

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IN

CP (IB) NO. 579/(ND)/2025

IN THE MATTER OF CP NO. 579/(ND)/2025

(Under Section 7 of IBC, 2016)

J.C. Flowers Asset Reconstruction Pvt. Ltd.

Authorized Representative

Ayush Agrawal

Unit No. 203-206, 2nd Floor Wing A,

Inspire BKC, Bandra (East),

Mumbai – 400051

**... Petitioner/
Financial Creditor**

Versus

Bliss Villa (Delhi) Private Limited

18 Kautilya Marg, Chanakyapuri,

New Delhi – 110021

**... Respondent/
Corporate Debtor**

Order Delivered on: 11.08.2026

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. ATUL CHATURVEDI, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Sidhant Kumar Marwah, Adv. Ritesh Kumar, Adv. Ekssha Kashyap, Adv. Shivam Sharan, Adv. Naman Gawda, Adv. Lahar Jain, Adv. Siddhant Ahirwal for FC

For the Respondent : Adv. Udipto Koushik S.

ORDER

PER: SHRI ASHOK KUMAR BHARDWAJ, MEMBER (J)

The captioned petition has been preferred under Section 7 of IBC, 2016 initiating the CIRP qua the Corporate Debtor. As there may be confusion regarding use of literal term initiation/commencement, for proper perception and understanding, we amplify that the definition of initiation date given in Section 5 (11) provides that with filing of an application by a creditor, the CIRP get initiated while the insolvency commences from the date of the order passed by this Tribunal admitting the application preferred by the creditor. In any case, at the outset, the Ld. counsel for the Financial Creditor made a reference to order/judgment dated 29.05.2026 passed by Hon'ble NCLAT in ***Bindu Kapoor (Suspended Director) Bliss Abode Pvt. Ltd. vs. Sapan Mohan Garg Interim Professional Bliss Abode Pvt. Ltd. & Ors.*** [Company Appeal (AT) (Insolvency) No. 2040 of 2025] and submitted that the issue involved in the present case is in all fours of the order (ibid). While taking us through the order, Ld. Counsel for the Applicant pointed out that the CD in the said case viz. Bliss Abode Pvt. Ltd. entered into Loan Agreement dated 13.07.2017 with Indiabulls Housing Finance Limited for Rs. 90 Crores and as default in repayment of the debt was committed, the applicant in the present case initiated CIRP qua Bliss Abode Pvt. Ltd.

2. A perusal of the factual position mentioned in the synopsis filed along with the application as also in Part-IV of the application, the respondent before us was one of the nine companies along with Bliss Abode Pvt. Ltd. in

whose favour financial facility was extended by the applicant before us. The relevant excerpt of Part-IV of the application reads thus:-

PART IV				
PARTICULARS OF FINANCIAL DEBT				
1.	TOTAL AMOUNT OF DEBT GRANTED AND DATE OF	Date of Agreement	Disbursed Amount	Date of Disbursement
		07.12.2017	Rs. 68,00,00,000/-	25-Jun-18
		07.12.2017	Rs. 57,00,00,000/-	25-Jun-18
	DISBURSEMENT	29.03.2019	Rs. 70,00,00,000/-	30-Mar-19
		Date of Default – 14 March 2020.		
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR THE COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	The brief facts of the case are as follows: 1. The Petitioner, J.C. FLOWERS ASSET RECONSTRUCTION PVT. LTD, a company incorporated under the Companies Act, 2013 and registered as an asset reconstruction company pursuant to Section 3 of the SARFAESI (as hereinafter defined), having its registered office at Unit No. 203-206, 2nd Floor, Wing A, Inspire BKC, Bandra Kurla Complex, Bandra (East), Mumbai – 400051 and a branch office at 1st Floor, Hotel Aloft, 5B, IGI T3 Road, Aerocity, New Delhi – 110037, acting in its capacity as trustee of JCF ARC TRUST 2024-25/33. 2. The Respondent, Bliss Villa (Delhi) Private Limited (also referred to as “Corporate Debtor”) is a private limited company incorporated under the Companies Act, 2013 and is engaged in the business of construction and real estate. The Corporate Debtor is a wholly owned subsidiary of RAB Enterprises (India) Private Limited (“RAB”), promoted by Ms. Bindu Kapoor,		

	the wife of Mr. Rana Kapoor (“RAB Promoters”). Mr. Rana Kapoor was the founder and promoter of Yes Bank Limited. <u>LOANS AVAILED BY THE CORPORATE DEBTOR AND THE SECURITIES PROVIDED IN RELATION THERETO</u> 3. In and around 2017, the Corporate Debtor approached Sammaan Capital Limited (“SCL”, (previously known as Indiabulls Housing Finance Limited) seeking financial facilities for business purposes, in favour of its wholly owned subsidiaries- - Bliss House Private Limited - Imagine Estate Private Limited - Bliss Agri and Eco Tourism Private Limited - Bliss Abode Private Limited - Bliss Villa Private Limited - Imagine Home Private Limited - Imagine Habitat Private Limited - Imagine Residence Private Limited These subsidiaries are collectively referred as “RAB Entities”. 4. After accepting the Corporate Debtor’s requests for financial facilities in favour of the aforesaid RAB Entities, the Corporate Debtor and SCL executed two Loan
	Agreements dated 07 December 2017 as under – - Agreement for a sum of Rs. 68,00,00,000/- (“Loan 1”). - Agreement for a sum of Rs. 57,00,00,000/- (“Loan 2”) A copy of the Loan Agreements dated 07 December 2017 executed between Sammaan Capital Limited and the Corporate Debtor is annexed herewith and marked as <u>Annexure P-3(Colly)</u>. 5. Subsequently, again in 2019, the Corporate Debtor again approached SCL for financial facilities over and above the Loan Nos. 1 and

	2. Pursuant to such a request, SCL and the Corporate Debtor executed another Loan Agreement on 29 March 2019 for a sum of Rs. 70,00,00,000/- (“Loan 3”). A copy of the Loan Agreement dated 29 March 2019 executed between SCL and the Corporate Debtor is annexed herewith and marked as <u>Annexure P-4</u>. 6. The Loan Agreements dated 07 December 2017 qua Loan 1 and Loan 2 as well as the Loan Agreement dated 29 March 2019 qua Loan 3 are hereinafter collectively referred as “Bliss Villa Loan Agreements”
	7. The terms of the Bliss Villa Loan Agreements are <i>pari materia</i> and the relevant terms thereunder can be summarized as follows – a. The tenure of the Bliss Villa Loan Agreements was 60 months from the date of disbursement under the Agreement or any part thereof. b. Clause 1.1 stipulates the following - i. The guarantors, hypothecators, mortgagors, pledgors together constitute “Obligors” under the Loan Agreements. ii. “Borrower’s Dues” includes outstanding principal loan amount and other amounts due/payable as per the Loan Documents and/or any other loan agreement(s) entered between (a) the borrower(s) and (b) the lender. iii. “Material Adverse Effect” includes a material adverse effect on the ability of the Obligors to perform their obligations.

	c. Clause 2.1 stipulates that all Obligors of Corporate Debtor are jointly and severally liable for repayment of the Borrower's Dues. Clause 9.2.2 further stipulates that the obligations under Loan Agreements are valid, binding and enforceable against the Obligors of Corporate Debtor. The relevant extract of Clauses 2.1 and 9.2.2 are reproduced below: <i>"2.1. Loan Amount</i> ... <i>The Obligor(s) shall be jointly and severally liable to pay the Borrower's Dues to the Lender."</i> <i>"9.2.2. The obligations expressed to be assumed in each Loan Documents are and will be legal, valid, binding and enforceable against the Obligor(s), the Obligor(s)' heirs, executors, successors, assigns and estate as if, they had been parties hereto. The Obligor(s)' heirs, executors, successors, assigns & legal representatives shall have no right or interest in the Security and on or after occurrence of an Event of</i>
	<i>Default under the Loan Documents, the Lender shall be entitled to sell or dispose of the Security on such terms and in such manner as the Lender deems fit upon, inter alia, happening of an Event of Default."</i> d. Clause 12.1.8 – A Material Adverse Effect constitutes an "Event of Default". e. Clause 12.2 – Upon occurrence of an Event of Default including a Material Adverse Effect as set out above, lender may recall the loan and the Borrower's Dues become repayable immediately by the borrower and its Obligors.

		f. Clause 16 – Any default by Obligors under their respective loan facilities would also constitute a default under the Loan Agreements. g. Schedule I of the Loan Agreement contained the schedule for repayment of the loan amounts. 8. In order to secure the repayment of the above sums, the following securities were furnished –
		a. Three Joint Deeds of Personal Guarantee by Mr. Rana Kapoor and Mrs. Bindu Kapoor (“Personal Guarantors”) to stand as guarantors for and assuring repayment of the sum under the Loans 1 to 3 upon failure by the Corporate Debtor to repay the same. A copy of the Deeds of Guarantee executed by Mr. Rana Kapoor and Mrs. Bindu Kapoor in favour of Sammaan Capital Limited are annexed herewith and marked as <u>Annexure P-5(Colty)</u>. <u>EVENT OF DEFAULT AND RECALL OF LOAN FACILITIES</u> 9. During the tenure of the above Bliss Villa Loan Agreements, the repayment ability of the personal guarantors i.e., Mr. Rana Kapoor and Mrs. Bindu Kapoor was materially affected and as per Clause 1.1 read with Clause 12.1.8 of the Bliss Villa Loan Agreements as detailed above, an event of default was committed. 10. The following events briefly describe the circumstances creating the material adverse effect and the consequent recall of the loan facilities by SCL –
		a. In the wake of multiple financial irregularities and allegations against the Personal Guarantors, a criminal investigation was initiated into the activities of the personal guarantors. b. The above criminal investigations led to the arrest of Mr. Rana Kapoor by the Directorate of Enforcement in relation to the offence of money laundering of assets.

	c. Subsequent thereto, the Central Bureau of Investigation initiated prosecutions against the Personal Guarantors and the same cases continue to remain pending as of date. 11. In lieu of the above events, SCL formed a reasonable apprehension that the Corporate Debtor and its obligors had been materially affected in terms of Clause 12.1.8 and accordingly, an Event of Default had occurred as per Clause 12.2 of the Loan Agreements. 12. As such, on 09 March 2020, SCL issued a Loan Recall Notice to the Corporate Debtor, recalling the Loans 1 to 3 availed by the Corporate Debtor and called upon the Corporate Debtor and the obligors under the
	Loan Agreement to repay an outstanding sum of Rs. 211,77,65,625/-, along with Rs. 1,41,24,244/- towards Tax Deductible at Source (TDS) within a period of 5 days i.e., on 14 March 2020, failing which the Loan Recall Notice would be treated as an invocation of all security documents and that SCL would be entitled to enforce such securities as offered by the Corporate Debtor and the obligors to recover the outstanding dues under the Loans 1 to 3. A copy of the Loan Recall Notice dated 09 March 2020 issued by Sammaan Capital Limited to the Corporate Debtor and the obligors is annexed herewith and marked as <u>Annexure P-6</u>. 13. Simultaneously, SCL also availed other remedies against the Corporate Debtor in terms of Clause 25 of the Bliss Villa Loan Agreements, the arbitration clause. Accordingly, on 12 March 2020, SCL approached the Hon'ble High Court of Delhi

	by way of a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (“AC Act”) bearing O.M.P. (I) (COMM) No. 69 of 2020 titled as “ <i>Indiabulls Housing Finance Limited v. Bliss Villa (Delhi) Private Limited & Ors.</i> ” seeking interim measures against the
	Corporate Debtor and the obligors, in aid of arbitration proceedings to be initiated by SCL. The above Petition pertained to directions to the Corporate Debtor to deposit the above-mentioned outstanding sum under the Loans 1 to 3 and the other Loan Agreements, Rs. 211,77,65,625/-, along with Rs. 1,41,24,244/-towards Tax Deductible at Source (TDS) with the Registry of the Hon’ble Court and to restrain the Corporate Debtor and the obligors from alienating/creating third-party rights over the assets provided as security under the Loan Agreements.

3. The Company mention against Clause 3 (e) of Part-IV is respondent before us.

4. Having heard the counsels for the parties and perused the record, we are satisfied that the judgment passed by Hon’ble NCLAT (supra) is squarely applicable to the facts and issues involved in the present case. Paras 2 to 29 of the judgment passed by Hon’ble NCLAT in the facts similar to those involved in the present case reads thus:-

“2. *Brief facts of the case giving rise to these two appeals are as follows:*

Comp. App. (AT) (Ins.) No. 2040/2025

i. The corporate debtor Bliss Abode Private Limited entered into Loan Agreement dated 13.07.2017 with Indibulls Housing Finance Limited for Rs.90 crore.

- ii. 4 other Loan Agreements dated 05.10.2017 were entered between the corporate debtor and Indiabulls Housing Finance Ltd. for sum of Rs.75 crore, Rs.67 crore, Rs.60 crore and Rs.83 crore respectively.
- iii. As security to the loan personal guarantees were executed by the appellant Ma. Hindu Kapoor and her husband Mr. Rana Kapoor. Deed of Hypothecation dated 08.08.2019 was executed.
- iv. On 23.08.2019, Memorandum of Entry (MoE) was executed which is recorded the deposit of title deed of property being 40, Amrita Shergill Marg, New Delhi with IDBI Trusteeship Services Limited as security trustee.
- v. On 09.03.2020, a loan recall notice was issued to the corporate debtor M/a. Bliss Abode Private Limited, appellant Ms. Bindu Kapoor and Mr. Rana Kapoor stating that event of default has occurred, hence the lender recall the outstanding loan totalling to Rs.388,42,96,875/-which need to be paid within 5 days from date of receipt of the notice No payments were made in response to the loan recall notice.
- vi. Notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 18.06.2020. The lender also initiated arbitration proceedings against the corporate debtor Bliss Abode Private Ltd., M/s. RAB Enterprises (India) Pvt. Ltd., Mr. Rana Kapoor and Ms. Bindu Kapoor.
- vii. The sole arbitrator gave an arbitration award dated 28.02.2023 in favour of lenders holding that claimants are entitled to recover INR 453,75,24,066/- along with the interest from 19.06.2020 till date of payment. Certain other claims were allowed.
- viii. Corporate debtor filed an application under Section 34 of the Arbitration & Concimation Act, 1996 against the award dated 28.02.2023, which is stating to be pending before the Delhi High Court. The Delhi High Court has not passed any interim order in Section 34 application.

- ix. *The financial creditor has also filed application Execution Petition under Section 36 of the Arbitration & Conciliation Act, 1996 seeking execution of the award on 20.11.2023.*
- x. *On 29.03.2025, Indiabulls Housing Finance Ltd. executed an Assignment Agreement in favour of JC Flowers Asset Reconstruction Pvt. Ltd.*
- xi. *On 23.07.2025, the financial creditor filed a Section 7 application being C.P. (IB) No.474/2025 alleging the total amount of Rs 453,75,24,066/-along with TDS and interest @11.25% per annum. In Section 7 application Part IV, the lenders have pleaded the details of sanctioned loan disbursement, loan recall notice dated 09.03.2020 as well as the arbitration award dated 28.02.2023*
- xii. *Notices were issued in Section 7 application, to which reply was filed by the corporate debtor objecting to Section 7 application. Adjudicating authority after hearing the parties vide order dated 15.12.2025 admitted Section 7 application and appointed the Interim Resolution Professional ("IRP"), aggrieved by which order, Comp. App. (AT) (Ins) No.2040/2025 has been filed.*

Comp. App. (AT) (Ins.) No. 585/2026

- i. *Loan Agreement dated 05.09.2018 was entered into between Bliss Abode Pvt. Ltd., the corporate debtor with Indiabulls Housing Finance Ltd. for Rs.75 croze,*
- ii. *Further Agreement dated 29.03.2019 was entered between the corporate debtor and Indiabulls Housing Finance Ltd. for sum of Rs. 105 crore. The common deed of guarantee was executed by appellants Ma. Bindu Kapoor and Mr. Ratna Kapoor.*
- iii. *Mortgage deed was executed in favour of security trustee, mortgaging the Duplex Apartment No. 5 on 15th & 16th Floor at a project named as Sesen, owned by a related partyImagine Residence Private Limited*

- iv. On 09.03.2020, Indiabulls Housing Finance Ltd. issued a loan recall notice asking the corporate debtor to repay the outstanding amount of Rs. 189,27,34,375/- along with the TDS and interest within 5 days from receipt of the notice.*
- v. The corporate debtor also initiated arbitration proceedings which finally concluded on 08.05.2021, where sole arbitrator gave an award in favour of lenders, which arbitration proceeding was concluded on 28.02.2023. Against the award, corporate debtor has filed Section 34 application before the Delhi High Court which is pending.*
- vi. Assignment was made by Indiabulls Housing Finance Ltd. in favour of JC Flowers Asset Reconstruction Pvt. Ltd. on 29.03.2025. Section 7 application was filed by the financial creditor on 24.10.2025 claiming outstanding amount of Rs. 258,74,50,829/-*
- vii. Notices were issued by the adjudicating authority to which reply was filed by the corporate debtor. Adjudicating authority after hearing the parties vide order dated 21.01.2026 admitted CP. (IB) No.585/ND/2025 and appointed the IRP, aggrieved by which order, Comp. App. (AT) (Ins.) No.585/2026 has been filed.*
- viii. Both the Section 7 applications filed by the financial creditors relied on 2 separate loan recall notice dated 09.03.2020 issued to the corporate debtor.*

3. We have heard learned Sr. counsel Mr. Krishnendu Dutta appearing for the appellant in both the appeals as well as learned Sr. counsel Mr. Abhijeet Sinha appearing for the financial creditor and learned counsel appearing for the IRP.

4. Learned Sr. counsel Mr. Krishnendu Dutta appearing for the appellant challenging the orders impugned in these appeals submits that very basis of initiating proceedings under Section 7 of the Insolvency & Bankruptcy Code, 2016 (for short the 'Code' or the 'IBC') are haseless. It is submitted that NCLT failed to consider

that there was no default in payment by the corporate debtor. As per the Loan Agreement, the corporate debtors were discharging liability to pay interest and there was no default committed in payment of the interest. Thus, financial creditor has unreasonably recall the loans on 09.03.2020 within few hours of personal guarantors arrest on 08.03.2020 arrest of Rana Kapoor husband of the appellant). Liability of personal guarantor only arises when the principal borrower fails to repay the debt. There was no default on the part of the corporate debtor as per Loan Agreement. FIR against the personal guarantor registered subsequently on 13.03.2020 and assets were attached by Directorate of Enforcement only on 09.07.2020 valued for Rs.562 crore. NCLT failed to consider that debt and default had not been crystallized. The award in favour of the financial creditor in C.P. (IB) No.474/2025 was under challenge by filing Section 34 application by the corporate debtor, which is pending consideration before the Delhi High Court. Debt and default had not been crystallized in view of the challenge to award of Section 34. Section 7 was not maintainable on basis of uncrystallised award. The adjudicating authority failed to consider that financial creditor in C.P. (IB) No.474/2025 was seeking execution of the arbitration award by means of Section 7 proceeding which is impermissible. Financial creditor when failed to achieve the execution before the Delhi High Court, it proceeded to file Section 7 application. Further Section 7 application filed in C.P. (IB) No.474/2025 was barred by time.

5. *Learned counsel for the appellant pressed the above noted submissions in support of Comp. App. (AT) (Ins.) No.585/2026 also claiming that loan recall notice being unfounded the entire proceedings initiated by financial creditor is without any basis and deserves to be set aside.*

6. *Learned counsel for the financial creditor refuting the submissions of the counsel for the appellant submits that recall*

notice issued on 09.03.2020 was based on contractual terms between the parties. On arrest of Mr. Rana Kapoor on 08.03.2020, there was material adverse effect on the repayment capacity of the obligors, financial creditor invoked Clause 12.1.8 read with Clause 12.2 of the Loan Agreement and issued the loan recall notice dated 09.03.2020. Corporate debtor failed to make the payment within time allowed. Arbitral award was also passed in favour of the lenders of Bliss Abode Pvt. Ltd. for an amount of Rs. 453,75,24,066/- with TDS and interest, which award gave fresh period of limitation to the financial creditor. It is well settled that in the proceeding under Section 7 it has to be found out as to whether there exist debt and default or not. In event, the debt and default is proved, adjudicating authority is obliged to pass an order of admission of Section 7 application. The present is the case where both the corporate debtors have failed to pay any amount in response to loan recall notice Further, even after the arbitral award dated 28.02.2023 the corporate debtor Bliss Abode Pvt. Ltd. did not pay any amount. Default by the corporate debtor was committed when they fail to make payment in response to loan recall notice dated 09.03.2020 which default still continue since no payments have yet been made by any of the corporate debtors for last six years. The fact that lenders have filed an application before the Delhi High Court for execution of the award does not in any manner prohibit the lenders to file Section 7 application which is an independent remedy. Submission of the appellant that lenders are proceeding only for purposes of taking assets namely, 40 Amrita Shergill Marg, which is a valuable property, is incorrect. The mortgaged asset had already been provisionally attached under PMLA Act The reliance of appellant on Regulation 2A(b) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (for short the "CIRP Regulations, 2016") is also misplaced. The inquiry of the Section 7 of the IBC is limited to determining the existence

of debt and default both having been established, the adjudicating authority has rightly admitted Section 7 application. More than 6 years have elapsed but the corporate debtor has not paid even a rupee. In the facts and circumstances of both these appeals, it is necessary to resolve the corporate debtor through insolvency resolution process under the IBC and both the appeals deserves to be dismissed with cost.

7. *Learned counsel for both the parties have placed reliance on the judgments of this Tribunal and the Hon'ble Supreme Court, which we shall notice while considering the submissions hereinafter.*

8. *The loan recall notice dated 09.03.2020 was issued to the corporate debtors; Bliss Abode Pvt. Ltd. and Bliss House Pvt. Ltd. with guarantors Hindu Kapoor and Rana Kapoor. It is useful to notice the loan recall notice dated 09.03.2020 issued to the corporate debtor Bliss Abode Pvt. Ltd. and the said personal guarantors. It is useful to extract the notice 09.03.2020 which is to the following effect:*

"To

Date:

March 09, 2020

1. M/s Bliss Abode Private Limited

40, Amrita Shergill Mary New Delhi-110003

Corporate Identity Number:

U70109DL2017PTC313912

2. M/s RAB Enterprises (India) Private Limited

15th Floor, Tower 2A, One Indiabulls Centre, Senapati

Bapat Marg. Lower Parel, Mumbai-400013 Corporate

Identity Number, U70101MH2005PTC153499

3. Mrs. Bindu Kapoor

427-428, 27th Floor, Samudra Mahal, Dr. A. B. Road,
Worli, Mumbai-400018 Permanent Account Number:
ALEPK8691A

4. Mr Rana Kapoor

427-428, 27th Floor, Samudra Mahal, Dr. A. B. Road,
Worli, Mumbai-400018

Permanent Account Number: AHIPK0411A

5. M/s. Imagine Realty Private Limited

15th Floor, Touser 2A, One Indiabulls

Centre, Senapati Bapat Marg, Lower Parel, Mumbai
400013 Corporate Identity Number:
U70102M112008PTC178672

6. M/s Bliss Habitat Private Limited

15th Floor, Tower 24. One Indiabulls

Centre, Senapati Bapat Mary, Lower Parel, Mumbai
400013

Corporate Identity Number:
70100M112016PTC316962

Dear Sir/Madam,

Subject: Notice under the Loan Documents and/or the applicable laws for, inter aliu, fa) Loan recall and parment of all amounts under the Loan Documents and/or (be sale/transfer/assignment/encumbrance of the Security/Securities provided under the Loan Documents and/or cl invocation of guarantee's) executed by the Guarantors) in favour of the Lender under the Loan Documents.

This has reference to the loan agreement(s) executed by (a) the Borrower(s) (as mentioned in Schedule 1 hereunder) (b) the Co-Borrower's) (as mentioned in Schedule 1 hereunder) and (c) Indiabulls Housing Finance Limited (hereinafter referred to as the "Lender") for the loan(s) more particularly mentioned in Schedule herunder amendment(s)/addendum/s) and/or thereto any ("Loan Agreement(s)"), the other Loan Documents and/or various letters), if any, exchanged between the Obligor(s) and the Lender.

Please note that Event of Default has/have already occurred under the Loan Documents as a result of, inter alia, Material Adverse Effect on account of occurrence of event which is likely to or prejudicially or adversely affect in any manner, the ability/capacity of the Obligor(s) to perform or comply with its obligations under the Loan Documents Kindly note that, as on March 09, 2020, the total outstanding Loan/s) amount along with the interest thereon is Rs. 388,42,96,875/(Rupees Three Hundred Eighty Eight Crores Forty Two Lakh Ninety Six Thousand Eight Hundred and Seventy live only) in the aggregate, which is payable to the Lender under the Loan Documents, In addition to the aforesaid amount, TDS certificates of Rs 4,36,46,048/(Rupees Four Crore Thirty Six Lakh Porty Six Thousand Forty Eight only is also to be submitted to the Lender under Loan Documents,

In view of the aforesaid and pursuant to the provisions of the Loan Documents, without prejudice to our other rights and remedies, we hereby recall the outstanding Loan(s) and call upon you to forthwith

pay us all the amounts payable to the Lender under the Loan Documents within five days from the date of receipt of this notice.

In case of failure on your part to comply with the aforesaid, without prejudice rights/remedies and without any further notice to any of you,

(a) please treat this notice (issued under the Loan Documents and/or the applicable laws) as a notice of/for sale, disposing off, transfer, grant, conveyance, assignment and/or encumbrance of any part of the Security/Securities provided in favour of the Lender under the Loan Documents; and/or

(b) please treat this notice (issued under the Loan Documents and/or the applicable laws) as a notice for invocation of the guarantee(s) executed by the Guarantor(s) in favour of the Lender, and pursuant to which the Guarantor(s) shall be liable to forthwith pay to the Lender all amounts payable to the Lender under the Loan Documents (including the amounts specified above); and/or

(c) the lender shall be entitled to, inter alia, exercise other rights and/or enforce remedies (at your costs and risk) available under the Loan Documents and/or applicable laws to, inter alia, recover all amounts payable by you to the Lender under the Loan Documents

Notwithstanding anything to the contrary, this notice shall prevail over and/or shall not be affected by any other correspondence, payments, actions, etc., in present or future, by or between you and the Lender,

unless this notice is specifically withdrawn/annulled by the Lender in writing.

Any capitalized terms used and not defined herein shall have the same meaning as ascribed to such terms under the Loan Documents

We expect prompt action on your part."

9. *Along with the notice, schedule was attached with respect to separate loan and the amount outstanding being Rs. 388,42,96,875/- with TDS and interest, the loan recall notice has been issued as per loan agreement entered between the corporate debtor and financial creditor. It is useful to notice certain clauses of the loan agreement entered between Bliss Abode Pvt. Ltd. and financial creditor dated September, 2017. In the present case loan recall notice refers to material adverse change ie, Clause 12.1.8. Clause 12.1.8 provides as follows:*

"12.1.8 Material adverse change

Any event or circumstance occurs which the Lender believes is likely to have a Material Adverse Effect or if any circumstance or event occurs which in the opinion of Lender, would or is likely to prejudicially or adversely affect in any manner, the ability/ capacity of the Obligor(s) to perform or comply with its/their obligations under the Loan Documents and/or to pay/repay the Borrower's Dues or any part thereof."

10. *The Clause 12.1.8 provides that any event or circumstance which lenders believes is likely to have a material adverse effect or is likely to prejudicially or adversely affect in any manner, the ability or capacity of the obligors to perform or comply with their obligations under the loan documents. Material adverse effect and obligors are defined in loan agreement in following worda:*

"Material Adverse Effect" means, a material adverse effect, in the opinion of the Lender on or affecting:

- (a) the business, operations, property or condition (financial or otherwise) of the Borrower(s);
- (b) the ability of the Obligor(s) to perform its/their obligations under the Loan Documents, or
- (c) the validity or enforceability of the Loan Documents or the rights or remedies of the Lender under the Loan Documents.

"Obligor(s)" Borrower(s), Hypothecator(s), the Guarantor(s), the mortgagor(s), the Pledgor(s) and/or any other persons providing Security to secure the Borrower's obligations under the Loan Documents including the Borrower's Dues and/or who is or becomes a party other than the Lender) to the Loan Documents"

11. Guarantors are included into the definition of obligors both Rana Kapoor and Bindu Kapoor are admittedly the guarantors of the loan

12. Learned counsel for the appellant questioned very issuance of loan recall notice. It is contended that the fact that one of the guarantors Rana Kapoor was arrested on 08.03.2020 cannot be said to be any effect which is material adverse effect. The liability of guarantors arises only when borrower commits default in making payments of its obligation. In the present case, there was no default on the part of the borrower since the payments of interest was being made and principal amount was not due for payment, whereas on the other hand the counsel for the respondent submits that material adverse effect which is in the opinion of lender effect ability of the obligor to perform their

obligation. Rana Kapoor one of the guarantors has been arrested and various criminal investigations had commenced that was material adverse effect within meaning of loan agreement. The expression material adverse effect has defined in loan agreement as noted above is a wise definition which in opinion of lenders affects various circumstances as enumerated in Clauses (a), (b) & (c). When Criminal investigation commenced against Rana Kapoor the promoter of the Yes Bank and the personal guarantor in the loan agreement and he was arrested on 08.03.2020, it cannot be said that formation of opinion by the lender that the said event is the material adverse effect can be said to against the contractual terms agreed between the parties. Lenders were entitled to exercise their contractual rights as provided in Clause 12.2 on consequence of an event of default is as follows:

"12.2 Consequence of an Event of Default

On and at any time after the occurrence of an Event of Default, Lender may, with or without any notice to any of the Obligor(s)

(i) cancel/recall the Loan whereupon the Loan and/or the Borrower's Dues shall become immediately repayable/payable by Obligor(s); and/or

(ii) initiate/exercise any or all of its rights, actions, remedies and powers under the Loan Documents and/or applicable laws (including issuance of show-cause notice(s) to the Obligor(s) and for making submissions before the relevant committee of the Lender); and/or

(iii) enforce, allot, sell, invoke, deliver, deal with, take possession, convey, transfer, assign, lease, sub-lease, encumber and/or dispose off

in any manner (on terms and conditions including the sale/transfer price of the Security or any part/unit thereof as deemed fit by the Lender) any or all or part of the Security with or without the intervention of the court/arbitrator) including mortgaged properties or any portion or unit thereof, Hypothecated Asset(s) or any portion or unit thereof and/or the Pledged Charged Shares, guarantees and demand promissory notes, and/or do such other things in relation to and/or with respect to the Security (any part thereof) which may be permitted under law”.

13. *We thus are of the view that no infirmity is found in issuance of loan recall notice dated 09.03.2020. The loan recall notice recalled the entire loan and asked the corporate debtor and obligors to make the payment within 5 days from receipt of the notice. Loan recall notice dated 09.03.2020 to M/s. Bliss Abode Pvt. Ltd. demanded a payment of amount of Rs 388,42,96,875/- whereas, loan recall notice dated 09.03.2020 demanded the corporate debtor Bliss House Pvt. Ltd, an amount of Rs. 189,27,34,375/. We thus are of the view that submission raised by the counsel for the appellant that loan recall notice is not in accordance with the agreement between the parties cannot be accepted. The loan agreement between the financial creditor and Bliss Abode Pvt. Ltd. as well as Bliss House Pvt. Ltd. were both in the same terms relying on which, the loan recall notice against the corporate debtor was issued on 09.03.2020.*

14. *Learned counsel for the appellant in support of Comp. App. (AT) (Ins.) No.2040/2025 submits that the arbitration award dated 28.02.2023 which has been obtained by lender from the Arbitral Tribunal being under challenge under Section 34 of the Arbitration*

& Conciliation Act, 1996, and which has not attained any finality, the said award can never be basis of Section 7 application. We need to notice the pleading and basis of Section 7 application filed against Bliss Abode Pvt. Ltd. The copy of the Section 7 application in C.P. (IB) No.474/2025 is filed as Annexure A-21 to the Comp. App. (AT) (Ina.) No.2040/2025. In Part IV of the application after giving the details of the sanctioned and relevant clauses of the loan agreement under the heading "**Event of Default and Recall of Loan Facilities**", has made following averments:

"PART-IV

PARTICULARS OF FINANCIAL DEBT		
1	TOTAL AMOUNT OF DEBT GRANTED AND DATE OF DISBURSEMENT	<u>EVENT OF DEFAULT AND RECALL OF LOAN FACILITIES</u>
		10. During the tenure of the above Loan Agreements, the repayment ability of the personal guarantors i.e., Mr. Rana Kapoor and Mrs. Bindu Kapoor was materially affected and as per Clause 1.1 read with Clause 12.1.8 of the Loan Agreements as detailed above, an event of default was committed. 11. The following events briefly describe the circumstances creating the material adverse effect and
		the consequent recall of the loan facilities by SCL- a. In the wake of multiple financial irregularities and allegations against the Personal Guarantors, a criminal investigation was initiated into the activities of the personal guarantors. b. The above criminal investigations led to the arrest of Mr. Rana Kapoor by the Directorate of Enforcement in relation to the offence of money laundering of assets. c. Subsequent thereto, the Central Bureau of Investigation initiated prosecutions against the Personal Guarantors and the same cases continue to remain pending as of date.

	12. In lieu of the above events, SCL formed a reasonable apprehension that the Corporate Debtor and its obligors had been materially affected in terms of Clause 12.1.8 and accordingly, an Event of Default had occurred as per Clause 12.2 of the Loan Agreements. 13. As such, on 09.03.2020, SCL issued a Loan Recall Notice to the Corporate Debtor, recalling the loan facilities i.e., Loans 1 to 5 and called upon the Corporate Debtor and the obligors under
	the Loan Agreement to repay an outstanding sum of Rs. 388,42,96,875/-, along with Rs. 4,36,46,048/- towards Tax Deductible at Source (TDS) within a period of 5 days i.e., on 14.03.2020, failing which SCL would be treated as an invocation of all security documents and that SCL would be entitled to enforce such securities as offered by the Corporate Debtor and the obligors to recover the outstanding dues under Loans 1 to 5. A copy of the Loan Recall Notice dated 09.03.2020 issued by Sammaan Capital Limited to the Corporate Debtor and the obligors is annexed herewith and marked as Annexure P-11.

15. Part IV also referred to the Arbitration Proceedings which culminated into arbitral award on 28.02.2023. In Part IV it was specifically pleaded that after loan recall notice did not pay any outstanding amount. Part IV pleads that default on the part of the corporate debtor subsist. In Part IV in paragraph 33, following has been pleaded:

“PART-IV

PARTICULARS OF FINANCIAL DEBT		
1	TOTAL AMOUNT OF DEBT GRANTED AND DATE OF DISBURSEMENT	33.It is clear from the position set out above that the Corporate Debtor has defaulted in its obligations under the Loan Agreements for Loans 1 to 5 and as on 30.06.2025 the Corporate Debtor is in default of a sum of Rs. 922,46,13,471/- (Indian Rupees Nine Hundred Twenty Two Crore Forty Six Lakhs Thirteen Thousand Four Hundred and Seventy One) ("Total Default Amount"). The default has been committed by the Corporate Debtor - a. On 14.03.2020, when the Corporate Debtor failed to repay the outstanding sum in terms of the Recall Notice. b. On 18.09.2020, when the Corporate Debtor failed to repay the outstanding sum under the Loan Agreements in relation to Loans 1 to 5, in terms of the Demand Notice. c. Further, the default of the Corporate Debtor continued during the pendency of the arbitral proceedings, that is from 29.06.2020 till 28.02.2023. d. On 28.02.2023 when the Arbitral Award was passed against the Corporate Debtor and the quantum of the default under the Loan Agreements for Loans 1 to 5 was crystallized at INR 453,75,24,066/- to SCL along with interest ("Awarded Amount"). e. On 29.05.2023 when the Awarded Amount was not repaid to SCL in terms of the timeline

		stipulated under the Arbitral Award. f. The default further continued when the Corporate Debtor and its Obligors failed to pay the Petitioner in accordance with the Legal Notice. g. The default is continuing as on date since neither the Corporate Debtor nor its Obligors have repaid the Default Amount under the Loan Agreements for Loans 1 to 5. A table containing the outstanding sums payable under the Loan Agreements for Loans 1 to 5 is annexed herewith and marked as Annexure P-17.
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16. Thus, the pleading is that default was claimed on 14.03.2020 which continues during the arbitration proceedings and after the arbitral award delivered on 28.02.2023, awarded amount was not paid.

17. Submission which has been pressed by the counsel for the appellant is that arbitral award is under challenge in Section 34 proceeding, it is not open for the lenders to file Section 7 application. Learned counsel for the appellant has relied on Regulation 2A of the CIRP Regulations, 2016 and submits that order of Court or Tribunal can be relied only where the period of the appeal of such order has expired that is when the said order has become final. It is submitted that order of the Arbitral Tribunal 28.02.2020 being under challenge under Section 34 of Arbitration & Conciliation Act, 1996 that cannot be relied by the lenders for filing any Section 7 application. We have already noticed the pleadings in Part IV of Section 7 application against the Bliss Abode Pvt. Ltd. which indicate that application is not founded only on Arbitral Award rather that first default which is claimed by

corporate debtor is default on loan recall notice dated 09.03.2020, when no payment was made by 14.03.2020, Section 7 application specifically relies on loan recall notice 09.03.2020. Thus, it cannot be said that application was filed only on basis of Arbitral Award. The Regulation 2A(b) which is relied by the appellant which provides that record or event of default by financial creditor which can be relied in support of Section 7 application. As noted above in the facts of the present case arbitral award is not the only basis for filing Section 7 application and default was committed on 14.03.2020 in response to loan recall notice, no amount was paid.

18. Learned counsel for the appellant further submitted that Section 7 application was filed to execute the award which is not permissible. Learned counsel for the appellant has relied on the judgment of this Tribunal in '**Shaikh Mohammed Tariq Vs. Aegis Forging Ltd.** reported in **[2022 SCC OnLine SC 4429]**. The above was a case where Section 7 application filed by the financial creditor was rejected by the adjudicating authority and appeal was filed against the said order. This Tribunal relied on the judgment of the Hon'ble Supreme Court in "**Vidarbha Industries Power Ltd. Vs. Axis Bank Limited**' reported in **[2022) 8 SCC 352]** and held that admission of Section 7 application is not obligatory merely on proof of debt and default. The said order passed by this Tribunal relied by the appellant is as follows:

"Heard Learned Counsel for the Appellant.

This appeal has been filed against the order passed by the Adjudicating Authority rejecting Section 7 petition filed by the Appellant for initiation of CIRP.

The appellant's case is that on his personal guarantee the Creditor's investors gave some funds to the Corporate Debtor. The Appellant's further case is that on the basis of the said guarantee, arbitration proceedings were initiated and there is an award

dated 11.11.2013 in favour of the Appellant which award has already been put into execution by the Appellant.

Adjudicating Authority after noticing the aforesaid fact has refused to admit Section 7 application.

Learned Counsel for the Appellant submits that the guarantee which was given by the Appellant is fully covered by Section 5(8)(i) of the Code which was a financial debt.

Be that as it may, the fact that there is already an award to pay Cash Security of Rs. 3,64,58,785/-with interest, which award has already been put in execution by the Financial Creditor, this was reason good enough to refuse admission of Section 7 application. It has now been laid down by the Hon'ble Supreme Court in Vidarbha Industries Power Ltd. Axis Bank Limited that admission of Section 7 application is not obligatory merely on proof of Debt. and default.

The facts as has been noticed by the Adjudicating Authority, as noted above are sufficient to refuse admission of Section 7 application. We thus are of the view that the appeal deserves to be dismissed.

Appeal is dismissed accordingly.”

19. *The above judgment which was delivered on 15.11.2022 does not help the appellant in the facts of the present case. Hon'ble Supreme court has clarified and explained the judgment of the Vidarbha Industries Power Ltd.' (supra) in subsequent judgments. It is relevant to notice the recent judgment of the Hon'ble Supreme Court in '**Power Trust (Promoter of Hiranmaye Energy Ltd.)' Vs. 'Bhuvan Madan & Ors. (Interim Resolution Professional***

of Hiranmaye Energy Ltd.)' reported in **[2026 SCC OnLine SC 248]**, where in paragraphs 33 & 34 following was laid down:

"33. Reiterating the ratio in Innoventive Industries Ltd. v. ICICI Bank [(2017) 205 Comp Cas 57 (SC); (2018) 1 SCC 407; (2018) 1 SCC (Civ) 356; 2017 SCC OnLine SC 1025.] this court in E.S. Krishnamurthy v. Bharath Hi-Tech Builders P. Ltd. ((2022) 230 Comp Cas 226 (SC); (2022) 3 SCC 161; (2022) 2 SCC (Civ) 129; 2021 SCC OnLine SC 1242.] held as follows [See page 245 of 230 Comp Cas.]:

"The Adjudicating Authority has clearly acted outside the terms of its jurisdiction under section 7(5) of the Insolvency and Bankruptcy Code. The Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application, respectively. These are the only two courses of action which are open to the Adjudicating Authority in accordance with section 7(5). The Adjudicating Authority cannot compel a party to the proceedings before it to settle a dispute."

34. In a similar vein, the Adjudicating Authority is not required to go into the inability of a corporate debtor to pay its debt. This is a clear departure from the scheme of winding up envisaged under section 433(e) of the erstwhile Companies Act, 1956 which required the Adjudicating Authority to come to a finding with regard to the inability of the company to pay the debt and thereby arrive at a requisite satisfaction whether it is just and equitable to wind up the company. The

Code restricts the scope of enquiry for admission of an insolvency process by a financial creditor merely to the existence of default of a debt due and payable and nothing more. The legislative intent behind such prompt and summary intervention is "to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation [Swiss Ribbons P. Ltd. v. Union of India (2019) 213 Comp Cas 198 (SC); (2019) 4 SCC 17; 2019 SCC OnLine SC 73, paragraph 28]."

20. In 'Elegna Co-op. Housing & Commercial Society Ltd.' Vs. 'Edelweiss Asset Reconstruction Co. Ltd. & Anr.' reported in [2026 SCC OnLine SC 82], Hon'ble Supreme Court has also again laid down that once it review the Section 7 that is debt and default is specified, admission must follow. Relevant paragraph of the judgment is as follows:

"12.3. The legal position is now well settled. In *Innoventive Industries Ltd. v. ICICI Bank* [(2017) 205 Comp Cas 57 (SC); (2018) 1 SCC 407; (2018) 1 SCC (Civ) 356; 2017 SCC OnLine SC 1025.], this court held that once the Adjudicating Authority is satisfied that a financial debt exists and a default has occurred, it must admit the application unless it is incomplete. The inquiry under section 7(5)(a) is confined strictly to the determination of debt and default, leaving no scope for equitable or discretionary considerations.

12.4 This principle was reiterated in *E.S. Krishnamurthy v. Bharath Hi-Tech Builders Ltd.* [(2022) 230 Comp Cas 226 (SC); (2022) 3 SCC 161; (2022) 2 SCC (Civ) 129; 2021 SCC OnLine SC 1242.],

wherein this court clarified that no discretion survives once default is established. Similarly, in Swiss Ribbons P. Ltd. v. Union of India [(2019) 213 Comp Cas 198 (SC); (2019) 4 SCC 17; 2019 SCC OnLine SC 73.], this court reaffirmed that the trigger for the corporate insolvency resolution process is default, and the object of the Code is to ensure timely resolution to preserve enterprise value.

12.5. *The reliance placed by the corporate debtor on Vidarbha Industries Power Ltd. v. Axis Bank Ltd. [(2022) 233 Comp Cas 544 (SC); (2022) 8 SCC 352; (2022) 4 SCC (Civ) 329; 2022 SCC OnLine SC 841.] is wholly misconceived. That decision has consistently been recognised as a narrow exception confined to its peculiar facts, namely the existence of an adjudicated and realisable claim in favour of the corporate debtor exceeding the debt owed.*

12.6. *This position now stands authoritatively clarified in M. Suresh Kumar Reddy v. Canara Bank [(2023) 22 Comp Cas-OL 586 (SC); (2023) 8 SCC 387; 2023 SCC OnLine SC 608.], wherein this court held that Vidarbha Industries Power Ltd. v. Axis Bank Ltd. [(2022) 233 Comp Cas 544 (SC); (2022) 8 SCC 352; (2022) 4 SCC (Civ) 329; 2022 SCC OnLine SC 841.] does not dilute the binding ratio of Innoventive Industries Ltd. v. ICICI Bank [(2017) 205 Comp Cas 57 (SC); (2018) 1 SCC 407; (2018) 1 SCC (Civ) 356; 2017 SCC OnLine SC 1025.] and E.S. Hi-Tech Builders P. Krishnamurthy v. Bharath Ltd. [(2022) 230 Comp Cas 226 (SC); (2022) 3 SCC 161; (2022) 2 SCC (Civ) 129; 2021 SCC OnLine SC 1242.] Admission under section 7 thus remains mandatory*

once debt and default are established, with Vidarbha Industries Power Ltd. v. Axis Bank Ltd. ((2022) 233 Comp Cas 544 (SC); (2022) 8 SCC 352; (2022) 4 SCC (Civ) 329; 2022 SCC OnLine SC 841.] operating only in exceptional circumstances."

21. *Learned counsel for the appellant further relied on the judgment of the Hon'ble Supreme Court in 'P. Mohanraj & Ors.' Vs. 'Shah Brothers Ispat Pvt. Ltd.' reported in [(2021) 6 SCC 258] submits that in view of the moratorium which has commenced on admission of Section 7 application, the corporate debtor is precluded to pursue his Section 34 application. Hon'ble Supreme Court in the above case in paragraph 97 has laid down following:*

"97. Shri Mehta then relied upon Power Grid Corpn. of India Ltd. v. Jyoti Structures Ltd. [Power Grid Corpn. of India Ltd. v. Jyoti Structures Ltd., 2017 SCC OnLine Del 12189; (2018) 246 DLT 485], in which the Delhi High Court held that a Section 34 application to set aside an award under the Arbitration and Conciliation Act, 1996 would not be covered by Section 14 IBC. This judgment does not state the law correctly as it is clear that a Section 34 proceeding is certainly a proceeding against the corporate debtor which may result in an arbitral award against the corporate debtor being upheld, as a result of which, monies would then be payable by the corporate debtor. A Section 34 proceeding is a proceeding against the corporate debtor in a court of law pertaining to a challenge to an arbitral award and would be covered just as an appellate proceeding in a decree from a suit would be covered. This judgment does not, therefore, state the law correctly."

22. *Hon'ble Supreme Court in the above case has held that proceeding under Section 34 is a proceeding against the corporate debtor just as an appellate proceeding in a decree from a suit. It was held by the Hon'ble Supreme Court that said proceeding under Section 34 are also to be covered by Section 14 of the IBC. There can be no dispute to the proposition laid down by the above case. The mere fact that corporate debtor is unable to pursue Section 34 application in which corporate debtor has challenged the arbitral award dated 28.02.2023 cannot be a ground to admit Section 7 application which was also founded on default which was committed by the corporate debtor on 14.03.2020 even much before the arbitral award was delivered.*

23. *Learned counsel for the appellant has also relied on the recent judgment of the Hon'ble Supreme Court in '**Anjani Technoplast Ltd. Vs. "Shubh Gautam"** in [Civil Appeal No.8247/2022] decided on 23.04.2026. Reliance has been placed on paragraph 31 of the judgment. In paragraph 31 following has been held:*

"31. We have considered the NCLAT's reliance on this Court's decision in Dena Bank (supraj. It is true that in paragraph 141 of that judgment, this Court held that a decree for money in favour of a financial creditor would give rise to a fresh cause of action for initiating proceedings under Section 7 of the IBC. We do not doubt that proposition as a general statement of law. However, that principle does not operate in a vacuum. It does not mean that every decree holder who also happens to be a financial creditor is entitled, as a matter of right, to invoke the insolvency process in preference to execution. The question of whether, in each case, the invocation of the IBC amounts to misuse of the process or to the use of the Code as a

recovery mechanism remains a question to be examined on the facts.”

24. *In the above case, Section 7 application which was rejected by NCLT was reversed by the NCLAT relying on money decree passed by the Delhi High Court. What was held by the Hon'ble Supreme Court that every decree holder who is the financial creditor is not entitled to as a matter of right to invoke the IBC. Thus, question as to whether in each case by invocation of the IBC amounts to abuse of on the process or to use the forum as a recovery mechanism are the question to be examined in the facts of each case. In the facts of the above case, where Hon'ble Supreme Court held that application under Section 151 of the CPC and proceedings under Section 340 of the CrPC are pending before the Delhi High Court, where the decree passed and in the above case it was held that CIRP process was abuse of the process. In paragraphs 32 à 33, Hon'ble Supreme Court held that Section 7 application in the facts of the said case was abuse of process. In the above circumstances, the order of the NCLT dismissing the Section 7 application was upheld Judgment of the '**Anjani Technoplast Ltd.**' (supra) was based on its own facts and does not come to any aid to the appellant in the facts of the present case*

25. *Learned counsel for the respondent has relied on the judgment of the Hon'ble Supreme Court in '**Pioneer Urban Land & Infrastructure Ltd. & Anr.**' Vs. '**Union of India & Ors.**' reported in [(2019) 8 SCC 416), where it was held that financial creditor can take various remedy including Section 7 application. It was held that remedies under RERA Act are concurrent remedy. In paragraph 30 of the judgment, following was laid down:*

“30. As a matter of fact, the Code and RERA operate in completely different spheres. The Code deals with a proceeding in rem in which the focus is the rehabilitation of the corporate debtor. This is to take

place by replacing the management of the corporate debtor by means of a resolution plan which must be accepted by 66% of the Committee of Creditors, which is now put at the helm of affairs, in deciding the fate of the corporate debtor. Such resolution plan then puts the same or another management in the saddle, subject to the provisions of the Code, so that the corporate debtor may be pulled out of the woods and may continue as a going concern, thus benefitting all stakeholders involved. It is only as a last resort that winding up of the corporate debtor is resorted to, so that its assets may be liquidated and paid out in the manner provided by Section 53 of the Code. On the other hand, RERA protects the interests of the individual investor in real estate projects by requiring the promoter to strictly adhere to its provisions. The object of RERA is to see that real estate projects come to fruition within the stated period and to see that allottees of such projects are not left in the lurch and are finally able to realise their dream of a home, or be paid compensation if such dream is shattered, or at least get back monies that they had advanced towards the project with interest. At the same time, recalcitrant allottees are not to be tolerated, as they must also perform their part of the bargain, namely, to pay instalments as and when they become due and payable. Given the different spheres within which these two enactments operate, different parallel remedies are given to allottees under RERA to see that their flat/apartment is constructed and delivered to them in time, barring which compensation for the same and/or refund of amounts paid together with interest at the very least comes their way. If, however,

*the allottee wants that the corporate debtor's management itself be removed and replaced, so that the corporate debtor can be rehabilitated, he may prefer a Section 7 application under the Code. That another parallel remedy is available is recognised by RERA itself in the proviso to Section 71(1), by which an allottee may continue with an application already filed before the Consumer Protection Fora, he being given the choice to withdraw such complaint and file an application before the adjudicating officer under RERA with Section 88. In similar circumstances, this Court in *Swaraj Infrastructure (P) Ltd. v. Kotak Mahindra Bank Ltd.* (Swaraj Infrastructure (P) Ltd. v. Kotak Mahindra Bank Ltd., (2019) 3 SCC 620; (2019) 2 SCC (Civ) 136) has held that the Debts Recovery Tribunal proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and winding-up proceedings under the Companies Act, 1956 can carry on in parallel streams (see paras 21 and 22 therein)."*

26. *Learned counsel for the respondent has also rightly submitted that it is well settled that the decree gives a fresh period of limitation which has been laid down in 'Dena Bank' Vs. 'C. Shivakumar Reddy & Anr.'* reported in [(2021) 10 SCC 330], as well as the judgment in '*Kotak Mahindra Bank Ltd.*' Vs. '*A. Balakrishnan & Anr.*' reported in [(2022) 9 SCC 186]. In paragraph 28 of the judgment in '*Kotak Mahindra Bank Ltd.* (supra), following was laid down:

"28. *It could thus be seen that this Court in Dena Bank (Dena Bank v. C. Shivakumar Reddy, (2021) 10 SCC 330 in SCC paras 136 and 141, has in unequivocal terms held that once a claim fructifies into a final judgment and order/decreed, upon*

adjudication, and a certificate of recovery is also issued authorising the creditor to realise its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decree and/or the amount specified in the recovery certificate. It has further been held that issuance of a certificate of recovery in favour of the financial creditor would give rise to a fresh cause of action to the financial creditor, to initiate proceedings under Section 7 IBC for initiation of the CIRP, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the certificate of recovery, if the dues of the corporate debtor to the financial debtor, under the judgment and/or decree and/or in terms of the certificate of recovery, or any part thereof remained unpaid.”

27. *The submission of the appellant that application filed under Section 7 against Bliss Abode Pvt. Ltd. was barred by time cannot be accepted. There being an arbitral award dated 28.02.2023 in favour of the lenders, a fresh cause of action shall accrue and the application is admittedly filed within 3 years thereafter and is within time.*

28. *In view of the foregoing discussions, we are of the view that no grounds have been made out to interfere with the order of the adjudicating authority admitting Section 7 application against the corporate debtor. Adjudicating authority has rightly come to conclusion that financial creditor has been able to prove the debt and default. It is relevant to notice that in last more than 6 years, no payments have been made by any of the corporate debtors despite outstanding debt which was communicated by loan recall notice dated 09.03.2020. Debt and default was proved that is continuing.*

We are satisfied that in the facts of the present case, corporate debtor requires resolution under the IBC.

29. *We thus are of the view that no grounds have been made out to interfere with the impugned order. Both the appeals are dismissed.*

Parties shall bear their own costs.”

5. In view of the judgment passed by Hon’ble NCLAT (supra), we are left with no option but to admit the present application. Ordered Accordingly.

6. In the wake, moratorium as provided under Section 14 of IBC, 2016 is declared qua the CD and as a necessary consequence thereof the following prohibitions are imposed, which must be followed by all and sundry:

- (a) The institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of by the Respondent 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 Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Respondent.

7. As proposed by the Applicant/FC in IA-3070/ND/2026, Mamta Binani [Reg. No. IBBI/IPA-002/IP-N00086/2017-18/10227, E-mail-mamtabinani@gmail.com], is hereby appointed as IRP. It is further ordered

that the IRP shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC, 2016 specifically under Section 15, 17, 18, 19(2), 20 and 21 of the Code read with extant provisions of CIRP Regulations, 2016. The IRP would also take steps as per Regulations 4A and 30 of IBBI (CIRP) Regulations, 2016.

8. The Applicant/ FC is directed to deposit Rs. 2,00,000/- with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

9. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Applicant /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

10. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their record.

**Sd/-
(ATUL CHATURVEDI)
MEMBER(T)**

**Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**