER (JUDICIAL)

Neeraj Gupta/Stenographer