

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1187 of 2025**

**IN THE MATTER OF:**

**Airwill JKM Infrastructure Pvt. Ltd. ...Appellant**

**Versus**

**Cadillac Infotech Pvt. Ltd. ...Respondent**

**Present:**

**For Appellant: Mr. Gaurav Mitra, Mr. Abhinav Mukhi, Mr. Shantanu Tomar and Mrs. Aishwarya Modi, Advocates.**

**For Respondents Ms. Pooja Mehra Sehgal, Sr. Advocate with Ms. Bani Dikshit Mr. Aditya Puri, Mr. Dhruva Vig, Mr. Uddhav Khanna, Mr. Nivesh Dixit and Mr. Ankit Mittal, Advocates**

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**J U D G M E N T**  
**(21<sup>st</sup> November, 2025)**

**Ashok Bhushan, J.**

These two Appeals have been filed against the same order dated 13.06.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Court-V, New Delhi dismissing CP (IB) No.210/ND/2022- "*Airwil JKM Infrastructure Pvt. Ltd. vs. Cadillac Infotech Pvt. Ltd.*" and CP (IB) No.211/ND/2022- "*JKM Infrastructure Pvt. Ltd. vs. Cadillac Infotech Pvt. Ltd.*" which were filed under Section 7 of the IBC praying for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor- 'Cadillac Infotech Pvt. Ltd.'. Both the Appellants claiming to be Financial Creditors of the Corporate Debtor have filed these Appeals challenging the impugned order dated 13.06.2025.

2. Brief background giving rise to these Appeals need to be noted first.

2.1. The Appellant- Airwil JKM Infrastructure Pvt. Ltd. is a company incorporated on 02.08.2013. JKM Infrastructure Pvt. Ltd. is also the group company of Airwil JKM Infrastructure Pvt. Ltd. The Corporate Debtor is a company which was incorporated in the year 2005. The Corporate Debtor owned plots bearing municipal no. 1, 2, 11 and 12 located at Sector 135 Noida, the Corporate Debtor approached the Appellant for acquiring an adjoining plot bearing municipal no.10 located at Sector 135 Noida and jointly developing the plots owned by Corporate Debtor with the Appellant- Airwil JKM Infrastructure Pvt. Ltd. as Developer. A MoU was entered between Airwil JKM Infrastructure

Pvt. Ltd. and Cadillac Infotech Pvt. Ltd. (Corporate Debtor) where parties agreed that the Corporate Debtor shall obtain Plot No.10 and amalgamate all its plots to develop an IT Project on the plots. The plots in question were allotted by NOIDA to the Corporate Debtor for development of IT Project on the plots. Parties agreed that developer shall make payment as mentioned to the owner as agreed and after receipt of the payment and amalgamation of plot no.10, the parties shall enter into Development Agreement for development of the proposed project. MoU provided that amount of Rs.15 Crores will be paid by the Developer to the owner out of which Rs.10 Crores shall be interest free refundable and balance shall be non-refundable. The Agreement also provided for owner's allocation of 46.25% and developer's allocation of 53.75%. Prior to entering into MoU, the owner was paid an amount of Rs.1.75 Crore by the group company of the Appellant. After the MoU amount of Rs.12.5 Crore was paid to the owner by Airwil JKM Infrastructure Pvt. Ltd. and an amount of Rs.2.70 Crore was paid by JKM Infrastructure Pvt. Ltd. to the owner. Within period of four months which was stipulated for amalgamation of plot no.10, plot no.10 could not be amalgamated. The owner could receive amalgamation of plot no.10 from NOIDA only on 21.07.2014. A Property Development Agreement (PDA) was executed between the Corporate Debtor and another Company namely— Airwil JKM Infracon Pvt. Ltd. (the Group Company of Airwil JKM Infrastructure Pvt. Ltd.) on 06.09.2014 which PDA contemplated payment of Rs.15 Crore by Airwil JKM Infracon Pvt. Ltd. (hereinafter referred to as "Infracon Company"). The Agreement dated 06.09.2014 acknowledged payment

of Rs.1 Crore. The Corporate Debtor issued a notice dated 18.06.2015 terminating the PDA w.e.f 18.07.2015 alleging the failure on part of Infracon Company to pay balance of Rs.14 Crores within 45 days from the date of signing of the PDA and thus, called upon Infracon Company to deliver the vacant possession. When dispute arose between the Corporate Debtor and Infracon Company, the Corporate Debtor initiated proceedings before the Delhi High Court under Section 9 of the Arbitration & Conciliation Act, 1996. High Court passed an order on 21.10.2016 restraining the Infracon Company from creating third party rights qua the plots in question and arbitrator was appointed on a petition filed by the Corporate Debtor by the Delhi High Court. In the arbitration proceeding, claim was preferred by the Corporate Debtor to which reply was filed by Infracon Company who was Respondent in the arbitration proceeding. Arbitral Tribunal gave an Award on 16.10.2018 holding that arbitration dispute relates to Property Development Agreement. Issues touching MoU could not be adjudicated in the arbitration proceeding. The Arbitral Tribunal directed Infracon Company to handover the possession of the subject plots to the Corporate Debtor within four weeks. Arbitral Tribunal also directed Infracon Company to pay charges for unauthorised use and occupation of the said plots @ Rs.20 Lacs per month and also directed Corporate Debtor to refund the amount received from Infracon Company. Aggrieved by the Award dated 16.10.2018, Infracon Company preferred objections under Section 34 of the Arbitration and Conciliation Act, 1996 which were decided by the Learned Single Judge of the Delhi High Court on

29.11.2021 upholding the order of the Arbitral Tribunal except to the direction to pay sum of Rs.20 Lakh per month which was set aside. The order of the Single Judge of the Delhi High Court dated 29.11.2021 is challenged both by Infracon Company and Corporate Debtor in Appeal which Appeal is stated to be pending. The amount which was paid by Airwil JKM Infrastructure Pvt. Ltd. and JKM Infrastructure Pvt. Ltd. to the Corporate Debtor in pursuance of the MoU dated 07.08.2013 having not been repaid, proceeding under Section 7 were initiated by Airwil JKM Infrastructure Pvt. Ltd. and JKM Infrastructure Pvt. Ltd. on 05.03.2022 by CP (IB) No.210/ND/2022 and CP (IB) No.211/ND/2022 respectively. In Section 7 application filed by Airwil JKM Infrastructure Pvt. Ltd., repayment of Rs.12.50 Crore with interest was claimed totalling to Rs.26,56,25,000/-. Date when debt fell due was stated to be August 2014. In Section 7 application filed by JKM Infrastructure Pvt. Ltd.- CP (IB) No.211/ND/2022, amount claimed was Rs.2,70,00,000/- with interest totalling to Rs.5,73,75,000/- and amount was claimed to be due in August 2014. Reply to Section 7 application was filed by the Corporate Debtor. Both the parties were heard by the Adjudicating Authority and Adjudicating Authority by the impugned order dated 13.06.2025 has dismissed both the Section 7 applications being CP (IB) No.210/ND/2022 and CP (IB) No.211/ND/2022 holding that in the transaction, there was no financial debt within the meaning of Section 5(8) of the IBC. Adjudicating Authority further held that the MoU was entered between Airwil JKM Infrastructure Pvt. Ltd. and Corporate Debtor to jointly develop the plots owned by the Corporate Debtor.

MoU contained respective obligation on both the parties including the percentage of sharing of profits. The amount paid to the Corporate Debtor was not towards any financial transaction but was towards obligation to carry out jointly developing the plot. It is useful to notice the observations and findings entered by Adjudicating Authority in paragraph 27, 27.1 to 27.4:-

*“27. A careful analysis of the MoU dated 07.08.2013 indicates that the initial allotment of the land in question by the NOIDA authorities came with a condition that it be used for IT and IT-enabled services. Therefore, any agreement regarding the land inherently included a development component. The contention that the transactions involved two distinct legs, one for land acquisition and another for development, is scrutinized and it is observed that these two aspects are intrinsically linked, forming a composite agreement, without which the terms of the NOIDA allotment would be violated. It is a fact that a Property Development Agreement (PDA) was later executed between the Corporate Debtor and M/s Airwil JKM Infracon Pvt. Ltd., a sister concern of the applicant financial creditors, indicating an intent to proceed with the development as envisioned in the original MoU. Ultimately, the key legal question is whether the amounts paid under the MoU can be classified as a financial debt.*

*27.1. Going back to the facts mentioned in para 15 of this order, we notice that in the said MOU, it was the owner's obligation to acquire the additional 1 acre of land, if the payment is made by the developers within*

*the stipulated schedule, and the owner was to complete the said acquisition within six months. It was mutually decided that all expenses and costs for the development/construction of the project shall be exclusively borne by the developer, and it would also get the requisite approvals from the authorities after obtaining a power of attorney from the owner of the land. This sharing of responsibility is even extended to the handling of the project, which was decided to be maintained jointly by the owner and the developer, who would constitute a maintenance agency for the purpose. The financial implications include a clear demarcation of the sharing of the built-up area, with the owners' allocation being 46.25% and the developers' allocation being 53.75%. It was even decided that both parties shall execute and sign the booking/sale document/agreement in favour of the purchaser.*

*27.2. Given these stipulations in the MoU, we are not persuaded by the submission of the applicants that they should not be considered as investors in the project, but as only financial creditors because of clause 16 of the MOU laying down the end of understanding in the event the additional one plot is not acquired, and the because of clause 25 that the MOU shall no manner be constructed as creating any partnership or principal agent.*

*27.3. We also note that subsequently the parties have entered into arbitrations as well as extensive litigations to protect their financial interests. This matter is still sub-judice. Even in the present applications, the applicants have stated that "the failure on the part of*

*the CD to repay the amount paid by the FC under the MOU has exponentially aggravated the prejudice and injury to the FC. In furtherance of the same, the FC seeks to exercise its right and remedies as under the said MOU for the recovery of the outstanding amount of Rs. 12.50 Crs., paid by FC under the said MOU and the interest thereon." at page 13 of Volume 1 of the Petitions. The applicant may or may not be legally entitled to recovery, but as held by the Hon'ble NCLAT in the case of Ansal Housing Ltd. (Supra).*

*"the primary intent and object of the IBC is the resolution of the Corporate Debtor and not recovery of a debt of the creditor. It needs no emphasis that the Hon'ble Apex Court in a catena of judgments have observed that the provisions of IBC cannot be utilised by a creditor for recovery of its debt."*

*27.4. The concluding view, taking into consideration the nature of the MoU, the subsequent PDA, and the legal precedents cited, is that the transactions are more akin to a joint venture or development agreement rather than a pure financial lending arrangement. The cases cited by the applicants are distinguished based on their factual differences, particularly in the context of this specific MoU and its implementation. In view of the same, we hold that the provision of the MoU dated 07.08.2013 indicates a legal and binding relationship with mutual and financial obligations between the parties, and in the present case, the advance paid was an investment for profit and not a disbursement for the time value of money as defined in Section 5(8) of IBC, 2016. Hence, we are of the view that there is no basis*

*for initiation of CIRP under Section 7 of IBC, 2016 in both these petitions.”*

2.2. Aggrieved by the aforesaid order, these two Appeals have been filed by Airwil JKM Infrastructure Pvt. Ltd. and JKM Infrastructure Pvt. Ltd. respectively challenging the orders rejecting their respective Section 7 applications. It shall be sufficient to refer the pleadings in Company Appeal (AT) (Insolvency) No.1187 of 2025 for deciding both the Appeals.

3. We have heard Shri Gaurav Mitra, Learned Senior Counsel for the Appellant and Ms. Pooja Mehra Sehgal, Learned Senior Counsel appearing for the Corporate Debtor.

4. Shri Gaurav Mitra, Learned Counsel for the Appellant challenging the orders submits that the Adjudicating Authority committed error in holding the transaction in question not a financial debt within the meaning of Section 5(8). It is submitted that the MoU entered between the Appellant and the Corporate Debtor indicate that the finance was offered by the Appellant to the Corporate Debtor who was owner of the land for acquiring another plot of land being plot no.10 to amalgamate with plot nos.1, 2, 11 and 12 situated at Sector 135 Noida and it was only after amalgamation, a Property Development Agreement was to be executed and the terms and conditions for development of the plots noticed in the MoU was with respect to Development Agreement to be entered between the parties for the development of proposed project. Plot no.10 could not be acquired within the time as contemplated, no Development Agreement

was executed between the Appellant and the Corporate Debtor. Hence, the finding of the Adjudicating Authority that MoU is an Agreement between the parties to develop the land owned by the Corporate Debtor is unsustainable. Development Agreement has never come into existence. The very foundation of holding the MoU as Joint Agreement to develop the plot is groundless. It is further submitted that the Property Development Agreement took place only on 06.09.2014 not with the Appellant but another company namely Airwil JKM Infracon Pvt. Ltd. and there being dispute between the Corporate Debtor and Infracon Company, arbitration proceedings were undertaken by the Corporate Debtor in which award has been delivered by the Arbitrator on 16.10.2018 where Arbitrator clearly held that any issue touching MoU cannot be gone into the arbitration proceedings which arises out of Property Development Agreement dated 06.09.2014. It was held in the Award that PDA was not a sequel to the MoU. It is submitted that the Award was challenged in Section 34 proceeding where award has been affirmed except setting aside the part of the order by which payment of Rs.20 Lakhs per month was directed to the Corporate Debtor and further Appeals are pending against the order of the Delhi High Court dated 29.11.2021. It is submitted that the MoU clearly provided that in an event, plot no.10 is not amalgamated. The amount received by the Corporate Debtor shall be returned back without interest within 30 days and with interest thereafter. The provision in the MoU to refund the amount to the Appellant clearly indicates the nature of transaction as financial debt. The Corporate Debtor although has received the amount from Appellant of more

than Rs.15 Crore but has neither refunded the amount nor has been adjusted the amount in PDA which was executed on 06.09.2014 with Infracon Company which is a Group Company of Airwil JKM Infrastructure Pvt. Ltd. There being default committed by the Corporate Debtor of the amount received from the Appellant, Section 7 application was clearly maintainable. The Corporate Debtor has also acknowledged the amount received from Appellant in financial statements of 2013-14 to 2020-21 as “advance for which value is to be given”. There is clear acknowledgment of obligation to repay the amount affirming financial nature of transaction. Existence of repayment clause link to the non-fulfilment of the condition precedent, acquisition and amalgamation of the land clearly satisfied statutory requirement of financial debt under Section 5(8)(f) of the IBC. The Respondents have acknowledged execution of MoU, hence, they were bound to refund the amount. The Adjudicating Authority could not have ignored or disregarded the finding of the Arbitral Tribunal as well as Learned Single Judge of Delhi High Court which held that PDA is not sequel to the MoU executed between the Appellant and the Respondent. There is no relationship between MoU and PDA and contrary view taken by the Adjudicating Authority is unsustainable.

5. Learned Counsel appearing for the Respondent refuting the submissions of the Counsel for the Appellant submits that the transaction between the parties as reflected by MoU dated 07.08.2013 clearly indicate that it is a collaboration between the Appellant and the Corporate Debtor for the purpose of development of plots owned by Corporate Debtor. The pleadings in Section 7

application of the Appellant itself plead that developer is engaged in business of construction and development of Real Estate project and expressed its desire to develop the project in collaboration with the owner (Corporate Debtor) provided that the owner is able to get the permission for part sale of built-up space. The project was to be developed in the collaboration of both the parties i.e. developer and the corporate debtor with the co-operation of each other which are specifically pleaded in Section 7 application and is reflected in MoU, thus, the transaction for development of plots and Development Agreement was to be executed in consequence to the MoU after amalgamation of plot no.10. There was no financial debt in terms of Section 5(8) of the Code and Adjudicating Authority has correctly held that the transaction in question does not fall within the ambit of financial debt and transactions are more akin to a joint venture or development agreement rather than a pure financial lending arrangement. Clear and unequivocal intention of the parties was to enter into collaboration agreement for purpose of development of IT project in the land owned by the Corporate Debtor. MoU itself provided share of profit of both the developer and owner which is provided in Clause 14 of the MoU. MoU clearly contemplated profit sharing which militate against a transaction being a financial debt, the amount of Rs.15.75 Crore paid by the Appellant and affiliating company to the Corporate Debtor in the financial statement of the Corporate Debtor has been shown as “other current liability” which cannot be read as any financial debt. Real nature of transaction has to be found out. Appellant has also filed a summary suit in the Delhi High Court bearing C.S.

(COMM) 277 of 2022 where leave to defend application is preferred by the Corporate Debtor which is under consideration. The suit has been filed for recovery of the same money forming part of Section 7 proceeding. Appellant has been taking contradictory stand in different proceedings. The Appellant is adopting an inconsistent position that the money under the MoU were required to be either adjusted or refunded which is mentioned under Section 7 whereas a receipt dated 09.10.2014 is relied by the Appellant mentioning that amount has been adjusted. Appellant on one hand is alleging adjustment and on the other hand, proceeded with Section 7 proceedings which have rightly been dismissed. Section 7 application filed by the Appellant was for recovery of money has rightly been rejected.

6. We have considered the submissions of the Counsel for the parties and perused the record.

7. The only question which need to be considered in this Appeal is as to whether transaction undertaken by MoU dated 07.08.2013 is a transaction reflecting a financial debt owed by the Corporate Debtor to the Appellant. Section 5(8) of the IBC defines 'financial debt'. Section 5(8)(f) on which reliance is placed is as follows:-

***“5. Definitions. – (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);]*

8. For deciding as to whether a debt claimed in proceeding under Section 7 of the IBC is a financial debt or not, the real nature of the transaction need to be examined. We must refer to the judgment of the Hon’ble Supreme Court in **“Global Credit Capital Limited and Anr. Vs. Sach Marketing Pvt. Ltd. & Anr.- (2024) 9 SCC 482”** where Hon’ble Supreme Court had occasion to consider the provisions of Section 5(8)(f) of the IBC. We may refer to paragraph 27.3 of the judgment of the Hon’ble Supreme Court which clearly held that while deciding the issue of whether a debt is a financial debt or an operational debt arising out of a transaction covered by an agreement or arrangement in writing, it is necessary to ascertain what is the real nature of the transaction reflected in the writing. Para 27.3 is as follows:

*“27.3. While deciding the issue of whether a debt is a financial debt or an operational debt arising out of a*

*transaction covered by an agreement or arrangement in writing, it is necessary to ascertain what is the real nature of the transaction reflected in the writing; and”*

9. Thus, to consider the question as to whether transaction between the parties contains a financial debt, the real nature of transaction has to be found out. It is admitted case of the parties that both the parties entered into MoU dated 07.08.2013. Copy of the MoU has been brought on record as Annexure A-3. We need to notice certain clauses of the MoU to find out the real nature of transaction which was entered between the parties. The first relevant fact which needs to be noticed from MoU is that the Corporate Debtor- ‘Cadillac Infotech Pvt. Ltd.’ has been referred to as the ‘owner’ and ‘Airwil JKM Infrastructure Pvt. Ltd.’ has been referred to as ‘developer’. The MoU contains statement that the owner is the absolute owner and seized and possessed with right and sufficiently entitled to all those pieces of parcel of lease hold lands admeasuring about 16,000 Sq. Mts. bearing plots no. 1,2,11 & 12, situated in Sector 135, Noida from NOIDA Authority which land is eligible for development under relevant clause and land has been allotted to the owner for the purpose of construction and setting up of IT & IT enabled Services. MoU contained following statement with regard to developer:-

*“WHEREAS, the developer is engaged in the business of construction and development or Real Estate Projects and has good reputation, goodwill and. substantial experience and considerable expertise in the development of colonies, residential and Commercial*

*Complexes, IT/ITES, etc. and has expressed its desire to develop the project in collaboration with the Owner provided that owner is able to get permission for part sale of the built up space.”*

10. The above statement as recorded in MoU clearly indicate that the developer has expressed its desire to develop the project in collaboration with the owner. The MoU further notes need of acquiring plot no.10 situated at Sector 135 Noida area admeasuring 4000 sq. mtr. so as to make it permissible to sold in parts as per the policy of Noida authorities which statement is as follows:-

*“WHEREAS under the present prevailing policy of Noida Authorities, part sale(s) of the building(s)/ structures constructed on plot(s) admeasuring 4000 sq. mtr bearing Plot No. 10 situated in Sector 135, Noida which is adjacent to the plots of the owner and upon acquiring the same the owner will get the existing land as well as the land proposed to be acquired amalgamated in terms of the existing policy of the Noida and upon amalgamation the plot(s) area of the owner will increase from four acres to five acres and once that happens the built up area (s) on the same shall be allowed to be sold in parts as per the policy of Noida authorities.*

*WHEREAS the owner has assured the Developer that process of acquisition of additional one acre land and thereafter amalgamation of the same with the existing plots of land shall be completed within a period of six*

*months from the date of signing of this MOU PROVIDED the Developer adheres to the payment schedule herein stipulated.*

*WHEREAS the Developer believing the assurance of the owner that the area of the said plot shall be increased from four acre to five acres by adding another one acre in the existing land and that both the plots would be amalgamated and that the built up area so developed/ constructed on the said amalgamated plots would be permitted to be sold in parts, has agreed to enter into a Development Agreement with the owner and has agreed to develop a IT project on the said plot(s) of land as per sanctioned building plans and as per agreed specification and in collaboration and in co operation with the owner.”*

11. It was further pleaded that both the parties will execute a proper Development Agreement for the proposed project which statement is as follows:-

*“AND WHEREAS once the condition precedent, as stated above, is performed and achieved by the owner the developer has agreed to develop the said plots in to IT Project in collaboration with the owner and the parties will enter and execute a proper Development Agreement for the proposed project.*

*AND WHEREAS the parties have had detailed discussion on the issue and have broadly agreed on the terms and conditions which would govern the Development Agreement and pending execution of the*

*same the parties have decided to reduce in writing broadly agreed terms and conditions of the proposed Development Agreement. This MOU shall remain binding between the parties till a proper JDA is executed between the parties.”*

12. Further obligation of the owner is also separately dealt which are as follows:-

**“OBLIGATION OF THE OWNER:**

1. *The Owner hereby agrees and assures the Developer that, subject to Developer adheres to the payment schedule herein agreed, within a period of six months of the date of execution of this MOU, the owner shall acquire said additional one acre of land which is adjacent to the existing land of the owner and will get both the lands amalgamated so that plot(s) available for development of the. Project admeasures minimum 20,000 sq. mts, which would be qualified for part sale(s) as per existing NOIDA Policy.*
2. *That once the aforesaid condition precedent is achieved and a plot(s) admeasuring minimum 20,000 sq. meters the developer will be obliged to enter into Development Agreement with the Owner and would develop and construct a IT Project on the said Land, after obtaining all the applicable permissions and sanctions, getting building plans sanctioned as per agreed specifications at its own cost and expense on area/revenue sharing basis broadly on the terms and conditions appearing hereunder:”*

13. Broad Terms and Conditions which have been agreed between the parties governing the Development Agreement has also been noticed in MoU which contains owner's allocation and developer's allocation in paragraph 14 of the MoU which are as follows:-

*"14. OWNER'S ALLOCATION:*

*46.25% (Forty Six & one fourth percent) of the entire sale able built up area together with 46.25% (Forty Six & one fourth percent) share in the covered 1 open parking space(s), together with pro rata share in the open space (s), utility area (s), common services, etc. shall be owned and possessed by the Owner.*

*DEVELOPER'S ALLOCATION:*

*53.75% (Fifty three & three fourth percent) of the entire sale able built up area together with 53.75% (Fifty three & three fourth percent) share in the covered / open parking space (s), together with. pro rata share in the open space (s), utility area(s), common services, etc. shall be owned and possessed by the Developer.*

*The parties will identify and demarcate their respective allocations on the plan before the commencement of the Project to avoid any dispute."*

14. With respect to the payment by the developer of Rs.15 Crore, details have been noticed in paragraph 15. Paragraph 15 also indicate that the amount of Rs.3 Crore has already been received which is acknowledged and balance

amount was to be utilised for payment of balance consideration for the acquisition of additional plot of 4000 sq. mtr. Paragraph 15 is as follow:-

*“15. In addition to the above, the Developer shall pay to the Owner a sum of Rs.15,00,00,000/- (Rs. Fifteen Crore Only) as deposit out of which a sum of Rs. 10,00,00,000/- (Rs. Ten crore Only) shall be interest free refundable and the balance shall be non refundable. The interest free refundable deposit shall be refunded to the Developer from the initial sales from the share of First Party.*

*The agreed deposit shall be paid by the Developer to the Owner in the manner appearing hereunder:*

*a) Rs.3,00,00,000/- (Rs. Three Crore Only) upon signing of this MOU a: details given below:*

*i) Rs.25,00,000/- (Rupees Twenty Five Lacs Only) vide ch no.754176, dated 20.05.13 drawn on Allahabad Bank Tughlakabad, New Delhi.*

*ii) Rs.25,00,000/- (Rupees Twenty Five Lacs Only) vide ch No.754175 dated 17.05.13 drawn on Allahabad Bank Tughlakabad, New Delhi.*

*iii) Rs.25,00,000/- (Rupees Twenty Five Lacs Only) vide ch. no.754.77 dated 22.05.13 drawn on Allahabad Bank Tughlalabad, New Delhi.*

*iv) Rs.1,00,00,000/- (Rupees One Crore Only) vide ch no.354558 dated 11.06.13 drawn on Allahabad Bank Tughlakabad, New Delhi.*

*v) Rs.50,00,000/- (Rupees Fifty Lacs Only) dated 02.08.2013 drawn on Allahabad Bank, Tughlakabad, New Delhi thru RTGS.*

*vi) Rs.50,00,000/- (Rupees Fifty Lacs Only) vide ch no.020772 dated 07.08.2013 drawn on Allahabad Bank, Tugnlakabad, New Delhi.*

*vii) Rs.25,00,000/- (Rupees Twenty Five Lacs Only) vide ch.no.020773 dated 12.08.2013 drawn on Allahabad Bank, Tughlakabad, New Delhi.*

*And balance amounting to Rs. 12,00,00,000/- (Rupees Twelve crore Only) within two months from the signing of this MOU. This amount shall be utilized by the Owner for payment of the balance consideration for the acquisition of the additional plot of 4000 SQM of Land. As such this payment is the essence of the contract.”*

15. The submission which has been pressed by the Counsel for the Appellant is that Broad Terms and Conditions agreed between the parties governing the development agreement to be entered between the parties for the development of the proposed project was consequent to fulfilment of condition precedent and all relevant clauses including clause 14 would have come into play when development agreement was executed. No development agreement having been executed between the parties, the theory and the case of development of plots cannot be accepted.

16. It is true that no development agreement could be executed between the parties and development agreement which was executed on 06.09.2014 was between the Corporate Debtor and Group Company of Appellant, Infracon Company, thus, the development agreement did come into existence with a group company of the Appellant. Counsel for the Appellant submitted that the

dispute arose with regard to development agreement dated 06.09.2014 which was subject to arbitration and in arbitral award, it was held that the issues pertaining to MoU are not subject matter of arbitration, hence, the development agreement dated 06.09.2014 cannot be said to be sequel to MoU. Be that as it may, for the purpose of the present case i.e. for finding out true nature of transaction between the parties which is reflected in the MoU dated 07.08.2013, we have to look into the clauses of MoU itself.

17. As noted above, the MoU refers to the Corporate Debtor as owner and the Appellant- Airwil JKM Infrastructure Pvt. Ltd. as developer and which MoU noticed the ownership of the owner with regard to land and requirement of acquiring another 4000 sq. mtr. by means of plot no.10 on which the project was to be developed. We have already noticed the statement in MoU where it is noticed that the developer has expressed its desire to develop the project in collaboration with the owner and the amount which was to be paid by the developer to the owner of Rs.15 Crores was only for the purpose of development of project. One of the terms agreed between the parties was that all expenses for development work was to be borne by the developer. The project was to be developed by the developer on his own cost which is noticed in paragraph 3. The Broad Terms on which the parties agreed which was governing the development agreement to be entered between the parties was with the object and purpose of the development. Even though development agreement between the Appellant and the Corporate Debtor was not entered and Development Agreement was entered with Group Company of the Appellant i.e. Infracon

Company and the Corporate Debtor but even without taking into consideration of the development agreement subsequently entered the terms agreed between the parties, it is clear that MoU was only for the purposes of development of the plots which was jointly undertaken by the parties. Counsel for the Respondent has also referred to pleadings in Section 7 application, in which application Part V Column 8 Clause 5, following has been pleaded:-

<b>8.</b>	<b>LIST OF OTHER DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF FINANCIAL DEBT, THE AMOUNT AND DATE OF DEFAULT</b>
	<p><i>5. The CD through its director Mr. D.K. Gupta approached the director of the FC i.e. Mr. Vinod Kumar Sachdeva and represented that the CD is the owner of Plots bearing municipal no. 1, 2, 11 and 12 located Sector, 135, Noida, UP. It was further represented by them that the CD is also in the process of acquiring the adjoining plot bearing municipal no. 10 located at Sector, 135, Noida, UP for amalgamation of the said plots and development of the said plots through the FC for the construction of project named That the plots bearing municipal no. 1, 2, 11, 10 and 12 located Sector, 135, Noida, UP are collectively herein after being referred to as "Plots".</i></p> <p><i>"BOARDWALK".</i></p>

18. Thus, the true nature of transaction between the parties is clearly transaction for carrying out joint development of the plot and the amount which was paid by the developer was towards the above end. Plot no.10 which was to be acquired by the owner from NOIDA was also to be made part of entire

project measuring 20000 sq. mtr. for land belongs to the owner and developer was to carry out development in his own expenses and thereafter both were to share the developed areas as per percentage noticed above. Thus, the present was not a case granting of any loan and financial facility by the Corporate Debtor to the Appellant. We, thus, are of the view that the Adjudicating Authority did not commit any error in coming to the conclusion that the real nature of transaction is more akin to a joint venture or development agreement rather than a pure financial lending arrangement which conclusion has been recorded in paragraph 27.4 as noticed above.

19. Counsel for the Respondent in support of his submission has relied on various judgments of this Tribunal. Reference has been made to the judgment of this Tribunal in **“Meehika Buildcon LLP vs. City Star Infrastructure Ltd.- Comp. App. (AT) (Ins.) No.47 of 2024”** where this Tribunal has occasion to consider the nature of transaction in Section 7 application. In paragraph 6 of the judgment, following was laid down:-

*“6. We have heard Counsel for the parties and after perusal of record, are of the considered opinion that the Appellant has not advanced the money as loan rather the money has been given to the Respondent for the purpose of clearing their title over the land in question which was to be shared by both of them in the ratio of 30% / 70%. It is pertinent to mention that the Appellant has not filed any financial statement on record in order to show that the money which has been given as per*

*term sheet has been shown as a loan advanced to the Respondent.”*

20. Another judgment relied by the Respondent is judgment of this Tribunal in **“Ansal Housing Limited vs. Samyak Projects Private Limited- Comp. App. (AT) (Ins.) No.542 of 2023”** which was also a case where Adjudicating Authority dismissed Section 7 application by Ansal Housing Limited holding that financial debt did not exist in the proceeding. This Tribunal after noticing the facts of the said case and details of the agreement which was entered between the parties, following observations in paragraph 24 and 25:-

*“24. Undisputedly both parties being partners in developing the project together, the purchase and availability of land for the project was an essential ingredient thereof and hence any assistance by the Appellant to the Respondent tantamount to financing the operations of the joint venture. When shared liability for profit is so clearly manifested in the JVA and the ICD and responsibilities well demarcated in the execution of the real estate projects, it cannot be overlooked that both parties are development partners and co-sharers in the real estate projects. The JVA and ICD laid the foundations of a legal and binding relationship with mutual financial obligations towards each other. Given this backdrop, clearly the present 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 IBC. It may also not*

*be out of place to mention here that the primary intent and object of the IBC is the resolution of the Corporate Debtor and not recovery of a debt of the creditor. It needs no emphasis that the Hon'ble Apex Court in a catena of judgments have observed that the provisions of IBC cannot be utilised by a creditor for recovery of its debt. This Tribunal has also observed time and again that the primary focus of IBC, as a beneficial legislation, is to ensure revival and continuation of the Corporate Debtor and that the provisions of IBC cannot be misused for staging recovery of debt and for treating the Adjudicating Authority as a debt recovery forum.*

*25. In so far as the findings of the Adjudicating Authority are concerned that both the parties being joint venture partners, there was no financial debt in terms of Section 5(8) of IBC and hence the application under Section 7 of the IBC could not be entertained, we see no error in the impugned order. We hold that the Appellant is not a Financial Creditor in terms of Section 5(7) of IBC and the application under Section 7 at the instance of the Appellant was not maintainable and hence the same has been rightly rejected by the Adjudicating Authority. Hence the appeal fails and is dismissed accordingly. We, however, are of the view that the Appellant will have the liberty to exhaust other remedies available in law before any other appropriate forum and raise all pleas as permissible in law to protect their interests. No order as to costs.”*

21. Another judgment relied by the Respondent is judgment of this Tribunal in **“Vipul Limited vs. Solitaire Buildmart Pvt. Ltd.- Comp. App. (AT) (Ins.) No.550 of 2020”** where Adjudicating Authority dismissed Section 7 application against which Appeal was filed. In the above judgment, following was observed by this Tribunal in paragraph 25:-

*“25. The aforementioned letter evidences that, the Joint Development Agreement and the Master Development Agreement entered into between the Parties is a contract of reciprocal rights and obligations. A bare reading of the aforementioned clauses evidences that the payments to be made by the Respondent to the Appellant are governed by certain obligations to be fulfilled by the Appellant herein and likewise compensation to be paid by the Appellant to the Respondent is also governed by the condition that the Appellant should complete the construction within a specified period of time.”*

22. Applying the ratio of the judgments as noticed above, it is clear that the true nature of transaction which was entered between the parties through MoU dated 07.08.2013 was MoU by the parties to jointly carry on development of plots owned by the Corporate Debtor. The developer has made advance payment and was to make further payment so as to Corporate Debtor can acquire plot no.10 and amalgamate the same for carrying the development in 20000 sq. mtr. which is under the policy of NOIDA permitted the sale of spaces. Acquiring of plot no.10 was integral part of the project and amount of

Rs.15 Crore which was given to the Appellant in addition to Rs.1.75 Crore was towards the project of development in which ultimately the owner and developer has to receive their percentage of share in entire sale able built up area and share in the covered and open parking space(s) with pro rata share in the open space (s), utility area (s), common services, etc. shall be owned and possessed by the Owner. Thus, the amount given by the Corporate Debtor was not nature of loan or any financial assistance having time value of money.

23. Insofar as submission of the parties with respect to award by arbitral tribunal where Learned Counsel for the Appellant submits that the arbitral tribunal has observed that the MoU dated 07.08.2013 is not the subject matter of the arbitration. The said award was challenged in proceeding under Section 34 and now the appeal is pending before the Delhi High Court filed by both the parties i.e. Infracon Company and the Corporate Debtor. Hence, it is not necessary for us to make any observation with regard to the said proceeding for the purposes of Section 7 application.

24. We may further notice that in Section 7 proceeding from the pleadings on the record, receipt of amount of Rs.15 Crores by the Corporate Debtor was not even disputed which was paid in pursuance of the MoU dated 07.08.2013. Rs.1.75 Crores was paid prior to entering into MoU, Rs.15 Crore was to be paid under the MoU. Section 7 applications filed by both the Appellants were respectively for repayment of principal amount of Rs.12.5 Crore and Rs.2.70 Crore. Receipt of amount of Rs.15 Crore from Airwil JKM Infrastructure Pvt.

Ltd. is not disputed by Corporate Debtor. In the Property Development Agreement which was subsequently executed on 06.09.2024, acknowledgment of Rs.1 Crore was there and other amount was neither adjusted nor refunded. It is brought on the record that the Commercial Suit has been filed by the Appellant before the Delhi High Court for recovery of the amount paid to the Corporate Debtor. We observe that rejection of Section 7 application shall in no manner affect the rights of the Appellant to pursue its commercial suit filed in the Delhi High Court for recovery of the money which may be proceeded and decided in accordance with law unaffected by rejection of Section 7 application filed by the Appellant.

25. Subject to observations, as made above, both the Appeals are dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**New Delhi  
Anjali**