



**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 4615 OF 2024

Under Section 60(5) and 65 of Insolvency &
Bankruptcy Code, 2016

Fountain Square Residents and Commercial
Welfare Association, Mumbai

...Applicant

V/s

Mr. Jignesh Shah,

The Interim Resolution Professional

...Respondent

In the matter of

C.P.(IB) No. 48/MB/2024

NITCO Realities Private Limited

...Financial Creditor

Vs.

Sonata Realty Private Limited

...Corporate Debtor

Order delivered on: 18.03.2025

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant

:

Mr. Shyam Kapadia, Ld. Counsel
for the Applicant



For the Respondent 1 : Mr. Nausher Kohli, Advocate
For the Respondent 2 : Mr. Kunal Mehta, Advocate
For the CoC : Mr. Prakhar Tandon, Advocate

ORDER

1. This Application IA 4615/2024 was filed by Fountain Square Residents and) Commercial Welfare Association, Mumbai (Applicant), against the Interim Resolution Professional of the Corporate Debtor in the Corporate Insolvency Resolution Process of Sonata Realty Private Limited (CIRP) under Section 60(5) and 65 of The Insolvency and Bankruptcy Code, 2016 ("Code"), seeking following reliefs:

- a. *That this Hon'ble Tribunal be pleased to implead the applicants as a party to the above petition;*
- b. *That the delay if any may be condoned in the interest of justice.*
- c. *That this Hon'ble Tribunal be pleased to declare that the purported Financial Creditor has initiated CIRP in respect of the Corporate Debtor fraudulently and/or maliciously;*
- d. *That this Hon'ble Tribunal be pleased to pass an order recalling the order dated 4th June 2024 initiating CIRP in CP (IB) No. 48 (MB) of 2024.*
- e. *That this Hon'ble Tribunal be pleased to declare that as the property mentioned above is custodia legis of the Hon'ble Bombay High Court, the claims of any and all creditors are to be satisfied by the Corporate Debtor from the other properties and not the property that is custodia legis.*
- f. *That this Hon'ble Tribunal be pleased to exclude Nitco from the CoC on the grounds mentioned above.*
- g. *That pending the hearing and final disposal of this application, this Hon'ble Tribunal be pleased to pass an order staying the CIRP of the Corporate Debtor and restraining the Respondent from, in any manner whatsoever, proceeding with the CIRP of the Corporate Debtor and/or acting upon, based on or pursuant to the order dated*



4th June 2024 passed by this Hon'ble Tribunal initiating CIRP in CP (IB) No. 48 (MB) of 2024.

2. The Applicant is an association of purchasers of flats/ shops in the Project to be developed jointly by the Corporate Debtor and Shree Shubh Builders Pvt. Ltd. on the plots of land being:
 - a. Village Oshiwara, Taluka Andheri bearing CTS No. 1C/3A and Survey No. 41/1A admeasuring 9827 square meters (“Property 1”);
and
 - b. Village Oshiwara, Taluka Andheri bearing CTS No. 1/C A (Part) and Survey No. 41, Hissa No. 1A admeasuring 3500 square meters (“Property 2”).

3. Various persons inclined to purchase residential and commercial units in the Project have paid considerable amount to the Corporate Debtor, against which Directors of Corporate Debtor and Shree Shubh Builders Pvt. Ltd. issued allotment letters to the purchasers (i.e., including members of the Applicant). A sum of approximately Rs. 127.78 Crore came to be collected from allottees of the Project and various other investors. Thereafter, the Joint Development Agreement between Corporate Debtor and Shree Shubh Builders Pvt. Ltd. was terminated, as a result of which the Corporate Debtor became solely responsible for completion of the Project.
 - 3.1. Since the Corporate Debtor was not taking any steps towards completion of the Project, the Applicant filed a suit bearing Suit No. 189 of 2017 before the Hon'ble Bombay High Court seeking declaration that the letters of allotment issued by the Corporate Debtor and Shree Shubh Builders Pvt. Ltd. are valid, subsisting and binding and for other consequential reliefs with respect to the completion of the Project. Similarly, other allottees have also filed proceedings before the Hon'ble Bombay High Court qua the Project against the Corporate Debtor and Shree Shubh Builders Pvt. Ltd.
 - 3.2. By an order dated 14th September 2016 passed by the Hon'ble Bombay High Court in Suit No. 753 of 2016 filed by one Fountain Square Oshiwara Welfare Society, the Hon'ble Bombay High Court was



pleased to appoint Court Receiver, High Court Bombay, as the Receiver with respect to the property admeasuring 8152 square meters bearing Survey No. 41/1A, CTS No. 1C3/A of Village Oshiwara, K/West Ward and lying and being situate in Village Oshiwara, Taluka Andheri, Mumbai. Thereafter, by an order dated 4th May 2017 passed in Suit No. 189 of 2017, the Hon'ble Bombay High Court was pleased to continue the Court Receiver, High Court Bombay, also on Property 1. Thereafter, in the Suit filed by the Applicant before the Hon'ble Bombay High Court viz. Suit No. 189 of 2017, the Hon'ble Bombay High Court, vide its order dated 6th August 2018 was pleased to appoint Court Receiver, High Court Bombay as the Receiver of Property 2.

- 3.3. Pursuant to the aforesaid orders passed by the Hon'ble Bombay High Court in the Suits filed by the Applicants and various other allottees, the Court Receiver, High Court Bombay, is in possession of the Properties of the Corporate Debtor.
- 3.4. Thereafter, by an order dated 17th July 2018 passed in the Suit No. 189 of 2017, the Hon'ble Court permitted the Applicant to publish a notice under Order I Rule 8 of the Code of Civil Procedure 1908.
- 3.5. Pursuant to the order dated 17th July 2018, the Applicant issued a Public Notice inviting purchasers of flats/ apartment/ commercial premises or any other persons who are interested in supporting or defending the Suit filed by the Applicant.
- 3.6. Pursuant to issuance of the public notice by the Applicant, Nitco Realities Private Limited i.e., the purported Financial Creditor has, vide its letter dated 6th August 2018 addressed to the Applicant, expressed its intention to support the Suit filed by the Applicant against the Corporate Debtor, also agreeing to bear the costs associated with prosecuting all litigation by the Applicant against the Corporate Debtor.
- 3.7. Along with the letter dated 6th August 2018, the purported Financial Creditor also provided the Applicant with a copy of an alleged Memorandum of Understanding dated February 2008. The said alleged Memorandum of Understanding dated February 2008 pertained to purchase of shareholding of certain shareholders Mrs. Nilufer Damania and Mrs. Nasreen Azam Khan by the purported Financial Creditor. The



nature of the transaction thereunder is not, in any manner whatsoever, pertaining to a financial debt under section 5(8) of the IBC and does not satisfy the criteria which is a sine qua non for existence of a financial debt under the IBC, much less any interest being charged thereon. The Applicants had also been granted the NOC by MMRDA to form a cooperative housing society. Moreover, the affidavit filed by the promoters Nilufar Damania and Roshani Damania of the corporate debtor would demonstrate the real picture in the present matter. It is in the aforesaid circumstances; the Applicant was shocked to come across the public announcement dated 9th June 2024 issued by the Respondent intimating initiation of CIRP against the Corporate Debtor at the instance of and in the captioned petition filed by the purported Financial Creditor under the order dated 4th June 2024 passed by this Tribunal.

3.8. A bare perusal of the order dated 4th June 2024 passed by this Tribunal demonstrates the following:

3.8.1. That the purported Financial Creditor came to this Tribunal with a completely false and concocted case, contrary to its own documents as detailed hereinabove that the purported Financial Creditor had allegedly disbursed monies to the Corporate Debtor pursuant to a scheme floated in the year 2008.

3.8.2. That the purported Financial Creditor has suppressed several documents, including the aforesaid orders passed by the Hon'ble Bombay High Court under which the Properties are custodia legis and which was to the knowledge of the purported Financial Creditor.

3.8.3. That the last annual general meeting and the balance sheet of the Corporate Debtor are dated 29th September 2012 and 31st March 2012 and therefore, there was no question of there being any acknowledgements of liability as noted in paragraph 5 of the order. That assuming monies were advanced by the purported Financial Creditor to the Corporate Debtor in the year 2008, the captioned petition (having been filed in the year 2024) was in any event barred by the law of limitation since there was no question of there being any acknowledgment of debt after the year 2012.



- 3.9. That the factum of non-appearance of the Corporate Debtor demonstrates that both the purported Financial Creditor and the Corporate Debtor are hands in glove with each other and the captioned petition under section 7 of the IBC was filed only with an intent to defraud the other genuine creditors and the various home buyers whose monies have been collected by them.
- 3.10. Immediately upon becoming aware of the order dated 4th June 2024 and the public announcement dated 9th June 2024, the Applicant addressed a letter dated 19th June 2024 and 21st June 2024 to the Respondent inter alia pointing out the aforesaid, including the factum of the CIRP having been initiated fraudulently by the purported Financial Creditor by suppressing material facts and documents, including what is stated hereinabove. In fact, the Directors- Roshni Damania and Nilufar Damania had issued a clarificatory letter regarding their non-involvement in the company Transactions.
4. The Respondent No. 1, the Resolution Professional has filed affidavit in Reply stating that the present application has been filed under signature of one Mr. Dinesh Raitani claiming to be secretary of the Applicant association in terms of authorisation given in his favor in the meeting held on 2.2.2017, while the captioned Petition was filed during 2024, and the Order sought to be recalled was passed on 4th June 2024. It is further submitted that *“After further scrutiny, I categorised 15 creditors as FCs and the remaining 1 creditor as an OC. The documents submitted by the remaining 104 entities neither show any payment to the CD nor the CD's records showed any credit balance and hence I rejected their respective claims. The said list of 104 entities also includes, the names of the members of the Applicant”*. It is further stated that the CD has no privity of contract with the members of the Applicant whatsoever and has received no amount from the said members of the Applicant. Further, the captioned IA is not maintainable under the law as 5 members of the Applicant have already filed IA No. 4477 of 2024 in Company Petition No. 48/MB/2024 seeking direction against me to admit their claim as home buyers and therefore the present application is not maintainable.



5. Respondent No. 2, the Original Petitioner M/s Nitco Realities Pvt Ltd. has filed affidavit in reply stating that an application for recall of an order passed in exercise of jurisdiction under Section 7 of the Insolvency and Bankruptcy Code is not maintainable on grounds such as: (a) re-visiting the matter on merits; or (b) the Corporate Debtor's properties being under receivership; or (c) limitation. Since August 2016, the Applicant knew of the existence of the MOU dated 2nd February 2008. Consequently, the fact that the Applicant elected to accept the Order dated 4th June 2024 and that it had no grievance whatsoever with the commencement of the CIRP is apparent from the fact that the Form CA dated 19th June 2024, does not in any manner state that the Applicant is filing the same under protest or without prejudice to any of its objections. The only basis on which the Applicant has contended that the debt of Rs. 2.50 Crores and interest thereon would not constitute a financial debt within the definition contained in Section 5(8) of the Code, is a misplaced reliance on the Memorandum of Understanding dated 2nd February 2008 (MOU) between Respondent No. 2 and the Corporate Debtor. The Applicant contends that the MOU reflects a transaction of sale and purchase of equity shares of the Corporate Debtor, which Respondent No.2 was supposed to acquire and it is towards that acquisition that Respondent No. 2 disbursed money to the Corporate Debtor aggregating to a sum of Rs. 19 Crores and out of which, a sum of Rs. 2.50 Crores is to be recovered. On this simplistic basis, the Applicant contends that what was represented to be a financial debt in the Company Petition, was nothing but a payment towards purchase of shares and a refund of that payment could not qualify as being a financial debt. What is however worth noting is that there is no dispute that Respondent No. 2 had disbursed an aggregate sum of Rs. 19 Crores to the Corporate Debtor and there is also no dispute that out of this sum, the Corporate Debtor re-paid to Respondent No. 2, a sum of Rs. 16.50 Crores. The question that arises is whether the disbursement had the commercial effect of a borrowing. In this regard, it needs to be appreciated that whilst the MOU may on the face of it, reflect a transaction pursuant to which the Respondent No. 2 was to acquire shares. of the Corporate Debtor, the undisputed receipts annexed at pages 185 to 189 of the Interlocutory Application clearly reflect that the sum of Rs. 19 Crores was paid by Respondent No. 2 to the Corporate



Debtor for the purpose of enabling the Corporate Debtor to acquire land from the M11RDA. This was clearly a finance given by Respondent No. 2 to the Corporate Debtor. It is only for this reason and to secure the finance that the MOU was entered into in order to create security in respect of the 50% equity shares of the Corporate Debtor. Instead of formally entering into a pledge agreement, the parties styled their finance transaction in the form of a MOU, which would ostensibly reflect- a transaction of sale and purchase of shares but was in reality, nothing but a borrowing by the Corporate Debtor from Respondent No.2 in order to enable it to acquire land. If the transaction was in fact for acquisition of shares of the Corporate Debtor, there would be no need to make any payment to the Corporate Debtor. The payments would be made to the shareholders of the Corporate Debtor.

6. Heard the Learned Counsel and perused the material on record.
 - 6.1. Mr. Tarun Dhir has filed an Intervention Petition 20 of 2025 stating that Mr. Dinesh Raitani, who purportedly is acting as the authorized representative of the homebuyers, was never authorized to file any claim on behalf of the homebuyers or to represent them in the ongoing CIRP of the Corporate Debtor. Furthermore, Mr. Dinesh Raitani is not an allottee of the Corporate Debtor. Mr. Dinesh Raitani's wife is allottee. Hence, Mr. Dinesh Raitani has no locus standi to file the said IA No. 4615 of 2024 on behalf of the Respondent No. 1 association. The Applicant Association has filed an affidavit in reply enclosing thereto a Resolution dated 4th February 2025 authorizing Mr. Dinesh Raitani to represent the Applicant association and also ratifying all the acts/things/deeds already executed and performed by Mr. Mubashir Patel, Chairman and/ or Mr. Dinesh Raitani, Secretary and Mr. Baiju Bajaj Treasurer of the Association in representing and defending the Association in legal matters before the aforesaid Courts/Tribunals and making such acts binding on the members of the Association. Accordingly, we do not find any merit in this Intervention. Nonetheless the Applicant association has raised the issue of misrepresentation on the part of Respondent No.2 in seeking order dated 4th June 2024 from this Tribunal which has serious repercussion. Accordingly, we consider



it appropriate to take notice of documents placed before us and examine the matter.

6.2. The Applicant, an association of home-buyers, has sought impleadment in the Company Petition C.P. (IB) 48/2024. The applicant's members had claimed to be financial creditor in the CIRP commenced in terms of Order dated 4th June, 2024 and filed its claim on 17th and 19th June 2024 for its admission before Respondent No. 1. However, the claims filed by its members were rejected in majority of cases by the Respondent No. 1 citing no disbursal of debt to the Corporate Debtor and in case of members where such disbursal was found acknowledged in the books of Corporate Debtor, the claim was accepted. In nutshell, the Applicant is not a creditor of the Corporate Debtor. Nonetheless, it is trite law that no stakeholders is required to be impleaded as party Respondent in a Petition u/s 7 of the I B Code, and if any person is aggrieved by an order passed in terms of such petition, such aggrieved person has a right to file an appeal u/s 61 of the Code before the Appellate Authority. Accordingly, the prayer for impleading as party to the Company Petition is sans merit.

6.3. The Applicant has also sought (i) a declaration that the initiation of CIRP in the case of Corporate Debtor was fraudulent/malicious; (ii) recall of Order dated 4.6.2024 initiating CIRP in the case of Corporate Debtor; and (iii) exclusion of Respondent No. 2 from CoC, inducted as its financial creditor. All these prayers are based on the proposition that the amount of Rs. 2.50 Crores due from the Corporate Debtor and forming basis of admission of Corporate Debtor into CIRP in terms of Order dated 4.6.2024 is in fact not a financial debt, in the light of one document i.e. Memorandum of Understanding dated 2nd February 2008 and that MOU was suppressed by the Respondent No. 2 in C.P. (IB) 48/2024.

6.4. The power of this Tribunal to recall its order is dealt in the decision of Hon'ble Supreme Court in the case of **Greater Noida v. Prabhjit Singh Soni (2024) 6 SCC 767** at para 50 thereof, which reads as under –

“..... Therefore, even in absence of a specific provision empowering the Tribunal to recall its order,



the Tribunal has power to recall its order. However, such power is to be exercised sparingly, and not as a tool to re-hear the matter. Ordinarily, an application for recall of an order is maintainable on limited grounds, inter alia, where (a) the order is without jurisdiction; (b) the party aggrieved with the order is not served with notice of the proceedings in which the order under recall has been passed; and (c) the order has been obtained by misrepresentation of facts or by playing fraud upon the Court /Tribunal resulting in gross failure of justice.”

6.5. Undisputedly, there is challenge to the jurisdiction of this Tribunal to pass an Order in C.P. (IB) 48/2024. Further, the Code does not contemplate issuance of any notice to any stakeholder in a Petition u/s 7 of the Code while adjudicating the initiation of CIRP proceedings except the Corporate Debtor itself. The Applicant has alleged that the Respondent No. 2 suppressed the MOU dated 2.2.2008 in order to claim its outstanding as Financial Debt, while in terms of MOU dated 2.2.2008, the amount was originally disbursed for acquisition of shares of the Corporate Debtor. The Applicant has placed on record (i) a MOU dated 2.2.2008, and (ii) a letter dated 6.8.2018 from Respondent No. 2 to the Applicant’s Signatory. Admittedly, these two documents were not placed before us by the Original Financial Creditor. To examine the aspect of suppression and mis-representation, it is relevant to note the contents of MOU dated 2.2.2008 and the pleadings in Part IV of the Form 1 forming basis of C.P. (IB) 48/2024.

6.6. The relevant pleadings in sub-part 2 of Part IV of Form 1 reads as under

—

“3. Sometimes in the year 2008, the Petitioner came across a January, scheme floated by the Respondent thereby offering interest @ 9% p.a.

4. As the Petitioner had surplus funds, the Petitioner got carried away with the lucrative offer as offered by the Respondent and hence the Petitioner deposited an amount of Rs. 19,00,00,000/- (Rupees Nineteen Crores Only) with the Respondent. The



amounts were paid by the Petitioner in instalments as is / mentioned in 'Annexure D'.

5. The Respondent also returned the principal on the dates as mentioned in Annexure C, however failed to repay an amount of Rs. / 2,50,00,000/- and /interest on the entire principal amount.

.....
7. As the balance amounts were not being repaid, the Petitioner by / way of abundant precaution issued a notice to the / Respondent, however neither the amounts were received from the Respondent nor any reply. The aforesaid notice was dispatched on 08.08.2022. The Notice was also e-mailed to the Respondent on / 16th August, 2022. A / copy of the Notice dated 06.08.2022 together with Postal Receipts and e-mail dated 16th August, 2022 are annexed and marked as Annexure 'C' Colly hereto."

6.7. The relevant clauses of MOU dated 2.2.2008 entered into between Corporate Debtor and Respondent No. 2, pursuant to which the disbursement of Rs. 19.00 crores is stated to have taken place reads as under :

"e) NITCO is aware that the said property is required to be acquired by MMRDA shall grant lease in respect of the said property for a period of sixty (60) years at the lease premium @ Rs.22,150/- per Sq. Mts. to Sonata on land admeasuring on or about 9827 sq.mtrs (more specifically mentioned in the Schedule hereinbelow). In addition to the above, Sonata has also represented NITCO that MMRDA shall also grant lease in respect of additional neighbouring plot admeasuring on or about 3,500 sq. mtrs. for a period of ___ years at the lease premium @ Rs. per sq., ft within time lines agreed hereinbelow.

f) Shareholders of Sonata namely Mrs. Nilufer Damania & Mrs. Nasreen Azam Khan has offered to sell 50% of their equity equally to NITCO with the consent & confirmation of Mr. Vishram Sawant & Mr. Prashant Sawant., wherein the FSI is calculated @ Rs.4,000/- per sq ft. For acquiring the same, a detailed shareholding agreement & other agreements for development etc will be executed and signed between Sonata, respective shareholders of Sonata. & NITCO.



A) *The schedule of payment of amount aggregating Rs.43 Crores to be borne by NITCO will be on the following terms & conditions hereby agreed upon:*

- 1) *Advance payment of Rs. 5 Crores is hereby been agreed to be paid to shareholders of M/s Sonata Realty (P) Ltd, namely Mrs. Nasreen Khan & Mrs. Nilufer Damania who hold 50% shareholding each in Sonata, with consent & confirmation of Mr. Vishram Sawant, Mr. Prashant Sawant & Executive Director of Sonata Mr. Azim Khan, to whom Rs.1 Crore vide cheque drawn on Punjab National Bank bearing Cheque No. “ 726327 “ dated 2/2/2007 is issued & received by Sonata on 2/2/2008. & Rs. 2 Crores vide cheque drawn on Punjab National Bank bearing Cheque No. 726339 dated 7/2/2008 is also received & acknowledged by Sonata & shareholders of Sonata. Balance of Rs 2 Crores, making a total advance payment of Rs.5 Crores will be made to Sonata on signing of the detailed MOU.*
- 2) *Further, payment of Rs. 22.5 Crores to be made by NITCO only on execution & signing of the Shareholders Agreement, Development Agreement etc with Sonata & all the shareholders of Sonata, its executive Director on confirmation/completion of all land lease etc formalities including full possession of Sonata at Sonata s’ exclusive cost with MMRDA in respect of 9827 sq.mtrs plot plus neighbouring plot of 3,500 Sq.meters herein agreed to be acquired by Sonata within a span of 30 days from the date of signing the detailed MOU. The shareholders agreement will enable the company to make resolutions wherein directors nominated by NITCO will have the powers/authority to do the acts, deeds and things required for the development of the project. Both parties confirm that they will not compromise the salaeble area. However, in case, 3500 sq. mtrs neighboring plot is not acquired from MMRDA by Sonata, then the payment schedule as aforesaid stated will vary proportionately only on the basis of 9,827 sq. mtrs at this stage itself and further payment of Rs. 22.5 Cr. aforesaid and balance Rs. 15.5 Cr. below-stated will stand proportionately reduced to be paid by NITCO to SONATA Sonata undertakes 50% equity in Sonata be transferred to NITCO immediately on signing off the aforesaid development agreement.*



Shareholders agreement will also be entered into between NITCO & Sonata even before execution of the development agreement.

3) The balance Rs. 15.5 Crores will be paid to shareholders of Sonata namely Mrs. Nasreen Khan & Mrs. Nilufer Damania with the consent & confirmation of Mr. Vishram Sawant & Mr. Prashant Sawant, as and when bonafidely required from time to time for contributing the expenses of this Oshiwara project (more specifically stated in the Schedule of Property) herein below for 9827 sq mtrs plus 3,500 sq. mtrs..

g) In case, Sonata is unable to acquire the neighboring plot of 3,500 sq. mtrs aforesaid & include the same in the schedule of property mentioned hereinbelow as stated in Clause e) above, then the total investment be reduced from Rs. 86 Crores to 63.43 crores and simultaneously, NITCO on making advance payment of Rs.5 Crores to Sonata, Sonata will further be entitled to receive only Rs. 31.67 Crores in respect of only 9827 sq. mtrs.. All rights, title, & interest in property whether 9827 sq.mtr or 9,827 plus 3,500 sq. mtrs will stand in equal proportion of NITCO & Sonata. All encroachments, if any would be cleared & vacated exclusively at the cost of Sonata.

h).....

i)

j) Stake of 50% equity in Sonata is being acquired by NITCO only for the purpose of development & sale in equal proportion having equal frontage in the below-mentioned Schedule of Property and under no circumstances, pre-existing liability or existing/further liability will be borne by NITCO to any extent on behalf of Sonata or its associated concerns. NITCO shall also be entitled to mortgage the land (more specifically mentioned in the Schedule hereinbelow) & in such case, Sonata will also provide personal guarantees as NITCO would to the concerned financial institution /banks etc. Sonata also undertakes no to deal with or dispose off in part or in full, the schedule of property more specifically mentioned hereinbelow without the prior consent of NITCO. However, Sonata will be free to sell/lease/dispose of its share of the constructed area as and when desired by them without requiring any consent from NITCO. Sonata hereby agrees that there shall be no further issue of equity shares nor shall Sonata amend Articles of Association without prior consent of NITCO for reasons whatsoever.



k) In case, Sonata fails to bring its proportionate share of investment at any relevant point of time, Sonata shall only hand-over/surrender their respective shareholding proportionately to the amount contributed by Sonata in this project only to NITCO at the FSI rate of Rs. 4,000/- herein agreed above and not to any third party for whatsoever reasons.”

6.8. The receipts issued by all seven shareholders of Corporate Debtor in respect of five payments aggregating to Rs. 19.50 crores reads identically, and the particulars of the payment matches with the Exhibit D to the Petition showing Particulars of claim. It is relevant to note that these receipts were not enclosed with the Petition. One receipts dated 2.2.2008 in relation to payment of Rs. 1.00 Crore is reproduced here under for the purpose of understanding :

“Received a sum of Rs 1 Crore vide cheque dated 2nd Feb 08 drawn on PUNJAB NATIONAL BANK, NARIMAN POINT MUMBAI from Nitco Realities Pvt. Ltd.in favour of SONATA REALITY PVT. LTD. vide cheque no. 726327 in respect of land situated lying & being at Oshiwara Taluka, Andheri in the Registration District & Sub-District Of MUMBAI City & MUMBAI Suburban bearing CTS NO IC3 and Survey No 41 admeasuring on or about 9827 sq. mtrs plus 3,500 sq. mtrs assured and undertaken to be acquired by Sonata From M.M.R.D.A.”

6.9. The relevant part of letter dated 6.8.2018 from Respondent No. 2, explaining the nature of transaction with Corporate Debtor, reads as under :

“4. I further have to inform you that one MOU came to be executed by and between ourselves and M/s. Sonata Realty Pvt. Ltd. and which was signed by Mrs. Nilufer Damania and Mrs. Nasreen Khan for and on behalf of M/s. Sonata Realty Pvt. Ltd. This MOU infer alia provides that a Share transfer Agreement would be executed between M/s. Sonata Realty Pvt. Ltd. on the



basis of which the said Project (Fountain Square) was to come up at the said location.

.....

6. Kindly appreciate that under the said MOU, in lieu of the huge monetary considerations, said builder M/s. Sonata Realty Pvt. Ltd. had declared us authorized shareholder in their said proposed building of “Fountain Square” which was to be constructed /developed by Shree Shubh Builder at property laying at Plot bearing S. NO. 41 Hissa No. 1-A (Part), C.T.S No. 1-C/3 (Part) of Village Oshiwara, admeasuring 9827sq. Meter taluka Andheri M.S.D Mumbai situated at Relief Road Near Raghvender Temple Oshiwara, Jogeshwari (West) Mumbai- 400 102.

7. Pursuant to the said MOU, said builder has deceitfully taken us substantial amount from us under the pretext of allotment and transfer of agreed shares as per the MOU, in view thereof, there is still due and receivable a Sum of Rs.2.5 Crores/- being the Principal amount plus interest @18%p.a from the said builder to us.”

6.10. It is relevant to note the decision of Hon’ble Supreme Court in the case of ***Beacon Trusteeship Limited versus Earthcon Infracon Private Limited and Another 2020 SCC OnLine SC 1233***, wherein it was held that “7. Considering the provision of Section 65 of the IBC, it is necessary for the Adjudicating Authority in case such an allegation is raised to go into the same. In case, such an objection is raised or application is filed before the Adjudicating Authority, obviously, it has to be dealt with in accordance with law. The plea of collusion could not have been raised for the first time in the appeal before the NCLAT or before this Court in this appeal. Thus, we relegate the appellant to the remedy before the Adjudicating Authority.”

6.11. In the present case, it is apparent that the particulars of debt as stated in Part IV of the Application evidencing its nature is completely different, except the total amount outstanding. While in Part IV, the Respondent No. 2 had pleaded it to be simpliciter transaction of



amounts, carrying interest, disbursed in a scheme floated by the Corporate Debtor, however, on a careful analysis of the MOU dated 2.2.2008 read in conjunction with the receipts issued towards payment of the amounts (claimed as disbursement of loan in Part IV), the true nature of the transactions is not a simpliciter loan transaction, but the Respondent No. 2 had agreed to pay money to the Corporate Debtor in lieu of Corporate Debtor through its shareholders agreeing to transfer 50% of share in the developed plot of land, which was to be acquired from MMRDA under lease. Clause (i) providing for “*All further expenses for the purpose of development & construction etc more specifically mentioned in Schedule hereinbelow will be borne in the ratio 50 :50*”; and clause (j) providing that “*Stake of 50% equity in Sonata is being acquired by NITCO only for the purpose of development & sale in equal proportion having equal frontage in the below mentioned Schedule of Property and under no circumstances, pre-existing liability or existing /future liability will be borne by NITCO to any extent on behalf of Sonata or its associated concerns*” clearly evidence that the parties to MOU had agreed to transfer 50% interest in the said property and obligation of the Respondent No. 2 in relation to total payment was subject to adjustment in view of clause g & k in case of failure of Corporate Debtor to acquire neighbouring plot of 3500 sq. mtrs. or to bring in its share of investment. The averments in the letter dated 6.8.2018 of Respondent No. 2 are also in contrary to facts stated in Part IV. The existence of said MOU has not been disputed by the Respondent No. 1 or Respondent No. 2. Accordingly, we are of considered view that the Respondent No. 2 has mis-represented the particulars of its debt so as to prevent this Tribunal from determining the true nature of the amount due claimed by it in the C.P. (IB) 48/2024 and mis-declared the surrounding facts leading to disbursement of claimed debt. The Order dated 4.6.2024 was passed by this Tribunal believing its submission that there was subscription to a scheme floated by the Corporate Debtor and such scheme carried an interest @ 9% p.a., which remained uncontested by the Corporate Debtor in the absence of any reply. Had the MOU dated 2.2.2008 and receipts issued by the



Corporate Debtor would have been placed on record, the outstanding amount of Rs. 2.50 crore could not have held to be a financial debt, and this would have led to rejection of C.P. (IB) 48/2024.

6.12. The Hon'ble NCLAT in case of ***Acute Daily Media Pvt. Ltd. and Others versus Rockman Advertising and Marketing (India) Ltd. and Others 2025 SCC OnLine NCLAT 159*** held that

“40. While there is no quarrel over the fact that [Section 7](#) vests rights on the financial creditors to initiate CIRP proceedings against the defaulting Corporate Debtor, however, debt and default cannot always be seen in isolation. We cannot be unmindful of the fact that the Adjudicating Authority is also required to take care that the provisions of [Section 7](#) of IBC are not misused or abused in any manner either by the financial creditor or the promoters of the Corporate Debtor to take undue advantage at the cost of insolvency resolution. Present is a case where the promoters of the Corporate Debtor and the Financial Creditors in trying to create a non-existent financial debt out of routine business entries, have ended up unwittingly committing lapses which lapses when seen cumulatively points to a web of conspiracy and collusion on their part to create a contrived situation of debt and default. The mistakes and infirmities committed by the Appellants in the process are not one-off or stand-alone mistakes or inadvertent errors. These errors are also grave in that it also included violation of other statutes like [Companies Act](#). When we take a comprehensive and holistic view of the entire conspectus of facts and circumstances, we find that there is ample proof to show that the [Section 7](#) application was a motivated attempt to bring the Corporate Debtor into the rigours CIRP proceedings. The bonafide of the Appellants in the filing of the [Section 7](#) application is clearly doubtful. Viewed from the angle of the totality of circumstances, the findings of the Adjudicating Authority that the insolvency proceedings in C.P.(IB)-50(PB)/2021 resulting in the order dated 17.05.2022 were initiated fraudulently and with malicious intent for a



purpose other than the resolution of the insolvency of the Corporate Debtor, is neither dehors the records nor unwarranted. When such fraudulent CIRP Company Appeal (AT) (Insolvency) No. 1480 of 2024 proceedings are initiated, the Adjudicating Authority has jurisdiction under the IBC to consider the allegations of fraudulent and malicious initiation of CIRP proceedings in terms of [Section 65](#) and recall the CIRP admission order.”

6.13. It is relevant to note that the Corporate Debtor and its appointed Developer Shree Shubh Builders Pvt. Ltd. are reported to have collected huge money from the buyers, who have invested money in the upcoming development, and Hon’ble High Court of Bombay has appointed a court receiver in relation to the properties of Corporate Debtor on which the development work was to take place. Both the Corporate Debtor as well as Shree Shubh Builders Pvt. Ltd. collected money by selling their share in the developed project. The claim of the buyers who paid money to Shree Shubh Builders Pvt. Ltd. were not admitted in CIRP of the Corporate Debtor as there was no disbursement to the Corporate Debtor. Nonetheless, the payment was collected by Shree Shubh Builders Pvt. Ltd. on the basis of authorisation of Corporate Debtor recognising Shree Shubh Builders Pvt. Ltd. as developer of project and authorised to sell its part of developed project.

6.14. In view of the aforesaid discussion, we are of considered view that the Order dated 4.6.2024 in C.P. (IB) 48/2024 was obtained by Respondent No. 2 by misrepresentation of facts in relation to the debt resulting into admission of Corporate Debtor in CIRP process treating the Respondent No. 2 as financial creditor, while the amount claimed in the Petition was in fact not a financial debt. We have no hesitation to say that Respondent No. 2 has played a fraud upon this Tribunal by misleading it, and has initiated the CIRP process in case of Corporate Debtor fraudulently. Accordingly, we consider it appropriate to recall our Order dated 4.6.2024 and dismiss C.P. (IB) 48/2024 as the Petitioner therein is not a financial creditor. Consequent to this, all other prayers becomes infructuous. All applications pending as on date under C.P.



(IB) 48/2024 do not survive consequently and stands disposed of accordingly.

6.15. Since, we have reached a conclusion that the Respondent No. 2 has initiated the CIRP process fraudulently, we consider it appropriate to direct the Respondent No. 2 to deposit a penalty of Rs. 5,00,000/- in Bharat Kosh within 30 days of this Order.

-Sd/-
Prabhat Kumar
Member (Technical)

-Sd/-
Justice V.G. Bisht
Member (Judicial)