

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

1. IA/3929/2025 C.P. (IB)/601(MB)2024

IN THE MATTER OF

Rajendra Raja Bali Singh
Vs

... Petitioner

Rohan Developers Private Limited

... Respondent

U/s 7 of the Insolvency & Bankruptcy Code, 2016

Order Delivered on 10.06.2026

CORAM:

MS. LAKSHMI GURUNG
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant: Appeared but not marked appearance

For the Respondent:

ORDER

IA/3929/2025- The above IA is listed for pronouncement of the order. The same is pronounced in open Court, *vide* a separate order.

Sd/-
CHARANJEET SINGH GULATI
Member(Technical)

Sd/-
LAKSHMI GURUNG
Member(Judicial)

/Ziyaul/

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - V**

I.A. 3929/2025

IN

C.P. NO. 601(IB)/MB/2024

Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016.

**Omkaara Assets Reconstruction Private
Limited**

47th Floor, Kohinoor Square, N.C. Kelkar
Marg, R.G. Gadkari Chowk, Shivaji Park,
Dadar (W), Mumbai 400028.

... Applicant

Versus

Neehal M Pathan

Resolution Professional for Project wise
CIRP of Rohan Developers Private Limited.

Having address at:

Plot No 27, R.S. No. 825, Sahjeevan Parisar,
Near TPM Church, Circuit House Kolhapur
416003.

... Respondent

IN THE MATTER OF:

Rajesh Raja Bali Singh

... Financial Creditor

Versus

Rohan Developers Private Limited

... Corporate Debtor

Order Pronounced on: 10.06.2026

Coram:

Ms. Lakshmi Gurung
Member (Judicial)

Sh. Charanjeet Singh Gulati
Member (Technical)

Appearances:

For Petitioner: Adv. Rohit Gupta a/w. Adv. Aditya M. (PH)

For Respondent: Adv. Ayush Rajani a/w. Adv. Mitali Bhatt and Adv. Siddharth Etambe i/b. AKR Legal (PH)

ORDER

I.A. NO. 3929/2025

1. The present application was initially filed by the ICICI Bank Limited (“**Bank**”), against Mr. Neehal M. Pathan, the Resolution Professional (“**RP**”) of the Hughes Project of Rohan Developers Private Limited (“**Corporate Debtor**”), seeking following reliefs:

“a) Direct the RP of the Corporate Debtor to admit the claim of the Applicant as a financial creditor in the CIRP of "7 Hughes Project" and accordingly reflect it in the list of creditors;

b) Admit the Applicant into the CoC and provide minutes of meeting of earlier meeting conducted;

c) Pass such other or further order(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice.”

2. An Interlocutory Application bearing No. 1561 of 2026, was filed by Omkara Asset Reconstruction Private Limited (“**Applicant**”) seeking substitution of its name in place of the Bank in the present I.A. bearing No. 3929 of 2025. The said substitution was sought basis an Assignment Agreement dated 30.03.2026, through which the debt forming the subject matter of the present application stood assigned in favour of the Applicant, and the same was allowed by this Tribunal vide order dated 21.04.2026.

3. **Brief Facts as per the Application:**

- 3.1 This Tribunal, vide order dated 24.01.2025 passed in C.P. No. 601 of 2024, admitted Rohan Developers Private Limited (“**RDPL**”) into the Corporate Insolvency Resolution Process (“**CIRP**”). Thereafter, I.A. No. 645 of 2025 was filed seeking rectification of the said order on the

ground that the insolvency pertained to the 'Project' and not to the Corporate Debtor, i.e., Rohan Developers Private Limited. The said rectification application was allowed by this Tribunal vide order dated 06.02.2025, thereby initiating CIRP against the Project.

- 3.2 The Applicant filed its claim in Form C as a Financial Creditor of the Corporate Debtor on 20.02.2025. However, it is submitted that their claim has been admitted as that of a Secured Creditor and not as Secured Financial Creditor.
- 3.3 It is submitted that, a loan of Rs. 90 Crores was disbursed to the Corporate Debtor on 17.06.2011. However, as the Corporate Debtor was unable to develop inter alia the 7 Hughes Project independently and was therefore unable to service the Bank's loan in a timely manner, it started exploring options to enter into a joint development arrangement with another developer.
- 3.4 On 29.03.2016, the Bank had issued a credit arrangement letter to IndoGlobal, sanctioning two different Rupee Term Loan facilities amounting to Rs. 115 crores and Rs. 60 crores, respectively, aggregating to Rs. 175 crores, for the construction and development of real estate projects, including the "7 Hughes Project" ("**7 Hughes/Project under CIRP**") (which was then referred to as "Project Ajinkya" and "Project Pathare").
- 3.5 Thereafter, on 12.04.2016, a Joint Development Agreement ("**JDA**") was executed and registered between the Corporate Debtor, IndoGlobal and the tenants of the premises of the 7 Hughes Project and Project Pathare wherein development rights were given to IndoGlobal. Under the said arrangement, IndoGlobal was required to provide to the Corporate Debtor an interest-bearing refundable deposit of Rs. 175 crores and an interest-free refundable deposit of Rs. 10 crores, funded through the Applicant Bank's loan facility. It is an admitted position that IndoGlobal disbursed Rs. 171,28,14,500/- and Rs. 9,00,00,000/- towards the said deposits to the Corporate Debtor, including Rs. 90 crores utilised

towards repayment of the Corporate Debtor's existing liabilities secured by a mortgage over both projects, namely the project under CIRP and Project Pathare and the remaining amount was to be utilized towards the development of the said projects.

- 3.6 In addition to the JDA, personal guarantees amounting to Rs. 85 crores were executed by Mr. Sanjay Chhabria and Mrs. Ritu Chhabria, the directors of IndoGlobal. Furthermore, personal guarantees covering the entire loan amount were also provided by Mr. Harresh Mehta, Mr. Anuj Mehta and Mr. Rohan Mehta i.e., directors of the Corporate Debtor in favor of the Bank. Along with the issuance of the personal guarantees, Mr. Sanjay Chhabria, Mrs. Ritu Chhabria, Mr. Harresh Mehta, Mr. Anuj Mehta and Mr. Rohan Mehta had also executed shortfall undertaking dated 12.04.2016, undertaking to infuse funds in IndoGlobal in case of any shortfall in the resources of IndoGlobal for completing its project.
- 3.7 It is submitted that, pursuant to the Board Resolution dated 29.03.2016, an Indenture of Mortgage (**IoM**) dated 12.04.2016 was executed in favour of the Applicant in respect of two projects, namely Project Ajinkya (now known as 7 Hughes, being the project under CIRP) and Project Pathare, by the Corporate Debtor as mortgagor, with IndoGlobal as the borrower availing the credit facilities. The Corporate Debtor undertook that, in the event of default by IndoGlobal in repayment of its obligations to the Bank, it would, upon demand, make good such payments. The said Board Resolution further records the Corporate Debtor's consent to create security in favour of the Bank over the project under CIRP. The Credit Arrangement Letter dated 29.03.2016 also contemplated such guarantee in a form acceptable to the Bank, and the Indenture of Mortgage records that the loan was sanctioned on the strength thereof for the JDA projects, including 7 Hughes and Project Pathare.
- 3.8 Following IndoGlobal's default in repayment obligations, the account was classified as a non-performing asset ("**NPA**") on 14.02.2020. On

16.03.2021, the Bank issued a recall notice to IndoGlobal, Corporate Debtor (in its capacity as the corporate guarantor) and the personal guarantors to make outstanding payments. Further, a demand-cum-invocation notice dated 07.07.2021, was issued to IndoGlobal, the Corporate Debtor and the personal guarantors as IndoGlobal had breached the terms and conditions of the transaction documents.

- 3.9 Thereafter, a multipartite Deed of Cancellation (“**DoC**”) dated 23.02.2022 was executed, which terminated the Joint Development Agreement between IndoGlobal and RDPL in relation to the 7 Hughes Project. Pursuant to the terms recorded in the DoC, the Corporate Debtor agreed to take over all liabilities of IndoGlobal towards the Bank's loan amounting to Rs. 176.97 crores and thereby assumed principal liability.
- 3.10 This Tribunal, vide order dated 12.04.2022 passed in CP No. 377 of 2021, initiated CIRP against the IndoGlobal. The Bank on 25.05.2022, submitted Form C with the IRP of IndoGlobal for a claim amount of Rs. 199,36,25,978/- (Rupees One Hundred and Ninety-Nine Crore Thirty-Six Lakh Twenty-Five Thousand Nine Hundred and Seventy-Eight Only).
- 3.11 Thereafter, the RP filed IA No. 4073 of 2023 under Section 66 and 67 of the Code, wherein RDPL was made a party as Respondent No. 4. It is submitted that, vide order dated 13.12.2023 passed in IA No. 4073 of 2023 in the CIRP of the IndoGlobal, the NCLT upheld the validity and enforceability of the DoC and all liabilities of IndoGlobal, including the loan payable to the Bank, were transferred to the Corporate Debtor and thereby, the Bank became a financial creditor of the Corporate Debtor.
- 3.12 It is submitted that, on 08.01.2024, the Resolution Professional of IndoGlobal notified the Bank of the shift in liabilities pursuant to the DoC and the Order dated 13.12.2023. Subsequently, vide letter dated 14.03.2024, the Bank informed the Corporate Debtor that it was transferring the liabilities which then stood in name of IndoGlobal to

the Corporate Debtor in accordance with the terms of the DoC. Accordingly, the internal transfer of liabilities by the Bank resulted in a change in the name of the borrower in the Bank's records and eventually led to the issuance of a demand notice by the Bank to the Corporate Debtor dated 06.09.2024.

- 3.13 It is submitted that the Corporate Debtor, by acknowledging its debt obligations to the Bank after execution of the DoC in the Financial Statement, confirmed its acceptance of the transfer of liabilities. Further, the independent auditor's report dated 07.09.2024 also records such acknowledgment and assumption of liabilities. Since these acknowledgments were made prior to the commencement of the CIRP of the Corporate Debtor, they establish that the Corporate Debtor had accepted the liabilities under the DoC.
- 3.14 It is submitted that, as RDPL had guaranteed obligations with the Bank as well as subsequently assumed liabilities of the financial debt pursuant to the terms of the DoC, the claim of the Applicant arose upon initiation of the CIRP against the Project, vide order dated 06.02.2025. Thereafter, the Bank on 20.02.2025, submitted its claim in Form C, amounting to Rs. 3,27,46,97,722/- in the CIRP of the Corporate Debtor.
- 3.15 It is submitted that the loan was obtained to meet the financial requirements of the Corporate Debtor. The same is corroborated by the fact that new loan was disbursed to IndoGlobal, part of which was utilized by the Corporate Debtor to pay its earlier loan. Thus, even keeping the DoC aside, the utilization of the loan proceeds, alongwith invocation of the corporate guarantee supports the claim of the Bank as upon invocation of the corporate guarantee by way of demand-cum-invocation notice dated 07.07.2021, the Corporate Debtor becomes a principal borrower.
- 3.16 The RP, vide email dated 08.04.2025, informed the Bank that, since no disbursement had been made directly to the Corporate Debtor and no corporate guarantee had been issued by the Corporate Debtor in favour

of the Bank, the Bank could not be treated as a financial creditor of the Corporate Debtor. Therefore, the Applicant submitted that the RP failed to consider the position of the Corporate Debtor as the ultimate beneficiary of the loan sanctioned by the Bank to IndoGlobal, which was intended to be utilized for the project that is presently undergoing the CIRP.

- 3.17 It is stated that the Bank has a dual claim against the Corporate Debtor firstly, pursuant to invocation of the corporate guarantee by way of demand cum invocation notice dated 07.07.2021 and secondly, as per the terms and conditions of the DoC, wherein, the payment obligations were taken over by the Corporate Debtor. Additionally, the transfer of liabilities from IndoGlobal to the Corporate Debtor vide letter dated 14.03.2024 made the Corporate Debtor the principal borrower which has never been disputed by the Corporate Debtor, and that the RP has failed to verify the claim submitted by the Bank as financial creditor.
- 3.18 Accordingly, the Applicant has approached this Tribunal, praying that the present application be allowed by directing the RP to admit the Applicant's claim as a financial creditor.

4. **Affidavit in Reply filed by the Respondent**

- 4.1 It is contended that, the present CIRP pertains only to the "7 Hughes Project", whereas the Pathare Project is not part of the present CIRP and the JDA dated 12.04.2016, nowhere records any financing arrangement or loan facility availed from ICICI Bank in relation to the Pathare Project.
- 4.2 The Respondent submits that the Credit Arrangement Letter dated 29.03.2016 issued by the Applicant Bank to Indo Global demonstrates that the Corporate Debtor was neither a co-borrower, co-obligor, nor guarantor. Further, the Applicant had advanced Rupee Term Loans I & II aggregating to Rs. 175 crores exclusively to Indo Global and mere utilisation of such funds by Indo Global under the Joint Development

Agreement dated 12.04.2016 with the Corporate Debtor does not render the Applicant a financial creditor of the Corporate Debtor.

- 4.3 It is submitted that Indo Global utilised a portion of the said funds to make payments to the Corporate Debtor, which were applied towards repayment of the Corporate Debtor's existing loan of Rs. 90 crores. Upon such repayment, the said loan stood fully discharged and the remaining facility was cancelled, leaving no subsisting debt of the Corporate Debtor. The utilisation of funds by Indo Global for payments to the Corporate Debtor, does not create any direct financial debt of the Corporate Debtor. Further, Clause 6.3 of the JDA provides that Indo Global, as developer, was solely responsible for arranging and funding the project, including payment of refundable deposits to the Corporate Debtor. Clause 7 stipulates that, in consideration thereof, Indo Global was entitled to a specified constructed area. Clause 9.4 records that upon repayment of Rs. 90 crores towards the earlier loan, the said liability stood fully discharged. Clause 9.6 only records creation of security over development rights, and Clause 9.7 places sole responsibility for repayment of the bank loan upon Indo Global.
- 4.4 It is submitted that, as per the Board resolution dated 29.03.2016, passed by the Corporate Debtor, the Indo Global was described as the "Borrower" and Clauses 2 and 3 of the resolution merely authorize the Corporate Debtor to provide security as a Mortgagor and, no deed of corporate guarantee executed by the Corporate Debtor has been produced on record.
- 4.5 It is submitted that under the Indenture of Mortgage dated 12.04.2016, Indo Global is expressly described as the "Borrower" availing the credit facilities, while the Corporate Debtor is identified only as the "Mortgagor" and the Applicant as the "Mortgagee". The document merely creates a charge over the Corporate Debtor's share in the project (including under Clause 8) and does not impose any borrowing or guarantee obligation upon the Corporate Debtor. Mere creation of

mortgage security does not confer the status of a financial creditor upon the Applicant vis-à-vis the Corporate Debtor. Despite the document being expressly titled an “Indenture of Mortgage”, the Applicant seeks to treat it as a guarantee, which is contrary to settled principles of law. Section 126 of the Indian Contract Act distinguishes a guarantor/surety from a principal debtor, while Section 58(a) of the Transfer of Property Act separately defines a mortgagor and mortgagee. In the absence of any Deed of Corporate Guarantee, the Corporate Debtor, being only a mortgagor, cannot be treated as a guarantor, and consequently, Section 128 of the Contract Act has no application.

- 4.6 It is contended that, vide order dated 13.12.2023 passed in IA 4073/2023, this Tribunal upheld the Deed of Cancellation and the plea of res judicata is wholly misconceived since the Corporate Debtor was never a party to IA No. 4073/2023 or the CIRP proceedings of Indo Global.
- 4.7 It is contended that the Applicant’s reliance on the Demand-cum-Invocation Notice dated 07.07.2021 is misconceived, as the said notice pertains to personal guarantees and describes the Corporate Debtor only as “Noticee No. 2 – Mortgagor”. Similarly, in the demand notices dated 16.03.2021 and 07.07.2021 issued to Indo Global, the Corporate Debtor is identified as “Noticee No. 2” and described as the Mortgagor, and not as a co-borrower or corporate guarantor. Mere impleadment of the Corporate Debtor as a mortgagor in such notices does not render it a guarantor or co-borrower.
- 4.8 The Applicant’s reliance upon the decision in China Development Bank v. Doha Bank QPSC is misplaced, since in that case the corporate debtor was admittedly a co-obligor and signatory to the financing documents. In the present case, the Credit Arrangement Letter dated 29.03.2016 shows Indo Global as the sole borrower, whereas the Corporate Debtor merely created security as mortgagor. Hence, the said

judgment does not support the proposition that disbursement is unnecessary under Section 5(8) of the IBC.

- 4.9 It is contended that the borrowing was exclusively by Indo Global, and the Applicant has failed to establish any direct disbursement to, or borrowing by, the Corporate Debtor. The Applicant's reliance on Section 5(8)(f) of the IBC is misplaced, as it overlooks the essential requirement that a financial debt must arise from a borrowing transaction involving the Corporate Debtor itself, with disbursement against consideration for the time value of money. In this regard, reliance is placed on *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited & Others* (2020) 8 SCC 401. Consequently, the Applicant cannot be treated as a financial creditor of the Corporate Debtor and, at best, falls within the category of "other creditors" under Regulation 9A of the CIRP Regulations.
- 4.10 It is submitted that the note in the Auditor's Report dated 07.09.2024 states that any reclassification would occur only upon confirmation from the Applicant Bank. No such confirmation exists, except for the letter dated 14.03.2024, wherein the Applicant merely indicated that the process for change of borrower was being initiated. Such accounting disclosures do not establish any "disbursement" or "borrowing" as required under Section 5(8) of the IBC, and these essential requirements cannot be diluted merely because the Applicant is a bank. Further, the Applicant's direct lending relationship with the Corporate Debtor stood extinguished upon repayment of Rs. 82,09,94,672/- in full and final settlement of the earlier loan.
- 4.11 In these circumstances, the Applicant cannot be treated as a Financial Creditor in the CIRP of the 7 Hughes Project, at best, it falls within the broader category of "creditor" under Section 3(10) of the Code and may claim, in place of Indo Global, such amounts as are operational in nature. Consequently, the Applicant's claim of Rs. 3,27,46,97,722/- cannot be admitted as financial debt and, if at all maintainable, can

only be considered under Form F as an "Other Creditor" in terms of the Deed of Cancellation dated 23.02.2022.

4.12 In view of the above submissions, the Respondent seeks appropriate orders from this Tribunal.

5. **Affidavit in Rejoinder by the Applicant**

5.1 An Affidavit in Rejoinder was filed on 24.11.2025 to the Respondent's Affidavit in Reply dated 04.10.2025.

5.2 The Applicant submits that the contention that the DoC is unrelated to the JDA/CIRP project is untenable, as the JDA covered both Project 1 (7 Hughes/Ajinkya) and Project 2 (Pathare). The DoC cancelled the JDA and recorded transfer of Bank loan liabilities for these projects, which was admitted by the Corporate Debtor in IA No. 4073 of 2023 and affirmed by this Tribunal vide order dated 13.12.2023.

5.3 It is contended that Section 5(8) of the IBC does not require direct disbursement and expressly includes liabilities arising from guarantees and indemnities under Section 5(8)(i). In the present case, the loan disbursed by the Applicant Bank to IndoGlobal against consideration for time value of money was utilized by the Corporate Debtor, which had also undertaken liability as guarantor and subsequently as principal obligor under the DoC. Accordingly, the debt constitutes a valid and enforceable financial debt against the Corporate Debtor.

5.4 The Applicant states that the Corporate Debtor was not merely a mortgagor but also a corporate guarantor. The Board Resolution dated 29.03.2016 passed by the Corporate Debtor explicitly states that the Corporate Debtor shall *"guarantee the repayment/payment by the Borrower of the Facilities and all monies in respect thereof to ICICI Bank in accordance with the terms of the facility agreement."* The relevant clause categorically states: *"AND/OR The Company do guarantee repayment/payment by the Borrower of the Facilities and all monies in*

respect thereof to ICICI Bank in accordance with the terms of the facility agreement and the other Transaction Documents.". Furthermore, the JDA at Clause 9.6 explicitly requires "*Corporate Guarantee of RDPL*" to be provided for securing the Bank Loan.

- 5.5 It is submitted that NPA classification pertains only to the borrower's account status and does not determine the liability of co-obligors or security providers. The DoC subsequently created an independent and subsisting financial obligation of the Corporate Debtor towards the Applicant Bank, and earlier notices, including the recall notice dated 16.03.2021, cannot negate such later assumption of liability. The DoC only substituted the borrower and did not alter the nature of the debt.
- 5.6 It is submitted that the Corporate Debtor acknowledged its liability in its audited financial statements for FY 2023–2024 dated 07.09.2024, recording the outstanding amount payable to the Applicant Bank, thereby confirming recognition of the debt post DoC and the Bank's letter dated 14.03.2024. Pursuant to the order dated 13.12.2023, the Bank issued the letter dated 14.03.2024 updating its records by substituting IndoGlobal with RDPL as borrower, which was accepted by RDPL. Thereafter, an advance demand notice was issued in the ordinary course; the account number therein is system-generated for internal reference, while the amounts reflect the sanctioned limits under RTL-1, RTL-2, and RTL-3.
- 5.7 It is submitted that the contention that the transaction is operational in nature is misplaced. The Credit Arrangement Letter dated 29.03.2016 and the JDA show that the loan was sanctioned for development of projects undertaken by the Corporate Debtor and IndoGlobal as part of a structured financial arrangement. Routing of funds as refundable deposits does not change its character. The claim arises from the financial facility, under which the Corporate Debtor initially acted as guarantor and later assumed full liability under the

DoC, and therefore squarely qualifies as “financial debt” under Section 5(8) of the IBC.

5.8 It is submitted that reliance on the Applicant’s letter dated 10.07.2025 is misplaced, as no admission regarding absence of disbursement or liability was made. The DoC, upheld by this Tribunal vide order dated 13.12.2023, records the Corporate Debtor’s assumption of IndoGlobal’s loan, making it the principal obligor. The Bank’s letter dated 14.03.2024 recording such transfer was duly acknowledged and never disputed. **Read in context, the letter dated 07.07.2021 relates to invocation at default, while the letter dated 14.03.2024 reflects substitution of liability, thereby extending the default to the Corporate Debtor.**

5.9 It is submitted that the present claim arises from the Rs. 175 crore loan assumed under the DoC, and not the earlier Rs. 90 crore facility. The DoC reflects a clear substitution of liability. The repayment of Rs. 82,09,94,672/- pertains only to the earlier facility and has no nexus with the present loan transferred under the DoC. The present claim is thus a financial debt and not a refundable deposit and the Applicant cannot be required to file Form F or treated as other than a financial creditor.

Analysis and Findings

6. We have heard the Ld. Counsels of the parties and perused the documents available on record.
7. It is the case of the Applicant that, pursuant to the Board Resolution dated 29.03.2016, the Corporate Debtor resolved to guarantee the repayment/payment obligations of the Borrower, i.e. IndoGlobal towards the Bank. Thereafter, under the IoM dated 12.04.2016, the Corporate Debtor, acting as the mortgagor, undertook to pay the amounts demanded by the Bank in the event of any default by the Borrower. Further, a Joint Development Agreement dated 12.04.2016 was executed between the parties under which an interest-bearing

refundable deposit, funded through the Bank's loan facility of Rs. 175 Crores was provided by Indo Global to the Corporate Debtor. Subsequently, the said JDA was terminated vide Deed of Cancellation dated 23.02.2022, pursuant to which the Corporate Debtor took over all the liabilities of Indo Global. Accordingly, the Applicant claims to have a dual claim against the Corporate Debtor. The first arises from the invocation of security through the Demand-cum-Invocation Notice dated 07.07.2021, wherein the Corporate Debtor was addressed as the Mortgagor/Joint Developer. The second arises under the Deed of Cancellation, by which the Corporate Debtor assumed the payment obligations. The Applicant further submits that, by virtue of the transfer of liabilities from Indo Global to the Corporate Debtor through the letter dated 14.03.2024, the Corporate Debtor stepped into the shoes of the principal borrower. On this basis, Applicant contends that the Resolution Professional failed to verify and admit the Bank's claim as that of a Financial Creditor.

8. Per contra, the Respondent has contended that, the Applicant cannot be treated as a financial creditor as there is no borrowing or disbursement to the Corporate Debtor by the Applicant as required under Section 5(8) of the IBC and at best, the Applicant falls within the broader category of "creditor" under Section 3(10) of the Code.
9. Before going to the issue of the case, it is pertinent to note that the facts of execution of the Joint Development Agreement, Indenture of Mortgage and Deed of Cancellation are not disputed by either of the parties. Furthermore, the Resolution Professional has already admitted the entire claim of the Applicant, but has categorized it as a "secured other creditor". Therefore, the limited issue that arises for our determination in the present proceedings is whether the Applicant falls under the category of a "secured financial creditor"?

10. It is necessary to take note of the relevant definitions mentioned under the terms of the Credit Arrangement Letter dated 29.03.2016, which are as follows:

DEFINITIONS	
Property 1	Development rights of all the piece & parcel of land bearing C. S. No. 410 of Malabar and Cumbala Hill Division, Mumbai, admeasuring approx. 1,370.97 sq. mtrs. including all the structures thereon both present & future.
Property 2	Development rights of all the piece & parcel of land bearing C. S. No. 409 of Malabar and Cumbala Hill Division, Mumbai, admeasuring approx.- 775.93 sq. mtrs. including all the structures thereon both present & future.
Project 1	Residential cum Commercial project Ajinkya having saleable area of approx. 96,037 sq. ft. being developed by the Borrower on the Property 1.
Project 2	Residential project Pathare having saleable area of approx. 47,708 sq. ft. being developed by the Borrower on the Property 2.
Project	Project 1 and Project 2 being built on Property 1 and Property 2.
Joint Developer	Rohan Developers Private Limited
Purpose of Facility	RTL I shall be utilized towards balance construction cost of Project 1 and as refundable security deposit payable to Joint Developer. RTL II shall be utilized towards balance construction cost of Project 2 and as refundable security deposit payable to Joint Developer.

From the aforesaid definitions, it is evident that the Corporate Debtor was mentioned as a Joint Developer of the Project for which the loan was sanctioned to IndoGlobal by the Applicant and Project 1 and Project 2 have collectively been referred to as the “Project”, in respect of which Rupee Term Loan 1 and Rupee Term Loan 2 were sanctioned. Further, terms of the said letter under the head of ‘*Contractual Comfort*’, mentions about “*Corporate guarantee of Tenants on Property 1, Tenants on Property 2 and **Joint Developer** in favour of the Lender, in form and manner acceptable to the Lender*”.

11. It is also relevant to take note of the Board Resolution of the Corporate Debtor dated 29.03.2016, the relevant extract is as follows:

“RESOLVED:

1. THAT, the Company do note the offer of ICICI Bank Limited ("ICICI Bank") to provide to M/s Indo Global Soft Solutions and Technologies Private Limited ("hereinafter referred to as "borrower") the following financial assistance ("the facilities"):

Sr. No.	Nature of the Facilities	Amount of the Facilities/ Limits (Rs. in million)
1.	Rupee Term Loan ("RTL I")	Not exceeding Rs. 1150 million
2.	Rupee Term Loan ("RTL II")	Not exceeding Rs. 600 million
	Total	Not exceeding Rs. 1750 million

on the terms and conditions contained in the Credit Arrangement Letter No. 56/CRFMUM/96187 dated March 29, 2016 ("CAL") issued by ICICI Bank to the Borrower in this regard.

2. THAT the Company do create security in favour of ICICI Bank on the following in favour of ICICI Bank properties as security for the Facilities and all monies in respect thereof:

All the pieces and parcels of land bearing Plot Number 90 of the Gamdevi Estate of the MCGM and bearing CS number 410 of Malabar & Cumbala Hill Div; Mumbai admeasuring approx. 1,370.97 sq. mtrs., including all the structures thereon both present & future.

AND/OR

The Company do guarantee the repayment / payment by the Borrower of the Facilities and all monies in respect thereof to ICICI Bank in accordance with the terms of the facility agreement and the other Transaction Documents.”

12. In pursuance of the aforesaid board resolution, an Indenture of Mortgage dated 12.04.2016 was executed, the relevant extract of the same is reproduced herein below:

43(a) *In the event of any default on the part of the Borrower in payment / repayment of any of the moneys due to the Mortgagee under the Terms & Conditions and General Conditions, or in the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the Terms & Conditions and General Conditions, **the Mortgagor shall, upon demand to the Mortgagor, forthwith pay to the Mortgagee without demur all/part of the amounts as demanded by ICICI Bank and payable by the Borrower under the Terms & Conditions and General Conditions.** Any such demand made by the Mortgagee on the Mortgagor shall be final, conclusive and binding notwithstanding any difference or any dispute between the Mortgagee and the Borrower/ arbitration or any other legal proceedings pending before any court, tribunal, arbitrator or any other authority.*

43(b). *In the event of failure by the Mortgagor to make payment as stated above, the Mortgagor shall pay default interest at the same rate/s as specified in relation to the Facilities for the Borrower till receipt of the aforesaid amounts by the Mortgagee to its satisfaction.*

13. It is relevant to take note of the Joint Development Agreement dated 12.04.2016, the relevant extract of the said agreement is as follows:

“9. BANK LOAN

9.1 Prior to the execution hereof, the Developer has obtained sanction of the Bank Loan of Rs. 175,00,00,000/- (Rupees One Hundred Seventy Five Crores only) from Bank, out of which Rs. 160,00,00,000/- (Rupees One Hundred Sixty Crore only) will be disbursed in the following manner...

...

9.6 For the purpose of securing the Bank Loan, the Developer and RDPL shall create security by creating charge / mortgage on the development rights of the said Properties, the New Building(s),

*RDPL's Premises and Developer's Premises, Tenant Companies Premises, **Corporate Guarantee of RDPL and by providing personal guarantee of shareholders and directors of RDPL.** RDPL shall execute and register all necessary deeds, documents and writings in respect of the same without RDPL having any liability (of any nature whatsoever) of repayment of the Bank Loan save and except out of RDPL's Realizations.”*

14. Now, in order to determine whether the Applicant’s claim falls within the ambit of a "financial debt", it is necessary to examine the provisions of Section 5(8)(i) of the Insolvency and Bankruptcy Code, 2016, which define "financial debt" 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 –*

...

(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”

In essence, the said provision recognizes that where a person undertakes liability to repay or secure the repayment of a debt borrowed by another, such liability may itself constitute a financial debt. Thus, a guarantor’s obligation arising from a guarantee executed in respect of a financial facility extended to a borrower is a financial debt under the IBC.

15. Furthermore, while considering liability of the guarantor as financial creditor, the Hon’ble Supreme Court in **China Development Bank v. Doha Bank Q.P.S.C. and Ors., Civil Appeal No.7298 of 2022**, observed as under:

“GUARANTEE AS FINANCIAL DEBT

46. The question is whether the Corporate Debtor is a guarantor who has guaranteed the repayment of the loan amount by the

borrowers of the appellant. As far as the appellant -China Development Bank is concerned, under five different agreements, it has advanced financial facilities to RCom and RTL. So far as the appellant, Asset Care and Reconstruction Enterprises Limited, is concerned, there is one agreement under which finance has been extended to RCom. The same is the case with Shubh Holdings Pte. Ltd. Regarding the Export Import Bank of China, four agreements were executed under which facilities were granted to RCom. In the case of the Industrial Commercial Bank of China, there is one agreement under which finance was provided to RCom. The appellants have not advanced any facilities to the Corporate Debtor.

47. The answer to the question of whether the appellants are the Financial Creditors depends upon the answer to the question of whether the appellants are the guarantors.

....

*In terms of sub-section (11) of Section 3, debt is a liability or obligation in respect of a claim which is **due from any person** and includes a financial debt or operational debt. As noted earlier, **a claim is a right to payment** whether or not, such right is reduced to judgment and whether it is disputed or undisputed. The right to payment can be legal, equitable, secured or unsecured. **Therefore, if there is a liability or obligation in respect of a payment which is disputed, it still becomes a claim. Once there is a liability or obligation in respect of a claim, it becomes a debt. Once there is a financial debt, the person to whom a debt is owed, becomes a Financial Creditor.***

*49. The appellants are claiming that their case is covered by clause (i) of sub-section (8) of Section 5 of the IBC. Under clause (i), the amount of any liability in respect of any guarantee of the items referred to in clauses (a) to (h) becomes a financial debt. **Therefore, when clause (i) of Section 5(8) is applicable, it***

is not necessary that the Financial Creditor actually tenders any amount to the Corporate Debtor. In this case, the appellants are claiming that the amount of liability covered by clause (i) is in respect of money borrowed by the RCom entities (excluding the Corporate Debtor) against payment of interest under the facility agreements. There is no dispute that facilities were granted by the appellants to RCom entities. **The amount of any liability in respect of any of the guarantees for money borrowed against the payment of interest is a financial debt under Section 5(8) of the IBC.**

50. "Guarantee" is defined under Section 126 of the Contract Act, which reads thus:

"126. "Contract of guarantee", "surety", "principal debtor" and "creditor".—A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written."

A contract becomes a guarantee when the contract is to perform the promise or discharge the liability of a third person in case of default. Thus, when a person enters into a contract to perform or discharge the liability of a third party, the contract becomes a contract of guarantee.

51. Section 127 of the Contract Act reads thus:

"127. Consideration for guarantee.- Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

Hence, any promise made or anything done for the benefit of principal debtor may be sufficient consideration to the surety for giving guarantee.

...

53. ...

Therefore, the name of the document is not a decisive factor. Only because the title of the document contains the word hypothecation, we cannot conclude that guarantee is not a part of this document.”

[Emphasis Supplied]

The aforesaid judgment emphasizes that where a person undertakes to satisfy the debt or obligation of another, such undertaking creates a guarantee, and the liability arising therefrom would qualify as a financial debt under Section 5(8)(i) of the IBC. The Hon'ble Apex Court in the above matter, took note of the judgments passed in **C.C., C.E. and S.T. Bangalore (Adjudication) & Ors. v. Northern Operating Systems Pvt. Ltd.** and **D.N. Revri & Co.**, and held that the nomenclature of a document is not decisive, and that the true meaning of the contract must be gathered by adopting a common-sense approach.

16. In the present case, pursuant to the Board Resolution dated 29.03.2016, the Corporate Debtor resolved to guarantee the repayment/payment obligations of the Borrower towards the Bank. Under the Indenture of Mortgage, the Corporate Debtor, acting as mortgagor, undertook to pay the amounts demanded by the Bank in the event of any default by the Borrower. Further, under the Joint Development Agreement, the Corporate Debtor agreed to create security by way of a Corporate Guarantee. Therefore, we are of the view that the Corporate Debtor's undertakings constitute a guarantee in respect of the financial obligations of IndoGlobal within the meaning of Section 5(8)(i) of the Code. Accordingly, the Applicant qualifies as a Financial Creditor under Section 5(7) of the Code.
17. In addition and without prejudice to the aforesaid, it is noted that prior to the initiation of CIRP against IndoGlobal, the Corporate Debtor and IndoGlobal had executed a Deed of Cancellation dated 23.02.2022, thereby, terminating the Joint Development Agreement dated

12.04.2016. The relevant extract of the said deed is reproduced hereinbelow:

*“S. As setout hereinabove, the Developer has liabilities and obligations towards the repayment of the outstanding amounts of Rs. 176,97,00,000/- (Rupees One Hundred Seventy-Six Crore Ninety-Seven Lakh Only) towards the Bank Loan. In addition thereto, the Developer also has liabilities as a promote under RERA including towards the flat purchaser/s of the Developers’ Premises being Unit No. T1-1801 located on the 29th floor of the new building/Project of constructing and handing over the possession of the same. As a part of the negotiated terms of settlement between the parties, **it has been agreed that RDPL shall take over all the aforesaid liabilities of the Developer in full and final settlement of all claims of the Developer against RDPL and all amounts payable by RDPL to the Developer under the Joint Development Agreement including towards the Interest Bearing Refundable Security Deposit, Interest Free Refundable Deposit and the Developer Additional Funds.**”*

From the aforesaid extract it is evident that, the Corporate Debtor assumed all the liabilities of IndoGlobal, including those relating to the interest-bearing refundable security deposit, interest-free refundable deposit, and developer additional funds.

18. The NCLT Mumbai- Bench-IV, vide order dated 12.04.2022 passed in CP No. 377 of 2021, initiated CIRP against the IndoGlobal. It is relevant to take note of the order dated 02.08.2023, passed by the Bench-IV in I.A. No. 2288 of 2023, in the CIRP of the IndoGlobal, the relevant extract is as follows:

“8.5. From this email communication this bench feels that, ICICI Bank appears to have no objection to the said deed of cancellation and has only asserted its claim against the

Corporate Debtor in so far as such claim exceeds Rs. 176.97 Crores, the amount admitted to have been due to ICICI Bank from RDPL in terms of such deed of cancellation, as such deed of cancellation can be subject matter of avoidance transaction only if such deed of cancellation was not entered in the ordinary course of business.

8.8. We do not find any merit in the argument of the RP that he admitted ICICI's claim as ICICI did not withdraw its claim against the Corporate Debtor despite being aware of the Deed of Cancellation, which runs contrary to his position in not including the valuable development rights in the "7 Hughes" project, if such deed of cancellation is considered to be valid and subsisting as on date in the absence of any order to the contrary from this Tribunal on this aspect. However, the email of the ICICI Bank indicates tacit approval of the ICICI Bank to the Deed of Cancellation.

8.9. The RP ought to have proceeded to adjudicate that the Corporate Debtor owes to ICICI Bank, which is as per the books of accounts of the Corporate Debtor, as under Regulation 13 of the CIRP Regulations, the RP does not have the power to adjudicate a claim, and the fact whether the Deed of Cancellation is still valid and subsisting could not be decided by him while admitting ICICI's claim.

8.10. Accordingly, this Bench considers it appropriate to direct the RP to admit the claim of ICICI Bank to the extent it is verifiable from the books of accounts taking into effect of Deed of Cancellation, till such Deed of Cancellation is held to be a void document under the Code or any other statute. The RP will be, at liberty, to seek early hearing in the avoidance application in relation to this transaction"

19. Accordingly, the RP of IndoGlobal filed avoidance application bearing IA No. 4073 of 2023 under Section 66 and 67 of the Code, wherein RDPL

was made a party as Respondent No. 4. The NCLT Mumbai- Bench-IV, vide order dated 13.12.2023, observed as under:

“4. The R4 filed its reply and submitted that the “RDPL had created a charge / mortgage in respect of its entitlement / rights in the land of the 7 Hughes project and the second property in favour of ICICI Bank Ltd for securing repayment of the loan of 90Cr. existing loan availed by RDPL”. On giving the security by the RDPL, the Corporate Debtor was freed of the entire transaction and all associated liabilities in relation thereto by virtue of the DoC, including the ICICI Bank loan. Mr. Nausher Kohli, Counsel for the ICICI Bank (R10) appeared and across the bench consented with the reply and statement of the Counsel for the R4. Therefore, the facts and circumstances stated supra, the claim against R4 is extinguished. The Counsel for the Resolution Professional also reported that they are not pressing the relief against the R4. Hence, the relief against R4 is dismissed.”

In the aforesaid order dated 13.12.2023, it was noted by this Tribunal that, on giving the security by the Corporate Debtor, the IndoGlobal was freed of the entire transaction and all associated liabilities in relation thereto by virtue of the DoC, including the ICICI Bank loan. The claim regarding avoidance transaction against the Corporate Debtor was extinguished, thereby upholding the DoC.

20. Furthermore, the Corporate Debtor in its Financial Statement for the year ended on 31st March, 2024, acknowledged the said Deed of Cancellation, the relevant extract of the Financial Statement is as under:

ROHAN DEVELOPERS PRIVATE LIMITED

CIN : U65990MH1992PTC070212

NOTES TO FINANCIAL STATEMENTS FOR THE YEAR ENDED 31ST MARCH, 2024

NOTE 14 : NON-CURRENT BORROWINGS

Amount in hundreds

Particulars	As at 31st March, 2024	As at 31st March, 2023
Secured - At amortized cost		
Term Loans - from Other	1,35,80,184.85	1,35,80,184.85
Unsecured - At amortized cost		
Loans from related parties*	1,14,46,651.90	1,19,25,291.44
Loans from corporates and others*	8,20,20,383.09	8,73,91,203.34
Total	10,70,47,219.84	11,28,96,679.63

* Borrowings includes Inter corporate Deposits from various group and Non group entities which are interest free.

Note:

The company had created a charge in favour of ICICI Bank Limited by way of mortgage of its Projects Ajinkya and Pathare (both located at Hughes Road, Mumbai) including hypothecation of trade receivables in respect of said Projects for securing loan availed by Indo Global Soft Solutions and Technologies Pvt Ltd (with whom the company had signed a Joint Development Agreement dated 12.04.2016) from ICICI Bank Limited.

However on 23rd February 2022, the company has entered into Cancellation Deed with Indo Global Soft Solutions and Technologies Pvt Ltd and has agreed to take over all the liabilities of the Indo Global Soft Solutions and Technologies Pvt Ltd with respect to ICICI bank loan.

On confirmation from ICICI bank, the loan will be reclassified later on.

From the above, it is evident that the Corporate Debtor, in its Financial Statement disclosed that, it entered into the DoC and has assumed all liabilities of IndoGlobal in relation to the ICICI Bank loan. This clearly demonstrates that the liability itself, as well as the quantum of the claim, was acknowledged by the Corporate Debtor.

21. Upon being informed by the RP of IndoGlobal regarding the shift in liabilities pursuant to the DoC and the order dated 13.12.2023, the Applicant, vide letter dated 14.03.2024, informed the Corporate Debtor that the liabilities standing in the name of IndoGlobal were being transferred to the Corporate Debtor in terms of the DoC and, subsequently, issued a demand notice on 06.09.2024 to the Corporate Debtor. The transfer of liabilities pursuant to the said letter were never disputed by the Corporate Debtor. Accordingly, in view of the order dated 13.12.2023 and the disclosures made in the Financial Statements, it is evident that the Corporate Debtor has assumed the liabilities of IndoGlobal. Therefore, the Applicant falls within the definition of a 'Financial Creditor' as provided under Section 5(7) of the Code.

22. **Conclusion**

- I. The Corporate Debtor has executed Indenture of Mortgage dated 12.04.2016, which clearly obliges the Corporate Debtor to pay to the Lender all part of the amounts payable by the Borrower. This language of IoM is clearly akin to the undertaking to pay and amounts to guarantee to the Lender.
- II. Though disbursement of loan was made to IndoGlobal, but the payment of loan was guaranteed by the Corporate Debtor. In other words, disbursement to IndoGlobal was on the basis of execution of JDA by the Corporate Debtor and the Corporate Debtor later cancelled the JDA vide DoC and assumed the liabilities by admitting it in its financial statement, to which the Lender has no objection.
23. For the reasons discussed above, the claim of the Applicant deserves to be admitted as 'Financial Creditor' and to be secured to the extent of the security interest. In view of the facts of the case, prayer clauses (a) is **allowed**. The prayer clause (b) is consequential in nature, and therefore, the Resolution Professional may take steps in accordance with law. Accordingly, the IA bearing no. 3929 of 2025 is hereby **disposed of** in above terms. No orders as to cost.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

OmkarD.

Sd/-

Lakshmi Gurung
Member (Judicial)