

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 465 of 2024

[Arising out of Order dated 08.01.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, New Delhi Bench, Court – II), in IA-
4347/2023 in C.P.(IB)-1744 of 2019]

IN THE MATTER OF:

UCO Bank **...Appellant**

Versus

Debashish Nanda,
Resolution Professional Bulland Buildtech Pvt. Ltd. **...Respondent**

Present:

For Appellant : **Mr. Brijesh Kumar Tamber and Mr. Prateek
Kushwaha, Advocates.**

For Respondent : **Mr. Sumant Batra, Mr. Sarthak Bhandari and Ms.
Riya Kaur Arora, Advocates for R-1/RP.**

WITH

Company Appeal (AT) (Insolvency) No. 1911 of 2024

&

I.A. No. 7059 of 2024

[Arising out of Order dated 09.07.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, New Delhi Bench, Court – II), in I.A.-
1449/2022 in C.P.(IB)-1744 of 2019]

IN THE MATTER OF:

UCO Bank **...Appellant**

Versus

Debashish Nanda,
Resolution Professional Bulland Buildtech Pvt. Ltd. **...Respondent**

Present:

For Appellant : **Mr. Brijesh Kumar Tamber and Mr. Prateek
Kushwaha, Advocates.**

For Respondent : Mr. Sumant Batra, Mr. Sarthak Bhandari and Ms. Riya Kaur Arora, Advocates for R-1/RP.

Ms. Noor Shergill, Advocate for SRA/R-2.

J U D G M E N T

ASHOK BHUSHAN, J.

I.A. No. 7059/2024

In

Comp. App. (AT) (Ins.) No. 1911/2024

1. This is an application praying for condonation of 13 days delay in filing of the appeal.
2. Sufficient cause has been shown in the application for condonation of delay.

Delay condoned.

Comp. App. (AT) (Ins.) Nos. 465 & 1911/2024

1. These two appeals have been filed by the appellant challenging the order dated 08.01.2024 passed by the adjudicating authority (National Company Law Tribunal, New Delhi Bench, Court – III) rejecting the I.A. No. 4347/2023 filed by the UCO Bank and order dated 09.07.2024 passed in I.A. No. 1449/2022 approving the resolution plan in the Corporate Insolvency Resolution Process (CIRP) of the corporate debtor – M/s. Bulland Builtech Pvt. Ltd.
2. Brief facts necessary to be noticed giving rise to these appeals are to the following effect:

- i. The corporate debtor M/s. Bulland Buildtech Pvt. Ltd. is a Real Estate Company which has engaged in a residential project namely “Bulland Elevates” situated in Greater Noida, Gautam Buddh Nagar, Uttar Pradesh.
- ii. In the above Real Estate Project, company allotted various flats to several persons. Several unitholders entered into Tripartite Agreement with UCO Bank and the company under which financial facility was obtained by the borrower for purchase of the units.
- iii. As per UCO Bank, 45 unitholders were sanctioned home loans on different dates in the year 2013 onwards. On the instruction of homebuyers, the amounts were paid to the corporate debtor.
- iv. Canara Bank filed an application under Section 7 of the IBC against the corporate debtor M/s. Bulland Buildtech Pvt. Ltd. on which CIRP against the corporate debtor was initiated vide order dated 22.03.2021 passed by the adjudicating authority.
- v. IRP through public announcement dated 26.03.2021 invited claim from the creditor of the corporate debtor wherein the last date for submission of the claim was 06.04.2021.
- vi. UCO Bank also filed its claim in ‘Form-C’ dated 05.04.2021 for an amount of Rs.18,82,07,927/-. The claim was filed on the basis of home loans sanctioned to 45 unitholders. In the claim form, the UCO Bank relied on the sanctioned letters as well as the Tripartite Agreement entered with the unitholder.

- vii. The Interim Resolution Professional (IRP) by email dated 22.04.2021 declined to accept the claim of the applicant. The applicant sent various emails and reminders to the IRP.
- viii. Debashish Nanda, respondent was appointed as RP on 03.09.2021. Applicant wrote to the RP and requested to provide the status of the claim. UCO Bank thereafter filed I.A. No.4373/2023 praying for direction to the RP to verify/consider/admit the claim of the applicant.
- ix. Reply was filed by the RP to the said application. In the reply, the RP has while objecting the claim of the applicant also pleaded that CoC with 94.37% voting, held on 9th CoC Meeting dated 21.03.2022, has approved the resolution plan. The RP also in the reply pleaded that loan disbursed by the UCO Bank has been done without due diligence and the allottees were not genuine homebuyers and in the record of the corporate debtor the allotment to unitholders as claimed is not shown.
- x. CRM data and homebuyer software does not support the claim. 25 allottees are speculative investor. Claim of only one allottee was found and admitted i.e., unitholder for the unit Flat No. F-1703.
- xi. The adjudicating authority heard the applicant, UCO Bank and the RP and by order dated 08.01.2024 has rejected I.A. 4373/2023, aggrieved by which order, Comp. Appeal (AT) (Ins.) No. 465/2024 has been filed.
- xii. The RP after approval of the resolution plan filed an I.A. No. 1449/2022 praying for approval of the resolution plan and addendum to resolution plan was also filed. The adjudicating authority considered the I.A. No.

1449/2022 and by order dated 09.07.2024 has approved the resolution plan submitted by Saviour Builders Pvt. Ltd., the R-2 in Comp. App. (AT) (Ins.) No. 1911/2024. Aggrieved by the order approving the resolution plan Comp. App. (AT) (Ins.) No. 1911/2024 has been filed.

3. We have heard Mr. Brijesh Kumar Tamber and Mr. Prateek Kushwaha learned counsels appearing for the appellant. Learned counsel Mr. Sumant Batra has appeared for the RP. We have also heard learned counsel appearing for the Successful Resolution Applicant (SRA).

4. Learned counsel for the appellant challenging the order passed by the adjudicating authority dated 08.01.2024 rejecting the application filed by the UCO Bank for accepting its claim submits that adjudicating authority committed error in rejecting the claim of the appellant. It is submitted under Tripartite Agreement with the unitholder, UCO Bank and the corporate debtor home loan was sanctioned to the borrower which was paid to the corporate debtor under the instruction of borrower. Under the Tripartite Agreement it was the responsibility of both the borrower and the corporate debtor to comply with the terms and conditions of the Tripartite Agreement. The Bank also got its charge registered with Central Registry of Securitisation Asset Reconstruction and Security Interest of India with respect to some of the units against which the home loans were sanctioned. Charge of the Bank has been registered against the units. It is submitted that as per the clause of the Tripartite Agreement in event borrower fails to repay the dues, the Bank shall have absolute right to the said stage to transfer alienate and deal with the same and realise their outstanding dues and borrower has no right to create

Comp. App. (AT) (Ins.) No. 465 & 1911 of 2024

any obstruction and objection thereto. The borrower has undertaken to deposit the registered title deeds of the units before the Bank to create a mortgage by deposit of title. It is submitted that the security interest was created in favour of the UCO Bank in the units for which home loan was sanctioned by the UCO Bank. Banks claim which was filed on the basis of sanction of loan to 45 unitholders after entering into Tripartite Agreement was liable to be accepted by the RP. Adjudicating authority committed error in rejecting the I.A. filed by the appellant for acceptance of claim. Learned counsel for the appellant further submits that the Bank has filed application before the Debt Recovery Tribunal (DRT) against unitholders and the company in which proceeding, decree has been passed by the DRT on different date in the year 2019-2020 in favour of the Bank against the borrowers and the M/s. Bulland Buildtech Pvt. Ltd. It is submitted that appellant having disbursed the amount to the company, it is the financial creditor of the corporate debtor within meaning of Section 5(8) of the IBC and adjudicating authority committed error in rejecting the application. Learned counsel for the appellant further submits that as per the terms of contractual arrangement entered between the parties wherein the corporate debtor was obligated to indemnify the Appellant Bank. The transaction is a financial debt within the meaning of Section 5, sub-section (8)(i). The corporate debtor having taken liability to indemnify the Bank, the transaction is a financial debt.

5. In support of Comp. App. (AT) (Ins.) No. 1911/2024, appellant submits that plan has been approved without taking into consideration the claim of the appellant which was erroneously rejected on 08.01.2024. The resolution

plan which has been approved by the adjudicating authority without considering the claim of the appellant as financial creditor, approval of the resolution plan deserves to be set aside.

6. Learned counsel Mr. Sumant Batra appearing for the RP refuting the submission of the appellant submits that appellant is not the financial creditor of the corporate debtor. Appellant has sanctioned home loan to the allottees and the amount was disbursed to the allottees only and it is the allottees who were the financial creditor, the disbursement cannot be said to be in favour of the corporate debtor. On the basis of Tripartite Agreement, appellant cannot claim to be financial creditor of the corporate debtor. Corporate debtor has neither applied nor availed any financial assistance from the UCO Bank. It is the allottees who were sanctioned the credit within the meaning of Section 5(8)(f) of the Code since the amounts have been raised by the corporate debtor from the individual allottees and not from the UCO Bank. The amount was sanctioned by the Bank to the allottees and on the instructions to the allottees was paid to the corporate debtor. It is submitted that out of the units claimed by the appellant, 20 units have been allotted to other allottees who had made payment to the corporate debtor and filed their claims whose claim have been admitted. Claim of certain individuals to whom the appellant claim to have sanctioned the loan had filed the claims in 'Form-CA' which was rejected by the IRP since their name could not reflect in the record of the corporate debtor. Claim of 6 individuals were rejected and 24 others even did not file any claim. Those individuals filed an application before the adjudicating authority claiming to be the homebuyer which claim to be rejected by the adjudicating

authority. Out of 44 units claimed by the appellant, 13 units were not allotted to any allottees and said units are reflected as vacant inventory as per the record of the corporate debtor. It is submitted that with regard to several transactions made by the promoters of the corporate debtor, avoidance application has been filed by the RP under Section 66 of the Code by I.A. No.1286/2022 with respect to certain persons whose names are included in the list of unitholders. The claim of only Parmit Jaiswal has been accepted as a genuine allottee who has been allotted Flat No. 1703, F Block, who had filed its claim before the RP. The decrees passed by the DRT which have been filed along with the appeal were not the basis of claim filed by the UCO Bank nor they were relied in the application which was filed by the UCO Bank before the adjudicating authority seeking a direction to admit a claim. Decrees which have been filed along with the appeal were prior to the initiation of CIRP, however, they were not basis of the claim of the UCO Bank hence are not relevant for considering the appeal. It is submitted that financial facility was extended to the borrowers/allottees and not to the corporate debtor, no claim can be made by the appellant from the corporate debtor. It was borrower who were liable to refund the amount. Mr. Batra further submits that in the avoidance application which has been filed by the RP for avoiding certain transactions entered by the promoters with respect to some of the allottees out of 44 loan accounts, in event any proceeds are received, the same can be given to the Bank subject to approval of the SRA.

7. Learned counsel for the SRA also supported the impugned order and submits that resolution plan was submitted on the basis of admitted claims

and the claim of the appellant was never admitted. Learned counsel for the SRA submits that the loan was not taken by the corporate debtor hence corporate debtor was not liable to make any refund and bank cannot claim itself a financial creditor of the corporate debtor. Learned counsel for the SRA submits that insofar as proceeds of Section 66 application for avoidance of transaction, if any amount is received the SRA has no objection to the said amount being paid to the UCO Bank towards its outstanding dues.

8. We have considered the submissions of the counsel for the parties and perused the records.

9. Both the parties have relied on various judgments of this Tribunal and the Hon'ble Supreme Court which we shall refer to while considering the submissions.

10. The issue which has arisen for consideration in the appeal is as to whether the claim submitted by the appellant in 'Form-C' for an amount of Rs.18,82,07,927/- was a financial debt owed by the corporate debtor and as to whether the RP was obliged to accept the claim as financial creditor. As noted above, the claim was filed by the appellant within time by its letter dated 05.04.2021 which claim was not accepted by the RP leading to the filing of the application I.A.4347/2023 by the appellant before the adjudicating authority which came to be rejected on 08.01.2024. We need to first notice the 'Form-C' which was filed by the UCO Bank dated 05.04.2021 for raising its claim. Copy of 'Form-C' has been brought on record as Annexure A-4 to the appeal. Appellant claiming to be a financial creditor has filed the claim.

Relevant particulars of 'Form-C' which are particulars of 'Form-C' regarding the claim are as follows:

“FORM C
SUBMISSION OF CLAIM BY FINANCIAL
CREDITORS

(Under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

Date 05/04/2021

From: UCO Bank, Asst Management Branch, Ground Floor, 5, Parliament Street New Delhi-110001

To

The Interim Resolution Professional/Resolution Professional,

Shri Mahesh Taneja

Value plus Insolvency Resolution Professionals Pvt Ltd.

1-B, 1/17, Lalita Park, Laxmi Nagar

East Delhi-110092

Email: irpbullandbuiltech@gmail.com

*Subject: **Submission of claim and proof of claim.***

Madam/ Sir,

UCO Bank, hereby submits this claim in respect of the corporate insolvency resolution process of M/s Bulland Buildtech Pvt. Ltd. The details for the same are set out below:

<i>Relevant Particulars</i>		
<i>1.</i>	<i>Name of the financial creditor</i>	<i>UCO BANK</i>
<i>2.</i>	<i>Identification number of the financial creditor (If an incorporated body, provide identification number</i>	<i>UCO BANK (2128)</i>

	<i>and proof of incorporation. If a partnership or individual provide identification records of all the partners or the individual)</i>	
3.	<i>Address and email address of the financial creditor for correspondence</i>	<i>Assets Management Branch. UCO Bank Building Ground Floor, 5, Parliament Street, New-Delhi - 110001. Email; NEWAMB@UCOBANK.CO.IN</i>
4.	<i>Total amount of claim (including any interest as at the insolvency commencement date)</i>	<i>RS. 188207927/- (RS. EIGHTEEN Crores eight two lakhs seven THOUSAND NINE HUNDRED AND TWENTY SEVEN ONLY.)</i>
5.	<i>Details of documents by reference to which the debt can be substantiated</i>	<i>Sanction letters. Tripartite Agreement and statement of account of 44 home loan accounts.</i>
6.	<i>Details of how and when debt incurred</i>	<i>Our bank has sanctioned and disbursed the home loan to the borrowers/ Allotees of M/s Bulland Buidtech Pvt. Ltd under Tripartite Agreement.</i>
7.	<i>Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which</i>	<i>NIL</i>

	<i>may be set-off against the claim</i>	
8.	<i>Details of any security held, the value of the security, and the date it was given</i>	<i>FLATS ALLOTTED TO THE DIFFERENT BUYERS/BORROWERS AS PER TRIPARTITE AGREEMENT</i>
9.	<i>Details of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a resolution plan</i>	<i>IFSC code: UCBA0002128 A/C No.01200210002186 UCO BANK, AMB, NEW DELHI</i>
10.	<i>List of documents attached to this claim in order to prove the existence and non-payment of claim due to the financial creditor</i>	<i>1) SANCTION LETTERS 2) TRIPARTITE</i>
<i>Relevant Particulars</i>		
		<i>AGREEMENT 3. STATEMENT OF ACCOUNTS</i>
<i>(Signature of financial creditor or person authorised to act on his behalf) (Please enclose the authority if it is being submitted on behalf of the financial creditor)</i>		
<i>Name in BLOCK LETTERS: MAHESH KUMAR</i>		
<i>Position with or in relation to creditor: ASSISTANT GENERAL MANAGER</i>		
<i>Address of person signing: UCO BANK, ASSET MANAGEMENT BRANCH, 5, PARLIAMENT STREET, NEW DELHI-110001</i>		

PAN number, passport, AADHAR Card or the identity card issued by the Election Commission of India.

DECLARATION

I, Mahesh Kumar, Assistant General Manager currently residing at UCO Bank, 5, Parliament Street, New Delhi do hereby declare and state as follows: -

1. UCO Bank, the corporate debtor was, at the insolvency commencement date, being the 5th day of April 2021, actually indebted to me for a sum of Rs. Rs. 188207927/- (RS. EIGHTEEN CRORES EIGHT TWO LAKHS SEVEN THOUSAND NINE HUNDRED AND TWENTY SEVEN ONLY.) In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below: SANCTION LETTERS, TRIPARTITE AGREEMENT and STATEMENT OF ACCOUNTS.

2. The said documents are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.

3. In respect of the said sum or any part thereof, neither I, nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following:

[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim].

4. I am / I am not a related party of the corporate debtor, as defined under section 5 (24) of the Code.

5. I am eligible to join committee of creditors by virtue of proviso to section 21 (2) of the Code even though I am a related party of the corporate debtor.

Date: 05.04.2021

Place: New Delhi

(Signature of Claimant)

VERIFICATION

1. Mahesh Kumar, the claimant hereinabove, do hereby verify that the contents of this proof of claim are true and correct to my knowledge and belief and no material fact has been concealed therefrom.

Verified at New Delhi on this 5th day of April 2021

(Signature of claimant)

[Note: In the case of company or limited liability partnership, the declaration and verification shall be made by the director/manager/secretary/designated partner and in the case of other entities, an officer authorised for the purpose by the entity.]”

11. The above details indicate that basis of the claim is sanction letters and Tripartite Agreement of accounts of 44 home loan accounts. There is no dispute that sanction letter was issued by the Bank in favour of the unitholder. The sanction letters and Tripartite Agreement and statement of accounts are the documents which have been relied in the ‘Form-C’ for proving financial debt. Section 3(6) defines the claim in following manner:

“3. Definitions.–

In this Code, unless the context otherwise requires,—

*(6) “**claim**” means—*

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;”

12. Section 3(11) defines debt in following manner:

“3. Definitions.–

In this Code, unless the context otherwise requires,—

*(11) “**debt**” means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;”*

13. Section 5(8) defines financial debt. Sections 5(8)(f) & 5(8)(i) which is relevant for the present case is as follows:

“5. Definitions.–

In this Part, unless the context otherwise requires,—

*(8) “**financial debt**” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—*

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

Explanation. -For the purposes of this sub-clause,-

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of [section 2](#) of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;”

14. For a creditor to be a financial creditor a financial debt is owed and is required to be owed. The definition of claim, we have noted above which is the right of payment whether or not such right is reduced to judgment, fixed disputed, undisputed, legal, equitable, secured or unsecured. The basis of claim is Tripartite Agreement and the clauses therein. We need to look into the one of the Tripartite Agreements which is part of the appeal filed as Annexure A-5 to the appeal dated 10.09.2013 entered between Mrs. Praveen Gupta borrower mortgager/first party as one part, UCO Bank as second part and M/s. Bulland Buildtech Pvt. Ltd. as third part. The statement in Tripartite Agreement clearly mentions that Bank has sanctioned the credit

facility to the borrower for buying the property as stated in Schedule II, which statement is as follows:

“...Whereas the borrower herein, on their requests and subject to compliances of requirements of SECOND PARTY herein, have been sanctioned the credit facility, as stated in Schedule I, herein below, (for short, "the said credit limit") for the purpose of buying the property as stated in Schedule II appended below, (for short, "the said space") agreeing to be purchased by the first party herein from owner/builder, as the case may be, in the project, as the terms and conditions as have been applicable thereto, inclusive but not limited to the personal guarantee of Guarantors herein and security, lien and equitable mortgage of the said space...”

15. The statement made by the owner and builder is that land still subsists by virtue of registered title deed read with requisite provision in their favour which are free from all encumbrances demands, mortgagers, liabilities, gifts, lien etc. The Agreement contained various statements on some of which reliance is placed by the appellant. Appellant has relied on clause 9 of the Tripartite Agreement which contemplate eventuality when first party fails to repay the dues. Clause 9 is as follows:

“9. That the first party undertake that in case they fail to repay the dues under «& on account of said credit limits as per the agreed terms and conditions, then the second party shall have absolute right to get the said space transferred, alienated, sold and/or dealt with the same in any manner to realise their entire outstanding dues, and the first party shall not have any right to create any obstruction and objection thereto.”

16. The above clause contains a stipulation that when borrower fails to repay the Bank shall have absolute right to get the said space transferred alienated sold and fist party shall not have any right to create any obstruction

and objection thereto. The said clause is obligation of first party i.e., a borrower. To the similar effect is Clause 12 which is as follows:

“12. That in case of the failure of the said first party, to liquidate the entire outstanding amount of the second party, under the said credit limits, the second party shall be entitled to get sold and auctioned the said space in the manner as deem fit, with/without recourse to the court of law and the sale proceeds thereof, shall be appropriated towards the outstanding dues and the first party shall not make any objection, & challenge to such action of the second party.”

17. The first party has appointed the second party their irrevocably and unconditionally true and lawful attorney. Clause 19 of the Agreement is as follows:

“19. That the first party do hereby appoint the second party herein their irrevocably and unconditionally true and lawful attorney and empower the said attorney to take all actions and do all deeds, at whatsoever, for the compliance of the present agreement and give discharge for and on their behalf and in their name. All or any of act of their said attorney shall be deemed as if done by us and shall be binding on us.”

18. Learned counsel for the appellant has also relied on Clause 41 of the Agreement which is as follows:

“41. That the owner and the builder herein jointly and/or severally agree/s and accept/s the present terms and conditions of this agreement and binds itself from the said terms and conditions and the same are not repeated herein separately only for avoidance of the repetition and desirous of being brief and short. The owner and builder are further agreed that all the terms and conditions hereof shall be applicable upon them, so far as the same pertains to the rights to the bank over the said space, in the capacity of owner and builder, as may be applicable which are applicable against the first party herein.”

to contend that builder has also jointly and severally agreed and accepted the terms and conditions of the Agreement and bind itself from the said terms. When we look into the Tripartite Agreement relied by the appellant under none of the clauses of Tripartite Agreement the corporate debtor has undertaken to make the payment to the Bank of financial facilities which was extended to the borrower in event of failure of the borrower to pay the outstanding. The Agreement of course permits that Bank to sell, alienate and transfer the unit. The first question to be considered as to whether the transaction i.e., Tripartite Agreement makes the Bank financial creditor of the corporate debtor. We have noticed the definition of claim above which clearly provides that claim means a right to payment, right to remedy for breach of contract. Claim of the appellant is on basis of Tripartite Agreement the claim shall arise only when the Tripartite Agreement gives any right to payment to the Bank from the corporate debtor. The home loan has been sanctioned by the Bank to the borrower and under the Tripartite Agreement it is the liability of the borrower to repay the amount and on failure of the borrower in making to payment the Bank is entitled to alienate transfer of this case for which facility was extended. None of the clauses in the Tripartite Agreement cast any obligation of the corporate debtor to make repayment of the loan to the Bank. It is relevant to notice that present is not a kind of Agreement to enter with respect to subvention scheme. The corporate debtor never undertook to pay any invoice as in normal subvention scheme. The entire liability to pay the home loan was on the borrower and corporate debtor has never undertaken to repay the loan. We fail to see that how the appellant can claim

right to payment from the corporate debtor on the basis of Tripartite Agreement when loan is sanctioned to borrower disbursement of the loan is also to the borrower although on the instruction of borrower it is made to the corporate debtor. We also need to consider the submission of the appellant on the strength of Section 5, sub-section (8)(i) of the IBC. Section 5, sub-section (8) (i) is as follows:

“5(8)(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clause (a) to (h) of this clause;”

19. Learned Counsel for the appellant to bring the transaction within the meaning of Section 5, sub-section (8)(i) contends that the clauses of Tripartite Agreement specially Clause-41 contains an indemnity by the builder to indemnify the Bank. The copy of Tripartite Agreement has been brought on record by the appellant as Annexure A-5. We have noted relevant clauses of the Tripartite Agreement in preceding paragraphs of this judgment. Clause-12 provides that in case of failure of the borrower to liquidate the entire outstanding amount to the Bank, the Bank shall be entitled to get sold and auctioned the said space in the manner as deem fit and Borrower shall not make any objection, & challenge to such action of the Bank. Thus, the condition to liquidate the outstanding amount and consequences are provided in Clause-12. The clauses as provided in Tripartite Agreement do not contemplate liability to be taken over by the Builder or Builder to make any repayment to the Bank. Learned Counsel for the Appellant placed reliance on Clause-41 of the Tripartite Agreement. Clause 41 of the Tripartite Agreement as extracted above, cannot be read as any indemnity given by the Builder in

favour of the Bank. Section 124 of the Contract Act defines ‘contract of indemnity’. Section 124 of the Contract Act is as follows:

“124. “Contract of indemnity” defined.—A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a “contract of indemnity”.

20. As per the definition of ‘contract of indemnity’, there has to be a promise by one party to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person. None of the clauses of Tripartite Agreement contain any contract of indemnity and Clause-41 on which reliance is placed, only contains agreement of builder that it accepts the present terms and conditions of the Tripartite Agreement and binds itself for the said terms and conditions. Thus, Clause-41 is reiteration of earlier terms and conditions of the Agreement. Applicability of Clause-41 arises only when there is any terms and conditions in the Agreement, which requires Builder to discharge the liability of Borrower for repayment to the Bank. There being no such terms and conditions in the Tripartite Agreement that on failure of Borrower to repay the loan to the Bank, the Builder is obliged to discharge the liability, Clause-41 in no manner helps the Appellant in the facts of the present case.

21. The adjudicating authority in the impugned order has relied on the judgment of this Tribunal in **‘Axis Bank’ Vs. ‘Value Infracon India Pvt. Ltd. & Anr.’** reported in **[2021 SCC OnLine NCLAT 426]**. In the above case also Axis Bank had filed the application before the adjudicating authority seeking a direction to declare the applicant Bank as secured financial creditor with a

claim amount as claimed in 'Form-C'. The Bank in the above case has sanctioned loan to 42 homebuyers. The Bank had obtained a decree against 42 allottees from the DRT. The claim submitted by the Axis Bank was not accepted hence application was filed which came to be rejected by adjudicating authority. This Tribunal referring to the judgment of the Hon'ble Supreme Court in '**Pioneer Urban Land & Infrastructure Ltd. & Anr.**' Vs. '**Union of India & Ors.**' made following observations in paragraphs 8 & 9:

"8. It is not disputed that M/s. Axis Bank has sanctioned loans to 44 home buyers/allottees who have purchased units/flats, in the project floated by the "corporate debtor". Home buyers were included as "financial creditors" vide amendment dated June 6, 2018. Section 5(8) of the Code reads as follows:

"5. Definitions.—In this Part, unless the context otherwise requires,—.

(8) 'financial debt' means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

(a) money borrowed against the payment of interest ;

(b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent ;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument ;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed ;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis ;

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

Explanation.—For the purposes of this sub-clause,—

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing ; and

(ii) the expressions, 'allottee' and 'real estate project' shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) ;

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account ;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution ;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in subclauses (a) to (h) of this clause"

(emphasis supplied)

9. *The hon'ble Supreme Court in paragraphs 18 and 19 in Pioneer Urban Land and Infrastructure Ltd. v. Union of India (2019) 217 Comp Cas 1 (SC) ; (2019) 8 SCC 416 has observed as follows (page 38 of 217 Comp Cas):*

"It can be seen that the Insolvency Law Committee found, as a matter of fact, that delay in completion of flats/apartments has become a common phenomenon, and that amounts raised from home buyers contributes significantly to the financing of the construction of such flats/apartments. This being the case, it was important, therefore, to clarify that home buyers are treated as financial creditors so that they can trigger the Code under

section 7 and have their rightful place on the committee of creditors when it comes to making important decisions as to the future of the building construction company, which is the execution of the real estate project in which such home buyers are ultimately to be housed. Shri Shardul Shroff, whose dissent was provided to us in the form of an e-mail, after finding that self-financed home buyers may be financial creditors, but a home buyer who is a borrower is not, then went on to state:

'8. If the home buyers have taken loans from banks, then it is such lenders who should be on the table on the CoC as special status creditors.

9. Our report ought to be altered to the extent that home buyers financiers should be treated as unsecured financial creditors and they should be representatives of the home buyers. There should be no direct right given to home buyers to be on the CoC.'

Even the dissent of Shri Shroff recognises that in the case of home buyers, who have taken loans from banks, such banks ought to be on the committee of creditors. If such banks ought to be on the committee of creditors as representatives of the home buyers, and they are to vote only in accordance with the home buyer's instructions, why should the home buyer himself then not be on the committee of creditors, and why should it make any difference as to whether he has borrowed money from banks in order to pay instalments under the agreement for sale or whether he does it from his own finances ? These matters have not been addressed by the dissenting view which in principle, as we have seen, supports home buyers who have taken loans as against home buyers who have used their own finances. Perhaps the real reason for Shri Shroff's dissent is the fact that unsecured, as opposed to secured, financial creditors are being put on the committee of creditors. If there is otherwise good reason as to why this particular group of unsecured creditors, like deposit holders, should be part of the committee of creditors, it is difficult to appreciate how such a group can be excluded."

(emphasis supplied)"

22. One of the clauses in Tripartite Agreement has been extracted in paragraph 14 of the judgment, which is as follows:

“14. The relevant clause of the tripartite agreement entered into between the home buyers, the developer and the appellant/M/s. Axis Bank is reproduced as hereunder: "It is agreed by and between the parties to this agreement that in case if the borrower fails to honour the commitment, the developer/ builder shall inform the bank and the bank shall have the right to pay the sale consideration and get it registered either in Bank's name or its nominee. Likewise in the event the borrower defaults in payment of instalments then, in such an event also, the bank shall have the right to inform about such default on the part of the borrower to the builder and shall accordingly have the right to write to the builder cancellation of agreement executed between the builder and the borrower, where after the bank shall have the right to pay the sale consideration and get the subject property registered either in the bank's name or in the name of the bank's nominee.”

23. This Tribunal noticed the fact that Bank has rendered financial assistance for the purpose of booking units in the project of corporate debtor and Agreements were made individually by the borrowers. This Tribunal in the above facts have held that financial institution which has advanced loan to homebuyers cannot be considered as financial creditors and included in the Committee of Creditors (CoC). Liability to pay home loan is on the individual homebuyers. In paragraph 15 to 17, following was held:

“15. It can be seen from the material on record that Axis Bank had rendered financial assistance for the purpose of booking units in the project floated by the "corporate debtor" and had a tie-up with the "corporate debtor" for procuring business from the home allottees. The home loan agreements in these cases were made individually by the borrowers. As per standing instructions, the money in the account of the home allottees was disbursed automatically to the "corporate debtor". Tripartite agreement is only by way of security

that the developer would withhold the allotment in the event of default by the allottee. The bank had sought security by creating mortgage of the residential units for the loans availed by the home buyers and the "corporate debtor" had given permission for the same to enable the home buyer to procure financial assistance.

16. From the aforementioned clause in the tripartite agreement entered into between the home buyer, the Axis Bank and the "corporate debtor", it is evident that in case of any default by the borrower, the bank would have the right to write to the builder for cancellation of agreement executed between the developer and the borrower, whereafter the bank shall have the right to pay the sale consideration and get the subject property registered. There is no material on record to evidence that any such cancellation has taken place. The home loan agreement read with the demand letters and the allotment letter clearly specify that when there is a "default" on behalf of the home allottee a penalty interest would have to be paid by the allottee to the bank. Therefore, the "default" aspect is to be seen vis-a-vis the home allottee and the appellant-bank only. It is contended by the respondent that though the allotment letter shows that the payments were construction linked, the bank released the entire amount prior to completion of construction.

17. Be that as it may, we are of the considered view that this subject matter cannot be viewed from such a narrow compass. It is definitely not the scope and objective of the Code to include banks/financial institutions which have advanced loans to home buyers to be considered as "financial creditors" and included in the CoC, specifically in the light of the fact the liability to repay the home loan is on the individual home buyers. This would defeat the very spirit and objective of the Code aiming at resolution and maximisation of the assets of the "corporate debtor". Presence of a mere tripartite agreement does not change the character of the amount borrowed by the home buyer vis-a-vis the bank and vis-a-vis the "corporate debtor". Viewed from any angle, the appellant cannot be included as a "secured financial creditor" in this case and hence we find no reasons to interfere with the well-reasoned order of the Adjudicating Authority."

24. Learned counsel for the appellant has placed much reliance on the judgment of this Tribunal in [**Comp. App. (AT) (Ins.) No.390/2023**], in **‘Canara Bank’ Vs. ‘Vivek Kumar, RP of M/s. AVJ Developers (India) Ltd.’** decided on 09.01.2025. Learned Counsel for the appellant submits that Canara Bank has also entered into Tripartite Agreement with homebuyer and the corporate debtor, which claim was not accepted. There was decree also obtained by the Canara Bank from the DRT. This Tribunal in the above case after noticing the relevant clauses of Tripartite Agreement held that the clauses in the Tripartite Agreement obliged the builder to refund the amount to the Bank hence the claim was required to be admitted. In the above judgment, in paragraph 53, this Tribunal has noticed the relevant clauses. Paragraph 53 of the judgment is as follows:

“53. Now it will be desirable to look into and examine the relevant clauses of the tripartite agreement entered into amongst the Appellant Bank, the Homebuyers and Borrower/ Corporate Debtor. The relevant portion of the tripartite agreement is reproduced as under :-

“उत्तर प्रदेश UTTAR PRADESH CA 138831

Tripartite Agreement

(To be executed by the Borrower, Canara Bank and Land owning Builder/PA holder of the land owner having rights to construct and sell Flats)

WHEREAS under an Agreement for Sale datedentered into between the Builder and the Borrower, the Builder has agreed to sell Schedule B property to the Borrower and in furtherance thereof, the Borrower has already paid to the builder Rs.15,85,000/- (Rupees Fifteen Lac Eighty Five Thousand Only) by way of advance money and the receipt of which is acknowledged by the Builder.

WHEREAS the Borrower has approached the Bank to grant him loan of Rs 11,00,000/- (Rupees Eleven lac Only) for purchase of Schedule B property and the Bank has vide its sanction letter dated.... Agreed to sanction the loan of Rs 11,00,000/- (Rupees Eleven lac Only) to the Borrower (hereinafter called "Loan").

Whereas Borrower and builder represent that after completion of construction of flat, Builder shall execute Sale Deed for Schedule B property in favour of Borrower in terms of this agreement. Pending execution of Sale Deed, the Borrower and the Builder have requested the Bank to disburse the said loan to the Borrower. Bank has agreed to disburse the said loan on the following terms and conditions among others:

2. The Borrower has already paid a sum of Rs.15,85,000/- (Rupees Fifteen Lac Eighty Five Thousand Only) to the builder on..... as advance money for the purchase of Schedule B property. **The Borrower hereby authorizes the Bank to disburse the above said loan amount directly to the Builder** in terms of the above said Agreement for Sale or as requested by the Borrower. The sum of Rs.11,00,000/- (Rupees Eleven Lac Only) advanced by the Bank to the Borrower and remitted by the Bank directly to the builder shall be deemed as disbursed by the Bank directly to the Borrower.

3. That the Bank has and shall have the first and paramount lien over the money disbursed by the Bank as loan to the Borrower, The charge in favour of the Bank shall be first and paramount over the charge which the Builder may have over the said flat/ loan amount.

4. That the Builder agrees that they have no objection to the Borrower(s) mortgaging Schedule B Property as security for the above said Loan.

5. That the Builder shall note in its records, the charge and lien of the Bank over the Schedule B property. The Builder shall not transfer the Schedule B property to any person without the prior written consent of the Bank

11. That on receipt of the entire loan amount, the Builder shall execute a proper Conveyance Deed/

Sale Deed/Lease Deed in favour of the Borrower. The Builder undertakes to deliver the same along with original Registration fee receipt directly to the Bank and not to the Borrower(s). Before the execution of the Sale Deed /Conveyance Deed/ Lease Deed, the Builder shall inform the Bank about the same and date of registration shall be fixed with written consent of Bank. On receipt of the entire loan amount, the Builder shall deliver possession of Schedule B property to the Borrower.

13. The Borrower/s, hereby undertakes to create equitable mortgage in favour of Bank after obtaining the original sale deed of Schedule B Property as per guidelines of the Bank.

16. In the event of **default of repayment of the loan and/or the Borrower(s)** committing any other default which make the **Borrower liable** for the **re payment of the entire amount outstanding in the said loan as per the terms of** the loan agreement executed between the **Borrower's and the Bank**, or if the Borrower withdraws from his agreement or **Builder cancels** the booking of the Borrower, or in **the event of failure of the Builder to complete the project, or in the event of death of the Borrower, or in any event where the title to the schedule flat/dwelling unit is not/not being passed on to the** Borrower or in any other eventualities of the nature **by which the** loan advanced by the Bank is **not utilised** for the purpose for which it was so advanced or breach of any of the terms and conditions contained in this agreement, **the entire amount advanced by the Bank on account of the Borrower shall be refunded by the Builder to the Bank.** If the entire amount refunded by the Builder is insufficient to close the loan account, Borrower shall make **immediate arrangements for payment of such deficit amount** as may be required to **close the loan account.** If the **Builder fails to repay** the amount as stated under this clause, the **Borrower shall repay the entire loan amount with interest,** expenses, penal interest, etc. in terms of the loan agreement executed by the Borrower/s.

17. The Builder hereby agrees that the **Builder shall not refund the Borrower** or any other person any advance/contribution given by the Borrower **unless the Builder has taken written consent from the Bank to that effect.**

18. In the event of any default by the Borrower and the Builder not paying the dues of the bank, the Bank shall have right to identify third party in the place of Borrower and Builder shall accept the purchaser identified by the Bank and execute necessary Conveyance deed/ Sale deed in favour of the said third party / purchaser. The Borrower **is bound to accept the said** Conveyance deed / Sale deed executed by the Builder at the **request of the Bank.** The decision of the Bank as to **whether Borrower has committed default or not shall be final and binding on the Borrower Builder.**

(Emphasis Supplied)

25. The judgment of this Tribunal in '**Axis Bank**' (*supra*) was also noticed, and the above case was distinguished on the ground that in case of '**Value Infracon India Pvt. Ltd. & Anr.**' (*supra*) there was no responsibility of the corporate debtor for any payment to the Banker, which has been observed in paragraph 63 of the judgment, which is as follows:

*“63. Hence it become correct important to understand the background and the ratio of the said judgement i.e., **Value Infracon India Private Limited (Supra)**. We already noted the relevant portion of the said judgment in the preceding paragraphs. It is clear that in the said case the loans were given by the banks to the individual homebuyers and it was responsibility of the homebuyers alone to repay the loan to the bankers/ Financial Creditors and there was no responsibility of the Corporate Debtor/ Borrower for any payment to banker in case of any default by borrower or Corporate Debtor.”*

26. In the Canara Bank, this Tribunal noticed Clause 16(c) of the Tripartite Agreement and noticing the clause that entire advance by the Bank shall be

refunded by the builder held that the case of the '**Canara Bank**' is clearly distinguishable from the '**Value Infracon India Pvt. Ltd. & Anr.**' (*supra*).

In paragraph 66 to 68, following was held:

“66. *In contrast to this the clause 16 of tripartite agreement of the present case before us reads as under :*

*“16. In the event of **default of repayment of the loan and/or the Borrower(s)** committing any other default which make the **Borrower liable** for the **re payment of the entire amount outstanding in the said loan as per the terms of** the loan agreement executed between the **Borrower's and the Bank,** or if the Borrower withdraws from his agreement or **Builder cancels** the booking of the Borrower, or in the event of failure of the Builder to complete the project, or in **the event of death of the Borrower, or in any event where the title to the schedule flat/dwelling unit is not/not being passed on to the** Borrower or in any other eventualities of the nature **by which the** loan advanced by the Bank is **not utilised** for the purpose for which it was so advanced or breach of any of the terms and conditions contained in this agreement, **the entire amount advanced by the Bank on account of the Borrower shall be refunded by the Builder to the Bank.** If the entire amount refunded by the Builder is insufficient to close the loan account, Borrower shall make **immediate arrangements for payment of such deficit amount** as may be required to **close the loan account.** If the Builder fails to repay the amount as stated under this clause, the Borrower **shall repay the entire loan amount with interest,** expenses, penal interest, etc. in terms of the loan agreement executed by the Borrower/s.”*

(Emphasis Supplied)

67. *This Clause is quite different from the typical clauses of the Tripartite agreement and different from the equivalent clause of the **Value Infracon India Private Limited (Supra)** noted, quoted and discussed in the preceding paragraphs.*

68. *The clause of tripartite agreement in the present appeal is very categorical that in case of default of payment of loan or borrower committing any default or any event of failure of builder or in event where the title of dwelling unit is not passed on to the borrower/homebuyers or due to breach of any terms and conditions contained in the tripartite agreement “the entire advance by the bank on account of borrower shall be refunded by the builder to the bank”. The clause 16 also provide that in case the builder fails to pay the amount as stated in this clause, the borrower shall pay the entire loan amount with interest, including panel interest etc., in terms of loan agreement.”*

27. After noticing the relevant provisions of the Code, it was held that in the facts of the present case, there was a financial debt advanced by the appellant to the corporate debtor. Following was held in paragraph 70 and 71:

“70. *In Clause 16 of the tripartite agreement in the present appeal and it is only on the failure of the builder to repay to the Appellant/Bank, the borrower/homebuyer is required to repay the entire outstanding balances to the Appellant/ Bank. We note that this is quite distinctive term which has been signed by the Appellant Bank as lender, the borrower (homebuyers) and the builder (Corporate Debtor) making direct relationship and set of obligations and rights between the Appellant/ Bank and the Corporate Debtor/ Builder. In fact, the primary responsibility in the present case is of the Corporate Debtor/ Builder and secondary responsibility is of borrower/ Homebuyers.*

71. *We have already taken into consideration the definition of financial debt in our earlier discussion. The main requirement is that there must be debt along with interest, if any, which is disbursed against time value and money and there should be disbursement of money from creditors to debtors in terms of Section 5(8) of the Code. In context of Section 5(8) of the Code, promise by the debtor to pay money to the creditor may also tantamount to transaction as defined under Section 3(33) of the Code and same may attract the provisions of the Section 5(8) of the Code. We have*

already noted that the clause 16 of the tripartite agreement in the present appeal amongst the parties indicates that the entire amount advanced by the bank on account of the borrower shall be refunded by the Corporate Debtor/ Builder to the Appellant/ bank thus in terms of Section 5(8) r/w Section 3(33) of the Code, the same may become a financial debt advanced by the Appellant bank to the Corporate Debtor”

28. This Tribunal set aside the order and remanded the matter. The case of this Tribunal in **‘Canara Bank’ (supra)** was thus based on specific clauses of Tripartite Agreement especially Clauses 13 and 16 as noted above. In the facts of the present case, Tripartite Agreement between the parties does not contain any clause under which the corporate debtor has undertaken the liability to refund the amount to the Bank. Thus, judgment of this Tribunal in **‘Canara Bank’ (supra)** in no manner helps the appellant.

29. The judgment of this Tribunal in **[Comp. App. (AT) (Ins.) No.172/2019]** in **‘Indiabulls Housing Finance Limited’ Vs. ‘Rudra Buildwell Projects Private Limited’**, also fully supports the submission of the appellant. In the above case, also India Bull Finance Ltd. has also entered into Tripartite Agreement with the homebuyer, corporate debtor and financial creditor and advanced the amount which facts have been noted in paragraphs 3 and 4. This Tribunal after considering the definition of financial debt under Section 5(8) held that financial creditor has disbursed the amount in consideration of time value of money in favour of the borrower hence application filed against builder was held not maintainable. In paragraph 6 following was held:

“6. Admittedly the appellant, IHFL, has disbursed the amount for consideration of time value of money in

favour of borrower, Mr. Davender Singh and not to the builder. Therefore, the Adjudicating Authority has rightly held that Rudra Buildwell Projects Pvt Ltd is not the corporate debtor of the appellant and the application under Section 7 of I&B Code is not maintainable.”

30. Learned counsel for the respondent in his reply to the application filed before the adjudicating authority as well as in reply before in this appeal has given details of 20 units which are out of 44 loan accounts claimed by the appellant who have been allotted to other homebuyers and the name of the allottees as claimed by the appellant is not reflected in the records of the corporate debtor. With regard to several transaction with respect to which loan sanctioned was claimed by the appellant avoidance application has been filed by the RP before the adjudicating authority which are pending consideration. It is further pleaded by the RP that there are 13 units which are claimed by the Bank to have been allotted to its borrower, whereas, the said units are shown as unsold inventory and not allotted to any homebuyer. It is submitted by the RP that the borrowers which are claimed by the Bank are all speculative investors and are not genuine homebuyers. We need not dwell any further on above submission of RP since the transaction with builder by the bank is not a financial debt.

31. Learned counsel for the appellant has relied on registration of charge before the Central Registry of Securitisation Asset Reconstruction and Security Interest of India and it is submitted that charge was not necessary to be registered under Section 77 of the Companies Act, 2013 and security interest in favour of Bank was created. Learned counsel for the appellant has also placed reliance on the judgment of this Tribunal in **[Comp. App. (AT) Comp. App. (AT) (Ins.) No. 465 & 1911 of 2024**

(Ins.) No.210/2024], in ‘Bizloan Private Limited’ Vs. Amit Chandrashekhar Poddar [Liquidator For Autocop (India) Private Limited], where this Tribunal has held that in the said case financial creditor was held to be secured financial creditor based on the registered charge with CERSAI in accordance with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. In the above case facility of discounting was extended to the corporate debtor. In the above case, liquidation order was passed. In the liquidation proceeding, claim was filed before the liquidator as secured financial creditor, which was rejected. In the above context, this Tribunal relying on Regulation 21(c) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 held that the registration of charge which CERSAI to be accepted as financial creditor. In paragraph 52 and 53, following was held:

“52. In the present appeal before us, the Appellant has indeed entered charge over the assets of the Corporate Debtor with CERSAI, however, the same is not registered with the RoC under Section 77(3) of the Companies, 2013.

53. Thus, we hold that the Appellant should have been treated as secured Financial Creditor based on the registered charge with CERSAI in accordance with Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016.”

32. The above judgment arose out of liquidation proceeding and reliance is placed on Regulation 21(c), where such charge is required to be considered. The question of accepting the appellant as secured financial creditor on the basis of charge registered with Central Registry of Securitisation and Reconstruction and Security Interest of India arises only when the appellant

is accepted as financial creditor of the corporate debtor. We having already noticed the relevant clauses of Tripartite Agreement and having taken the view that none of the clauses contain any obligation of the Builder to repay the loan taken by the borrower to the Bank and there is no financial debt owned by the corporate debtor to the appellant, the question of accepting the appellant as secured financial creditor, does not arise.

33. More so, we have to find true nature of transaction on basis of which the financial creditor claimed the financial debt. The Hon'ble Supreme Court in '**Global Credit Capital Ltd. & Anr.**' Vs. '**Sach Marketing Pvt. Ltd. & Anr.**' reported in **[2024 SCC OnLine SC 649]** has held that for finding out whether a debt is financial debt or not that true nature of transaction has to be found out. In the present case, the basic question for consideration is as to whether the transaction under which appellant had sanctioned home loan to the borrower and entered into Tripartite Agreement whether appellant can be held to be financial creditor of corporate debtor. We have looked into the various clauses of Tripartite Agreement entered into the borrower bank and corporate debtor, there is no liability of the corporate debtor to repay the amount which was sanctioned and disbursed to the homebuyer by the Bank. Coming to the decrees obtained by Bank from the DRT against the borrower and the corporate debtor, it is clear that decrees were obtained by the Bank, even prior to commencement of the CIRP and in the claim form, 'Form-C' appellant has not based its claim on basis of decree and the claim of financial debt was based only on the sanctioned letter and Tripartite Agreement. Bank having not filed 'Form-C' on the basis of DRT decree, which was very much

inexistence at the time of commencement of the CIRP, which was passed prior to commencement of CIRP the decree is not relevant for consideration in this appeal. Thus, it is not open for the Bank to claim acceptance of its claim on the basis of the said decrees with regard to which the claim was never raised before the adjudicating authority, either in 'Form-C' or in the application which was filed for accepting the claim. The facts of the present case are fully covered by judgment of this Tribunal in '**Axis Bank**' (*supra*). On basis of loan sanctioned by the Bank to the homebuyer and there being no clause in the Tripartite Agreement making builder liable to make repayment, the claim submitted by Bank in 'Form-C' is not covered in the definition of claim under Section 3(6), as noted above and adjudicating authority did not commit any error in rejecting the application filed by the appellant.

34. We thus do not find any merit in Comp. App. (AT) (Ins.) No.465/2024. The Comp. App. (AT) (Ins.) No.1911/2024 has been filed challenging the order of the adjudicating authority approving the resolution plan. We having upheld the order dated 08.01.2024 passed by the adjudicating authority rejecting the application of the appellant, we do not find any infirmity in the order approving the resolution plan based on the claims which were admitted by the RP which form part of the resolution plan. Appellant has also not made out any ground to establish that the plan approved by the CoC and adjudicating authority in any manner is non-compliant of Section 30(2) of the IBC. We thus do not find any error in the order of the adjudicating authority dated 09.07.2024, approving the resolution plan.

35. In view of above forgoing discussions and conclusions, we do not find any ground to interfere with the impugned order dated 08.01.2024 and 09.07.2024 passed by the adjudicating authority. Both the appeals are dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Arun Baroka]
Member (Technical)**

NEW DELHI

29th October, 2025

himanshu