NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1.

C.P. (IB)/282(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **14.10.2025**

NAME OF THE PARTIES: **Sunil Tulsidas Gadekar**

Vs

Vindhyawashini Marine Services Private Limited

Under Section 7 of the IBC.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate order. Detailed order is being uploaded on the NCLT portal today.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) No.282/MB/2025

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

1. SUNIL TULSIDAS GADEKAR

[PAN No. AUCPG7006J]
Indian inhabitant Age 33 years
residing at 602, Ashtavinayak Tower,
Plot No 59A-B, Sector-21 Kamothe,
Navi Mumbai - 410218, Maharashtra.

2. SHAKIR ALI SAJJAD ALI SHAIKH

[PAN No: CLPPS8425M]
Indian inhabitant Age 36 years
residing at Lady Ratan Complex,
Building No. 13/302, D S Road, Worli
Mumbai - 400018, Maharashtra.

…Financial Creditors/Applicants

Vs.

VINDHYAWASHINI MARINE SERVICES PRIVATE LIMITED
[CIN: U63010MH2008PTC184453]
Registered office: at B-15, Shree Nandham
Plot-59, Sector-11, CBD Belapur
Navi Mumbai - 400614, Maharashtra.

Office Address: Office No.505 at 5th floor
Mayuresh Planet Sector 15
Plot No. 42 and 43, Belapur
Navi Mumbai - 400614, Maharashtra.

...Corporate Debtor

Pronounced: 14.10.2025

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

Financial Creditor: Adv. Ms. Pooja Batra, Adv. Mr. Rajesh Dubey.

Corporate Debtor: Adv. Mr. Adeel Parkar

ORDER

[PER: BENCH]

1. BACKGROUND

1.1 This is an Application bearing C.P. (IB) No.282/MB/2025 filed on 03.03.2025 by Sunil Tulsidas Gadekar & Anr., the Applicants (Financial Creditors) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the AAA Rules") for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of Vindhyawasani Marine Services Private Limited, the Corporate Debtor (CD).

1.2 The Applicants are individuals engaged in the business of freight and logistics. The CD is a Private Limited Company registered under the Companies Act, 1956 and engaged in the business of shipping, marine and logistics.

1.3 The Applicants have relied on the following documents:

i. Master Data of the Corporate Debtor

ii. Copy of NeSL Form-C

iii. Written Consent of the proposed Interim Resolution Professional along with the copy of the Authorisation for Assignment.

iv. Copy of Demand Notice dated 16.02.2024

v. Copy of Award dated 09.11.2023 along with funding agreement dated 02.09.2015

vi. Copy of schedule of claim of the Applicants.

2. AVERMENTS OF FINANCIAL CREDITOR

2.1 The total amount claimed to be in default by the Applicants against the CD in Part-IV of the Application is Rs.2,11,91,300.50/- (Two Crore Eleven Lakh Ninety-One Thousand Three Hundred Rupees and Fifty Paisa) due as on 09.02.2024.

2.2 The date of default as per Part-IV is 09.11.2023. This date of default taken by the Applicants *inter alia* is the date when CD having failed to make payment of award amount after receipt of Award passed by Sole Arbitrator.

2.3 Sometime in the year 2014-15, the CD was suffering a severe financial crunch and was burdened with heavy debts, on account of which it was unable to carry out the repair, maintenance of its vessel, i.e., "C.B.Chenab" (hereinafter referred to as "Chenab"). Further, Chenab was arrested by the High Court Bombay under Admiralty Suit No.214/2014 *vide* order dated 13.03.2014 filed by Bombay Engineering Work.

2.4 The CD had approached the Applicants with an intent to streamline its business activities, including resuming the chartering of Chenab after due maintenance and repair. The Applicants duly agreed to provide funding to the CD in line with the terms and conditions agreed between the parties which were duly recorded

in a Funding Agreement entered on 02.09.2015 and finally executed on 16.08.2016.

2.5 It is submitted that under the terms of the said Funding Agreement, the Applicants provided funds to the tune of Rs.30 lakh each to the CD on various dates, the schedule of payment funding is annexed to the said Funding Agreement. In fact, due receipts for the said funds of Rs.30 lakh each having been given by the Applicants to the CD, were duly issued by the CD company, which also form a part of the said Funding Agreement.

2.6 Under the Funding Agreement, the parties agreed that in consideration of the said funding by the Applicants, the CD shall transfer 30% of its ownership in the Chenab in favour of the Applicants and it was agreed that the funds will strictly be utilised by the CD for the purpose of clearing all its debts and liabilities which include the repair and chartering of Chenab.

2.7 Further, under Clause 9 of the said Funding Agreement, it was agreed between the parties that once Chenab is ready for chartering, the net revenue generated from the business of chartering shall be divided between the parties in the following ratio: Corporate Debtors: 55% Claimant No.1: 22.5% Claimant No.2: 22.5%.

2.8 Under Clause 11 of the Funding Agreement, the Applicants were to receive the revenue which shall be generated from the chartering of Chenab till they got their principal funded amount and 45% profit p.a. on their invested funded amount. Further, under Clause 12 of the Funding Agreement, once the ship became competent for chartering as per time scheduled, for further fair seasons, the amount of per day generated revenue was to be distributed as per Clause 9.

2.9 The Applicant submitted that under the Funding Agreement, more particularly under Clause 11, the disbursement of Rs. 60 lakhs made by the Applicants was disbursed to the CD against the condition that the principal amount would be returned along with a guaranteed yield of 45% p.a., thus satisfying the time value of money requirement under Section 5(8) of the Code.

2.10 Under Clause 19 of the Funding Agreement, it is agreed between the parties that no amendment or modification or addition or alteration of this agreement shall be valid unless the same is made in writing & in consensus by the parties.

2.11 Despite the categoric understanding in the Funding Agreement between the parties as regards the revenue sharing, Applicant No. 1 has till date, admittedly only received a sum of Rs.6,25,000/- and Applicant No. 2 has admittedly received only a sum of Rs.8,55,000/- from the CD.

2.12 The Applicants thereafter upon enquiry learnt that the CD was in fact diverting the funds, which funds had been provided by the Applicants to the CD only for clearing its debt and liability of Chenab, and was using the same for purposes such as paying EMD for a chartering Agreement with ONGC (for a per day charter of Rs. 1.60 lakh) and for purchase of a new vessel C.B.KPS.

2.13 Despite the agreed terms of the Funding Agreement, more particularly Clause 14 (c) which casted an obligation on the CD to maintain complete transparency with the Applicants in respect of the business revenue of the company as well as revenue generated from the chartering of Chenab, the CD kept the Applicants in the dark and despite their requests, neither did the CD furnished any details as to the revenue earned by chartering of Chenab nor did it make any payments to the Applicants towards their share in the revenue.

2.14 The Applicants were accordingly constrained to file a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (being Application No. 133/2017) before the District Court, Thane which court after hearing the parties was pleased to pass an order dated 05.12.2017, in favour of the Applicants *inter alia* directing the CD to furnish a bank guarantee to the tune of Rs.30.20 lakhs. Pursuant to the said order, the Applicants had filed Application for Contempt of Court before the Hon'ble District Court as the CD had failed to comply with the said order. It was only in terms of the order dated 17.01.2019 passed in Civil Miscellaneous Application No. 149 of 2010 in the Contempt Proceedings that the CD furnished a bank guarantee.

2.15 Being aggrieved by the breach of the said Funding Agreement by the CD, the Applicants *vide* their Advocates letter dated 27.04.2017 addressed to the Advocate for the CD, invoked Arbitration clause under the said Agreement. The CD has not replied to the above notice nor disputed the claims made by the Applicants. The Applicants accordingly moved the Hon’ble Bombay High Court under Section 11 of the Arbitration and Conciliation Act,1996 for appointment of an Arbitrator. The Bombay Hight Court appointed the Ld. Arbitrator.

2.16 The CD in the Arbitral proceedings disputed the execution of the Funding Agreement dated 02.09.2015 and is relying upon an Agreement dated 23.09.2015 purportedly entered into between the parties, existence and execution of which is disputed by the Applicants. Subsequently, after hearing both the parties the Sole Arbitrator allowed the claim of Applicants herein and rejected the counterclaim of the CD. The Applicants state that the copy of award has been sent to CD by the Applicants and Advocate Mr. Vinod Dubey has also collected copy of award on behalf of the CD from the Ld. Arbitrator.

2.17 The Learned Arbitrator was pleased to pass the following Arbitral award,

> *"68. In light of the above discussion, the following Award is passed:*
> *(a) The Respondent shall pay to Claimant No. 1 a sum of Rs. 23,75,000/- along with simple interest @ 45'% p.a. from the date of execution of the Funding Agreement i.e. 16th August 2016 until payment/realization.*
> *(b) The Respondent shall pay to Claimant No.2 a sum of Rs. 21,45,000/- along with simple interest @ 45% p.a. from the date of execution of the Funding Agreement i.e. 16th August 2016 until payment/realization.*
> *(c) The Respondent is to pay a sum of Rs. 4,75,000/-to Claimant No. 1 towards costs incurred and a sum of Rs. 4,75,000/- to Claimant No.2 towards costs incurred"*

The CD was directed to pay to the Applicant No.1 a sum of Rs. 23,75,000/- and to pay to the Applicant No.2 a sum of Rs. 21,45,000/- along with simple interest @ 45% p.a. from the date of execution of the Funding Agreement, i.e., 16.08.2016 until payment/realization.

2.18 Despite the said award, the CD herein failed to make the payment and accordingly, the Applicants *vide* their demand notice dated 16.02.2024 once again called upon the CD to repay debt due as on 09.02.2024. Neither did the CD disputed the demand raised therein, nor did it make the payment. It is pertinent to note that the CD has also not challenged the Arbitral Award before any Court of law and thus the said award has attained finality.

2.19 This Tribunal *vide* interim order dated 02.04.2025 directed the Applicant to bring on record the NeSL record of default in Form C and D. The order records as follows:

> *"2. Ld. Counsel for the Applicant requests for one weeks' time for the purpose of filing rejoinder from the date of receipt of the reply of the Respondent. Ld. Counsel for the Applicant further states that he has not been able to place on record the NeSL record of default as per the directions given at the earlier hearing held on 10.03.2025. He seeks seven days' time for the purpose of making compliance of the said order. Extension of 7 days' time period is granted to the Applicant for purpose of placing the NeSL Form-D on record*

and for filing the rejoinder, as sought. An advanced copy of the same shall also be served on the Respondent."

The Applicant complied with the above order by filing an Additional Affidavit dated 02.05.2025 and stated that the Applicants received confirmation/acknowledgment for Form D only on 01.05.2024 through mail, which prevented the timely filing of both Form C and Form D as directed.

2.20 This Tribunal observed that the Applicant had filed the written consent form of proposed IRP in Form AA which is not as per the Code and therefore, *vide* interim order dated 19.08.2025, gave an opportunity to the Applicant to cure the defect in terms of proviso to Section 7(5) to place on record the correct written consent form and thereby de-reserved the matter.

2.21 Thereafter, the Applicant filed an Additional Affidavit dated 03.09.2025 which is recorded *vide* interim order dated 04.09.2025 and placed on record the correct written consent form of the proposed IRP.

3. REPLY OF CORPORATE DEBTOR

3.1. The CD has filed Affidavit-in-Reply on 15.05.2025. The same was affirmed by Mr. Akhand Pratap Singh, Director and authorised representative of the CD *vide* Board Resolution dated 14.02.2019.

3.2. In its reply, the CD has denied all the contentions of the Applicant made in the Application. The Applicants have failed to establish if they are Financial Creditors or that any Financial Debt exists and for this reason the Application be dismissed.

3.3. The Applicants have no cause of action to institute the present Application under Section 7 of the Code against the CD, as the allegations made therein are demonstrably false, frivolous, and bereft of substance. It is evident that the

Application has been filed with the ulterior motive of coercing the CD and extracting monies by misusing the beneficial provisions of the Code, thereby tarnishing the CD's reputation within the business community.

3.4. In substance and commercial reality, the sums credited to the CD were advanced pursuant to a joint venture and profit-sharing arrangement entered into between the parties, the objective of which was to clear the outstanding debts and liabilities of the vessel, undertake necessary repairs, and resume its commercial operations through chartering. It was expressly agreed that the net revenue generated from such chartering activities after accounting for and deducting all incidental and operational expenses would be shared in the agreed ratio of 45% to the Applicants and 55% to the CD. The Applicants have supressed the true character and commercial intent of the transaction in question.

3.5. The CD submits that there exists no Funding Agreement dated 02.09.2015, executed by the CD on 16.08.2016. The said document is neither registered nor duly notarized in the manner required under law. The mere attestation by the Notary Officer, without the endorsement '"Before Me," clearly establishes that the alleged Funding Agreement was not executed in the presence of the Notary Officer, thereby casting serious doubt on its validity and probative value. The CD does not dispute the fact that certain sums were transferred by the Applicants. However, the amount of Rs. 60,00,000/- was transferred pursuant to a joint venture and profit-sharing arrangement, arising from the Memorandum of Understanding dated 23.09.2015, duly executed between the Applicant and the CD. Unlike the purported Funding Agreement, the said Memorandum of Understanding bears the attestation 'Before Me" by the Notary Officer, clearly evidencing that the original document was produced and executed in the

presence of the Notary Officer, with all requisite parties being physically present at the time of execution.

3.6. The said arrangement cannot construe as a financial debt repayable by the CD under any circumstances. In fact, assuming for the sake of argument and purely under a hypothetical scenario that reliance is placed on the alleged Funding Agreement which forms the basis of the arbitral award it is evident that the arbitration proceedings were initiated for breach of contract, and not for recovery of any financial debt.

3.7. The Funding Agreement itself is devoid of any clause stipulating that, in the event the joint venture and profit-sharing arrangement fails to yield results, the CD would be liable to refund or repay the entire amount advanced. Most notably, Clause 13 of the alleged Funding Agreement expressly clarifies that the CD shall not be liable to repay any amount in the event revenue is not generated. The agreement further contemplates that the Applicant would be responsible for devising a business strategy to generate revenue an obligation the Applicants failed to discharge resulting in losses which the CD was compelled to bear.

3.8. The Applicants are misusing the Code by invoking this jurisdiction for execution of an arbitral award which is not the objective of the Code. The Applicants have not adduced any credible or cogent evidence to demonstrate that the transaction in question constituted a financial debt as defined under section 5(8) of the Code, nor that there existed a borrower-lender relationship between the parties an essential precondition for admission of an application under section 7. In the absence of these foundational elements, the basic ingredients required to invoke Section 7 of the Code and trigger the CIRP against the CD are clearly not satisfied.

3.9. It is further submitted that when a Memorandum of Understanding or agreement contains reciprocal rights and obligations between the parties specifically in the context of a profit-sharing or joint venture arrangement where each party is to partake in residual gains only upon successful performance of their respective obligations, the investment made pursuant thereto cannot, by any measure, be construed as a “financial debt” within the meaning of the Code.

3.10. The CD relies on the following judgments to show that there is no Financial Debt based on the Applicants being investors as the money was invested under joint venture and profit-sharing arrangement.

i. Jagbasera Infratech Private Ltd vs Rawal Variety Construction Ltd. in Company Appeal (AT) (Insolvency) No.150 of 2019, Hon’ble NCLAT, New Delhi.

ii. Sushil Ansal vs Ashok Tripathi & Ors. in Company Appeal (AT) (Insolvency) No.452 of 2020, Hon’ble NCLAT, New Delhi.

iii. Realpro Realty solutions Pvt. Ltd vs Sanskar Projects and Housing Ltd. in Company Appeal (AT)(Insolvency) No. 374 of 2023, Hon’ble NCLAT, New Delhi.

iv. Bridge & Building Construction Co Pvt. Ltd. vs Runwal Realtors Pvt. Ltd in CP (IB) No. 963 of 2021, Hon’ble NCLT, Mumbai.

v. M. K Jain & Ors. Vs. Krrish Realtech Pvt. Ltd in CP (IB) No. 348 of 2024, Hon’ble NCLT, New Delhi.

4. WRITTEN SUBMISSIONS OF THE FINANCIAL CREDITOR

4.1 The Applicant has relied on the following judgments:

i. Hon'ble Supreme Court in Kotak Mahindra Bank Limited vs. A. Balakrishnan and Anr., (2022) 9 Supreme Court Cases 186.

ii. Hon'ble Supreme Court in Dena Bank (Now Bank of Baroda) vs. C. Sivakumar Reddy, (2021) 10 SCC 330.

iii. Adhunik Corporation Limited vs. Shivam India Limited in Company Appeal (AT) (Insolvency) No. 1427 of 2023, Hon'ble NCLAT, New Delhi.

iv. Arunkumar Jayantilal Muchhala vs. Awaita Properties Pvt. Ltd. and Anr. in Company Appeal (AT) (Insolvency) No. 121 of 2023, Hon'ble NCLAT, New Delhi.

v. Sumangal Dealmark Pvt. Ltd & Ors. vs. Citystar Infrastructures Limited in CP (IB) No. 78 of 2024, Hon'ble NCLT, Kolkata.

5. ANALYSIS AND FINDINGS

5.1 We have heard both the Ld. Counsels and have perused the records as placed before us. Our findings in the matter are as under: -

5.2 The Applicants at the request of the CD agreed to provide funds to the CD in line with terms and conditions agreed between the parties under the Funding Agreement entered on 02.09.2015 and executed on 16.08.2016.

5.3 The Applicants had disbursed Rs. 30 lakh each to the CD on various dates. The due receipts for the said funds of Rs. 30 lakhs each having been given to the CD by the Applicant were duly issued by the CD which form a part of the Funding Agreement. It is seen from Schedule II of the Funding Agreement dated 02.09.2015 that the applicants have disbursed the above-mentioned funds to the CD as the CD has acknowledged the same. Therefore, we are of the view that

the funds were disbursed and there arose a financial relation between the parties.

5.4 It is admitted fact that the parties had agreed to share revenue in the ratio of 22.5% by each Applicant and 55% by the CD from the business of chartering and that the CD shall transfer 30% of its ownership in the Chenab in favour of the Applicants. The Applicants have admittedly received a sum of Rs. 6.25 lakhs and Rs. 8.55 lakhs from the CD.

5.5 The CD had then started to divert funds for purchase of new vessel which was a against the Clause 14(c) of the Funding Agreement which was in relation to maintain complete transparency with the Applicants in respect of the business revenue generated from chartering of Chenab. Thereafter, the CD did not make any payments to the Applicants towards their share in the revenue, pursuant to which the Applicants filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 where the Hon'ble Bombay High Court appointed a sole Arbitrator.

5.6 The Ld. Arbitrator passed an award and said award dated 09.11.2023 has assumed finality. The Arbitration Award records as follows:

> *"68. In light of the above discussion, the following Award is passed:*
> *(a) The Respondent shall pay to Claimant No.1 a sum of Rs. 23,75,000/- along with simple interest @ 45% p.a. from the date of execution of the Funding Agreement i.e. 16th August 2016 until payment/realization.*
> *(b) The Respondent shall pay to Claimant No.2 a sum of Rs. 21,45,000/- along with simple interest @ 45% p.a. from the date of execution of the Funding Agreement i.e. 16th August 2016 until payment/realization.*
> *(c) The Respondent is to pay a sum of Rs. 4,75,000/-to Claimant No.1 towards costs incurred and a sum of Rs. 4,75,000/- to Claimant No.2 towards costs incurred…"*

5.7 From the perusal of the Arbitration Award dated 09.11.2023 it is seen that the CD had to pay the Applicants a sum of Rs. 23,75,000/- and Rs. 21,45,000/- debt along with interest of 45% p.a. from the date of execution of the Funding Agreement i.e. 16.08.2016 until payment/realization. Therefore, we are of the considered view that there was an outstanding debt payable by the CD to the Applicants.

5.8 The CD has contested that the Funding Agreement dated 02.09.2015 and executed by the CD on 16.08.2016 does not exists as it is not registered and duly notarised. In our view, according to the Applicant his cause of action is arising out of non-payment of dues as per arbitral award. It is also seen that the CD has participated in the Arbitral proceedings. The arbitral award has dealt with this issue and has held that the Funding Agreement dated 02.09.2015 exists and the CD was not able to prove the invalidity of the Funding Agreement.

5.9 The CD has submitted that Clause 13 of the Funding Agreement dated 02.09.2015 has stated that the CD shall not be liable to repay any amount in the event revenue is not generated. Clause 13 is reproduced as follows:

> *"13. That whereas from February, 2016 to next three months, Company succeeds in generating the revenue but the revenue generated has failed to recover the funded amount including 45% p.a. returns on funded amount, investor shall decide the further strategy and company shall have no objection for the same."*

5.10 On perusal of the above agreement it is seen that Clause 13 of the Funding Agreement does not satisfy the CD's contentions. From the above extract we see that the Applicants were to decide further strategy if the revenue is not generated and the CD will not have any objection for the same.

5.11 Further, the CD contented that the Memorandum of Understanding dated 23.09.2015 was duly attested and the arrangements between the parties arose from this understanding. It is seen that the Memorandum of Understanding dated 23.09.2015 was disproved under the Award dated 09.11.2023 and further the payments were to be made as per the MOU stands negative as the MOU itself was not proved to be a substantial document. Therefore, the CD's contention that payment terms were as per the MOU is not accepted.

5.12 The CD states that the Arbitration proceeding was for breach of contract and not for recovery of any financial debt and the Applicant has invoked this jurisdiction for execution of the Arbitral Award. To deal with this issue this Tribunal places reliance on the judgments referred by the Applicants of Hon'ble Supreme Court in ***Kotak Mahindra Bank Limited vs. A. Balakrishnan and Anr., (2022) 9 Supreme Court Cases 186*** and ***Dena Bank (Now Bank of Baroda) vs. C. Sivakumar Reddy, (2021) 10 SCC 330.*** The Hon'ble Supreme Court in the case of ***Kotak Mahindra Bank*** (supra) has held as follows:

> ***"84****. To conclude, we hold that a liability in respect of a claim arising out of a Recovery Certificate would be a "financial debt" within the meaning of clause (8) of Section 5 of the IBC. Consequently, the holder of the Recovery Certificate would be a financial creditor within the meaning of clause (7) of Section 5 of the IBC. As such, the holder of such certificate would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the Recovery Certificate.*
> ***85****. We further find that the view taken by the two-Judge Bench of this Court in the case of* ***Dena Bank*** *(supra) is correct in law and we affirm the same."*

5.13 Therefore, in view of the above observations we can safely conclude that the Applicants have a fresh cause of action to file this Application under Section 7 of the Code as there is an Arbitral award in favour of the Applicants which has

attained finality and the CD has not satisfied the same by way of payment of the amounts as per award.

5.14 The CD has raised the issue that the transaction in question is not a financial debt as defined under Section 5(8) of the Code nor there existed a borrower-lender relationship between the parties. It is our finding that the Applicants had disbursed a sum of Rs. 60 lakhs to the CD under the Funding Agreement dated 02.09.2015 and the same is acknowledged by the CD with the due receipts attached in Schedule II of the Funding Agreement. There might not be explicit terms drawn in the Funding Agreement with regard to interest which would give a commercial effect of borrowing or time value of money under Section 5(8) of the Code. We place reliance on the Hon'ble NCLAT, New Delhi in ***Adhunik Corporation Limited vs. Shivam India Limited in Company Appeal (AT) (Insolvency) No. 1427 of 2023*** wherein the court held that,

> *"24. When we peruse the clauses of the MoA, it is an undisputed fact that payment of interest against disbursal was not specifically mentioned in the clauses. Be that as it may, we are of the considered opinion that the IBC does not provide for any prescriptive requirement for the Financial Creditor to place on record formal written agreements/documents between the parties to establish that the disbursal made was in the form of loan with interest. It would be misconceived to hold that the fund infusion did not qualify to be a financial debt merely because loan component was not explicitly mentioned in the MoA. It is a well settled proposition of law that interest on loan is not the only binding criterion for determining time value of money. The question whether a credit facility without charging interest can be considered to be a financial debt in terms of Section 5(8) of the IBC is no longer res integra and has already been decided by the Hon'ble Supreme Court in Orator judgment supra to hold that the definition of "financial debt" in Section 5(8) IBC does not expressly exclude an interest free loan. Viewed against this backdrop, the contention of the Respondent that the disbursal of the fund was bereft of loan component and hence not in the nature of a financial debt does not have legs to stand on.*

> *26. ……..It is further clear from the terms of the MoA that the Appellant was required to infuse funds to the Corporate Debtor to render the Corporate Debtor operational from its dysfunctional state. Moreover, the credit so provided was in the form of working capital and the entire amount was fully refundable. Even the funds provided for purchase of raw material at prevailing market prices was towards operationalization of the Corporate Debtor. The right of the Appellant to enjoy sales commission was also a form of return for the amount financed. From the judgment of the Hon'ble Supreme Court in Pioneer judgment supra the ratio is clear that even if transactions are not necessarily loan transactions, they still attract Section 5(8) of the IBC as long as the transactions have the commercial effect of a borrowing. The essential condition which needs to be fulfilled is disbursement against the consideration for time value of money. Since in the present case, the infusion of funds was a transaction which has direct bearing on the business carried out by the Corporate Debtor, raising of the amount through the above agreement has the commercial effect of borrowing. The clauses of the MoA contain clear indication that the infusion of funds was being done with the intent of earning profits and the investments was therefore for consideration for the time value of money. Therefore, this transaction has contours of a borrowing as contemplated under Section 5(8) of IBC. The investments made by the Appellant-Financial Creditor was with an eye for consideration for time value of money and therefore the transaction had commercial effect of borrowing."*

5.15 From reading the above findings, it can be said that the Applicants have invested funds under the Funding Agreement and as per the terms of the agreement, the Applicants were promised to get the principal amount along with profit @45% p.a. which the CD failed to pay the Applicants and therefore, the funds take the course of debt under Section 5(8) of the Code. The following is the finding as recorded in the Award:

> *"65. However, a reading of Clause 11 of the Funding Agreement clearly provides that the Claimants are entitled to a return of their principal amount. along with 45% p.a. on the same, and I cannot go beyond the terms of the contract entered into between the parties. As the same does not specify whether the rate or interest is compound or interest and no evidence has been led on the same, I hold that the same is to be simple interest on the principal sums invested. I therefore hold that Claimant No. 1 is entitled to receive a sum of Rs. 23,75,000/- from the Respondent along with interest @ 45% p.a.*

from the date of execution of the Funding Agreement i.e. 16th August 2016 until payment/realization. I also hold that Claimant No.2 is entitled to receive a sum of Rs. 21,45,000/- from the Respondent along with interest @ 45% p.a., from the date of execution of the Funding Agreement i.e. 16th August 2016 until payment/realization. Both Claimants will also be entitled to interest @ 9% p.a. being a fair and reasonable rate, from the date of this Award until when the moneys are paid to them. I therefore hold that Issue VIII is partially proved."

5.16 Therefore, from the above finding of the Ld. Arbitration Tribunal we hold that the CD has defaulted in payment of the principal amount and a simple interest of 45% p.a. as held by the Ld. Arbitrator.

5.17 The Applicant has also referred to the case of Hon'ble NCLAT, New Delhi in ***Arunkumar Jayantilal Muchhala vs. Awaita Properties Pvt. Ltd. and Anr. in Company Appeal (AT) (Insolvency) No. 121 of 2023***, where it has been held that,

"24. *The essential ingredients of financial debt in the context of IBC consists of disbursal accompanied by consideration for time value of money. We now proceed to examine whether in the present case, disbursement of money took place against the consideration for time value of money and whether commercial effect of borrowing is found to underpin the transaction. The concept of time value of money has nowhere been defined in the IBC. Time value of money is not only a regular or timely return received for the duration for which the amount is disbursed as an amount in addition to the principal, but also covers any other form of benefit or value accruing to the creditor as a return for providing money for a long duration. We find merit in the argument canvassed by Respondent No. 1 that money advanced was towards meeting working capital needs of the Corporate Debtor and for boosting its economic prospects and hence it was a disbursal against the consideration for the time value of money. As long as the lender visualizes an element of profit and enhancement of economic prospect in return for the money advanced for certain time period, the loan in question entails time value of money and acquires the colour of commercial borrowing which is clearly borne out from the facts of the present case. It has all the trappings of a financial debt and squarely falls within the purview of Section 5(8) of IBC. It is trite law that under the IBC once a debt which becomes due or payable, in law and in fact, and if there is incidence of non-payment of the said debt in full or even part thereof, CIRP may be triggered by the financial creditor as long as the amount in default*

> *is above the threshold limit. Once the Adjudicating Authority is subjectively satisfied that there is a debt and a default has been committed by the Corporate Debtor and the Section 7 application is complete in all respects, the Adjudicating Authority in the exercise of summary jurisdiction has to admit the Section 7 application. In our considered view, this is a case where all the pre-requisites for filing a Section 7 stood fulfilled and the Adjudicating Authority cannot be held to have committed an error in admitting the Corporate Debtor into CIRP for having defaulted in repaying a financial debt which was above the threshold limit*."

5.18 The Hon'ble NCLAT in the above matters held that the disbursement was for time value of money and falls under the definition of financial debt under Section 5(8) of the Code which is applicable to the present case.

5.19 The CD's reliance on the judgment of Hon'ble NCLAT, New Delhi in ***Jagbasera Infratech Private Ltd vs Rawal Variety Construction Ltd. in Company Appeal (AT) (Insolvency) No.150 of 2019***, wherein it is held that the amount invested in the Joint Venture Project by the Appellant in its capacity as a "promoter' and 'investor' does not fall within the ambit of definition of financial debt under Section 5(8) of the Code. In the present case, there is no Joint Venture Agreement between the parties and hence there arises no relation of promoter/investor. Therefore, we hold that reliance is misplaced by the CD. In the case of ***Realpro Realty solutions Pvt. Ltd vs Sanskar Projects and Housing Ltd. in Company Appeal (AT)(Insolvency) No. 374 of 2023***, Hon'ble NCLAT, New Delhi held that transaction is in the nature of investment for profit and not disbursement for time value of money and hence does not fall within the canvas of financial debt as defined under Section 5(8) of the Code. We notice that the facts of the case are distinguishable in a manner that in the present case the Applicants have invested funds in the CD and revenue generated therein would be returned to the Applicants along with the principal amount by the CD

and therefore the disbursement made by the Applicants is of the nature of debt, which is for time value of money. Thus, this judgment cannot come to the aid of the CD.

5.20 The judgment of Hon'ble NCLAT, New Delhi in ***Sushil Ansal vs Ashok Tripathi & Ors. in Company Appeal (AT) (Insolvency) No.452 of 2020***, the court held that Respondents in that matter had moved the Tribunal for execution/recovery of the amount due under the Recovery Certificate and not for insolvency resolution of the Corporate Debtor. But in the present case and placing reliance on the Hon'ble Supreme Court in ***Dena Bank*** (supra) case, the court has taken the view that any decree or award which is not fulfilled gives a fresh cause of action to the Applicants to file an Application under the Code. Therefore, from the above findings and judgments, we are of the considered view that the Applicants are Financial Creditors and a financial debt was due and payable by the CD.

5.21 Further, the NeSL record of default in Form C and Form D have been produced by the Applicants. The NeSL record in Form D is in form of email attached to the Additional Affidavit filed by the Applicants, which shows the status of authentication as "Deemed to be Authenticated".

5.22 In view of the above findings, it is clear that the Applicant has placed on record necessary evidences and materials to demonstrate the existence of the financial debt exceeding the minimum threshold of Rs.1 Crore prescribed under Section 4 of the Code due and payable by the CD as well as the default in repayment thereof by the CD. The Application is complete as all the relevant documents have been attached by the Applicant along with the Application.

5.23 The Applicant has proposed the name of Mr. Umesh Balaram Sonkar, a registered Insolvency Professional as the Interim Resolution Professional (IRP) to carry out the functions as mentioned under the Code. The Applicant has filed an Additional Affidavit and has given his consent and declaration in Form 2, *inter alia*, stating that no disciplinary proceeding is pending against him and also provided his AFA in Form B valid till 31.12.2026.

5.24 We find that all pre-requisites of Section 7(5)(a) of the Code are fulfilled and, accordingly, we are satisfied that the instant Application is fit for admission under Section 7 of the Code.

5.25 We make it clear that at this stage we have not crystalized the amount as claimed in this Application, the same is left to be collated by the IRP.

ORDER

In view of the aforesaid findings, Application bearing C.P.(IB) No. 282/MB/2025 filed under Section 7 of the Code by Sunil Tulsidas Gadekar and Shakir Ali Sajjad Ali Shaikh, the Financial Creditor, for initiating CIRP in respect of **Vindhyawashini Marine Services Pvt. Ltd**, the Corporate Debtor is hereby **admitted.**

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

I. We prohibit-

a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment,

decree or order in any court of law, tribunal, arbitration panel or other authority;

b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the Code or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.

IV. That the public announcement of the CIRP shall be made in immediately as specified under Section 13 of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.

V. That this Bench hereby appoints **Mr. Umesh Balaram Sonkar, a registered Insolvency Professional** having Registration Number **IBBI/IPA-001/IP-P-02619/2021-22/14043** and e-mail address

rosonkar1603@gmail.com having valid Authorisation for Assignment up to 31.12.2025 as the IRP to carry out the functions under the Code.

VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.

VII. That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the Code. The officers and managers of the Corporate Debtor the Corporate Debtor is directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. Coercive steps will follow against them under the provisions of the Code read with Rule 11 of the NCLT Rules for any violation of law.

VIII. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Financial Creditor is directed to deposit a sum of Rs.3,00,000/- (Rupees Three Lakh) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Financial Creditor on priority upon the funds available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.

X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.

XI. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.

XII. The Registry is directed to immediately communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.

XIII. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

//VM//