

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No.301
C.P.(IB)/113(AHM)2025

Under Section 7 of IB Code 2016

IN THE MATTER OF:

NRS Projects Private Limited
V/s
Omshivay Builders LLP

.....Applicant

.....Respondent

Order delivered on: 16/06/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**

CP (IB) No.113/7/AHM/2025

(An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the Matter of: Omshivay Builders LLP

NRS Projects Private Limited

(CIN: U45201GJ2011PTC067426)

Registered office at 302,
Riddhi Siddhi Elanza,
Beside Domino's Pizza,
Ellorapark Main Road,
Subhanpura, Vadodara,
Gujarat- 390007.

...Applicant

VERSUS

Omshivay Builders LLP.

(Identification Number: ACC-6808)

Registered office at
Dove Deck Club House, NH 08, Ajwa
Road, Vadodara, Gujarat, India, 390019.

...Respondent

Order Pronounced On: 16.06.2026

C O R A M:

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)**

A P P E A R A N C E:

For the Applicant/FC : Mr. Arjun Seth, Advocate. a.w.

For the ROC : Ms. Somya Jain, Adv
: Ms. Vipal Solanki, Company
Prosecutor
For the Chairman : Mr. Nipun Singhvi Advocate.
Monitoring Committee
For the Respondent/CD : **Ex-parte.**

O R D E R
(Per Bench)

1. This Company Petition is filed on 03.02.2025 by the Applicant - NRS Projects Private Limited against the Respondent - Omshivay Builders LLP under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP), for default in repayment of a claimed financial debt of Rs. 6,65,50,684.93ps. Including interest. The date of default is stated to be 05.06.2024.
2. On Perusal of Part-I of the Form-1 revealed that Applicant - NRS Projects Private Limited is a company incorporated on 12.12.2011 under the Companies Act, 1956, with Corporate Identification Number - U45201GJ2011PTC067426, having two Directors namely Gyan Arjunsingh Rajput, and **Nimit Rasiklal Sangani**. It has registered office at 302, Riddhi Siddhi Elanza, Beside Domino's Pizza, Ellorapark Main

Road, Subhanpura, Vadodara, Gujarat- 390007 as per the Master Data available on the website of the Ministry of Corporate Affairs. The present Petition has been filed through its Director, **Mr. Nimit Rasiklal Sangani** who has been authorised by Board Resolution dated 22.08.2024 which is annexed with the Petition as Annexure-A.

3. On perusal of Part-II of the Form-1 reveals that the Respondent is Omshivay Builders LLP having Identification Number: ACC-6808, incorporated on 28.08.2023 under the Limited Liability Partnership Act, 2008. The Respondent is having registered office at Dove Deck Club House, NH 08, Ajwa Road, Vadodara, Gujarat, India, 390019, having four designated partners namely **Nimit Rasiklal Sangani**, Kalpesh Mansukhbhai Raiyani, Chaturbhai Mohanbhai Kalsariya and Ghanshyambhai Chaturbhai Kalsariya, as per the Master Data available on the website of the Ministry of Corporate Affairs. The contribution of the partners in the Respondent is stated to be Rs. 5,00,00,000/-.
4. On perusal of Part-III of the Form-1 reveals that the Applicant has named **Mr. Kashyap Shah** having Registration No. IBBI/IPA-002/IP-N00367/2017-

2018/11035, having address: B-203, Manubhai Tower, Opp. Faculty of Arts, Sayajigunj, Vadodara, Gujarat, 390005 (**e-mail:** Kashyap.cs@gmail.com) under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). He has filed his written communication **Form-2**, which is annexed with the Company Petition as Annexure-B as per the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

5. On perusal of Part-IV and Part-V of Form-1 reveals that the Applicant has placed the facts through this Company Petition in the following manner:-

6.1 The Respondent awarded a work order dated 25.01.2016 to the Applicant for construction of the project "Silvernest-II" situated at Sevasi/Ajwa Road, Vadodara. Pursuant thereto, the Applicant deposited a sum of Rs.5,00,00,000/- as security deposit, supported by ledger accounts and bank statements annexed as Annexures C and D.

6.2 As per the terms of the work order, the Respondent was required to remove encroachments from the project land and obtain requisite development permissions. Despite repeated requests and communications exchanged between the parties, the

Respondent allegedly failed to fulfil the said obligations, though it acknowledged receipt of the security deposit and its liability to repay the same.

- 6.3 It is further stated that CIRP was initiated against the Applicant by order dated 25.07.2019 and a Resolution Plan was subsequently approved by this Adjudicating Authority on 30.08.2022.
- 6.4 Upon inspection of property records, the Applicant allegedly discovered that the subject land had been sold to a third party. Consequently, it issued a recall notice dated 05.06.2024 seeking refund of the security deposit together with interest @18% per annum.
- 6.5 The Respondent, by its reply dated 28.06.2024, is stated to have acknowledged its liability and expressed its inability to repay the amount on account of financial distress.
- 6.6 According to the Applicant, the Respondent committed default in repayment of the security deposit. The date of default is stated as 05.06.2024 and the amount claimed as due and payable as on that date is Rs.6,65,50,684.93/- inclusive of interest. The Applicant has also relied upon the record of default filed with the Information Utility.
- 6.7 On the basis of the aforesaid facts and documents, the Applicant asserts the existence of a financial debt and default, and has filed the present application under Section 7 of the Insolvency and Bankruptcy Code,

2016 seeking initiation of CIRP against the Respondent.

6.8 The Applicant has filed **Form-D** being the Record of Debt and Default issued by National E-Governance Services Limited (“NeSL”), wherein the date of default is recorded as 05.06.2024 and the status of the default is reflected as “Deemed to be authenticated”. The said NeSL record evidences the occurrence and continuation of default committed by the Respondent in repayment of the financial debt due and payable to the Applicant. A copy of the Record of Default filed before the Information Utility is annexed with the pursis Dated 05.03.2025 vide Inward Diary No. DD-85 as Annexure – A.

6. The Applicants has relied upon the following documents, which are as under: -

- (a) Copy of the Authority Letter issued in favour of the authorised representative as Annexure-A.
- (b) Copy of Consent to act as Interim Resolution Professional in Form-2 as Annexure-B.
- (c) Copy of the Ledger Account maintained by the Applicant as Annexure-C.
- (d) Copies of relevant Bank Statements evidencing disbursement of amount and receipts as Annexure-D.
- (e) Copy of the Work Order/Agreement executed between the parties as Annexure-E.
- (f) Copies of communications exchanged between the Applicant and the Respondent regarding fulfilment of

the conditions of the Work Order dated 25.01.2016 as Annexure-F.

- (g) Copies of further communications exchanged between the parties as Annexure-G.
 - (h) Copy of Order dated 25.07.2019 passed in Section 7 proceedings against the Applicant as Annexure-H.
 - (i) Copy of Order dated 30.08.2022 approving the Resolution Plan in the CIRP of the Applicant as Annexure-I.
 - (j) Copy of Recall Notice dated 05.06.2024 issued by the Applicant as Annexure-J.
 - (k) Copy of Reply/Letter dated 28.06.2024 issued by the Respondent acknowledging the liability as Annexure-K.
 - (l) Copy of Table of Computation showing the outstanding amount and default as Annexure-L.
 - (m) Copy of record of default/Form-C filed with the Information Utility (NeSL) as Annexure-M.
7. The Applicant, by way of a **Pursis** dated 21.03.2025 vide Inward Diary No. D-1915, seeks to place on record a copy of the Work Order dated 25.01.2016 issued by the Respondent to the Applicant herein, annexed hereto and marked as **Annexure-A**.
8. This Tribunal, vide Order dated 24.03.2025, issued notice to the Applicant herein as well as to the Chairman of the Monitoring Committee of the Applicant Company on the issue of maintainability of the present Petition in its present form.

9. In compliance with the aforesaid Order, the Chairman of the Monitoring Committee of the Applicant Company filed an **Affidavit** on 01.05.2025 vide Inward Diary No. D-2851 on the issue of maintainability. The contents thereof are reproduced hereinbelow:-

10.1 It is submitted that CIRP against the Applicant Company was initiated by order dated 25.07.2019 annexed as **Annexure A** and the Resolution Plan submitted by the Successful Resolution Applicants was subsequently approved by this Tribunal vide order dated 30.08.2022 annexed herewith as **Annexure-B**.

10.2 It is further submitted that the Successful Resolution Applicants failed to comply with the payment obligations under the approved Resolution Plan and committed breach thereof. Consequently, the Chairman of the Monitoring Committee filed IA No. 848 of 2023 under Section 74(3) of the Insolvency and Bankruptcy Code, 2016 seeking action against the Successful Resolution Applicants for violation of the Resolution Plan.

10.3 According to the deponent, upon breach of the Resolution Plan, the Successful Resolution Applicants forfeited their right to represent or act on behalf of the Respondent and the Monitoring Committee resumed control and supervision of the affairs of the Respondent in terms of the approved Resolution Plan.

- 10.4 It is contended that any action on behalf of the Respondent requires prior approval of the Monitoring Committee and, in the absence of such approval; the present proceedings are not maintainable. It is further pointed out that various applications relating to implementation and breach of the Resolution Plan are pending consideration before this Tribunal.
- 10.5 Reliance is placed on the judgments of the Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors. 2019) SCC OnLine SC 1478]*** and ***State Bank of India & Ors. v. Consortium of Mr. Murari Lal Jalan & Mr. Florian Fritsch & Anr. CIVIL APPEAL NOS. 5023-5024 OF 2024 (Jet Airways case)*** to contend that the Monitoring Committee is empowered to supervise implementation of the Resolution Plan and oversee the affairs of the Respondent during such period.
- 10.6 On the aforesaid basis, it is submitted that the present application, having been filed without approval or authorization of the Monitoring Committee, is devoid of legal authority, not maintainable in law and liable to be dismissed.
- 10.** The Applicant has also filed a **rejoinder** on 15.07.2025 vide inward diary no. D-4717, denying most contentions raised by the Chairman of the Monitoring Committee of the

Respondent in its reply. The contents of the Rejoinder are reproduced as follows: -

- 11.1 It is the contention of the Petitioner in the Rejoinder that the objections raised by the Chairman of the Monitoring Committee are confined only to two aspects, namely, alleged breach of the Resolution Plan by the SRA and the alleged requirement of prior approval of the Monitoring Committee before institution of the present petition.
- 11.2 It is submitted that subsequent to filing of the affidavit dated 24.04.2025 by the Chairman of the Monitoring Committee, this Tribunal vide common order dated 08.05.2025 dismissed the applications seeking revocation of the approved Resolution Plan and liquidation of the Respondent, while permitting consideration of the addendum to the Resolution Plan. A copy of the said order is annexed as **Annexure-A**.
- 11.3 The Petitioner has further contended that in view of the aforesaid order dated 08.05.2025, the allegations regarding breach of the Resolution Plan no longer survive and consequently the objections raised by the Monitoring Committee are rendered unsustainable.
- 11.4 It is further submitted that after passing of the order dated 08.05.2025, the Petitioner addressed a communication dated 14.08.2025 to the Chairman of the Monitoring Committee requesting that the matter be re-placed before the Monitoring Committee for

reconsideration, however no response was received thereto. A copy of the said communication is annexed as **Annexure-B**.

- 11.5 The Petitioner has contended that under Clause 5.2 of the approved Resolution Plan, management and control of the Respondent stood vested with the Successful Resolution Applicants and the Master Data of the Respondent evidencing such directorship is annexed as **Annexure-C**.
- 11.6 It is further contended that under Clause 5.3 of the approved Resolution Plan, the role of the Supervisory/Monitoring Committee is confined only to supervision of payments to stakeholders and does not extend to management or control of the affairs of the Respondent. A copy of the approved Resolution Plan is annexed as **Annexure-D**.
- 11.7 The Petitioner has further submitted that upon approval of the Resolution Plan vide order dated 30.08.2022, the Resolution Professional ceased to exercise managerial powers and the management of the Respondent stood transferred to the Successful Resolution Applicants.
- 11.8 It is also the contention of the Petitioner that there exists no provision either under the Insolvency and Bankruptcy Code, 2016 or under the approved Resolution Plan mandating prior approval of the Monitoring Committee for filing of the present Section

7 petition or for taking ordinary business decisions on behalf of the Respondent.

11.9 The Petitioner has specifically contended that the present petition has been instituted by NRS Projects Private Limited and not by Mr. Nimit Sangani in his personal capacity and therefore the objection regarding want of approval from the Monitoring Committee is misconceived.

11.10 It is lastly contended that the present proceedings have been initiated for recovery of dues and for the benefit of the Respondent and its stakeholders and therefore ought not to be obstructed on technical objections raised by the Chairman of the Monitoring Committee.

11. The Chairman of Monitoring Committee of NRS Projects Private Limited has filed **written submissions** on 04.09.2025 vide Inward Diary No. D - 6021. The same are taken on record.
12. Further, the Applicant has filed **synopsis** on 08.09.2025 vide Inward Diary No. D - 6052 to the affidavit of the chairman of Monitoring Committee.
13. The Applicant has filed a **further affidavit** dated 02.12.2025 vide Inward Diary No. D - 8100 placing on record the Minutes of the 19th and 20th Meetings of the Monitoring Committee held on 12.08.2025 and 07.11.2025

respectively, along with the Progress Report dated 29.11.2025 concerning implementation of the approved Resolution Plan, stakeholder payments, RERA compliances and construction progress of the project.

- 14.** It is submitted that the approved Resolution Plan continues to be under implementation and substantial progress has been achieved in construction activities and stakeholder distributions in terms thereof. Copies of the Minutes and Progress Report are annexed as Annexure-A, Annexure-B and Annexure-C respectively and the same are taken on record.
- 15.** The Applicant has filed a **Pursis** dated 26.01.2026 (on DMS) seeking to place on record the Minutes of the 21st Meeting of the Monitoring Committee held on 26.12.2025 and the Progress Report dated 25.01.2026 concerning implementation of the approved Resolution Plan. It is stated that substantial progress has been achieved in relation to stakeholder distributions, execution of sale deeds, construction activities and other implementation measures pertaining to the Dove Deck-I Project. Copies of the said

documents are annexed as Annexure-A and Annexure-B respectively. The same are taken on record.

- 16.** This Tribunal vide order dated 09.03.2026 directed the Applicant to place on record the ledger accounts of the Respondent in its books from the year 2016 onwards, the Master Data of the Respondent LLP along with details of its partners, and documents relating to the land bearing Revenue Survey Nos. 21/1, 22/1 and 23/1 situated at Sayajipura, Ajwa Road, Vadodara, which formed the subject matter of the work order dated 25.01.2016.
- 17.** In compliance thereof, the Applicant filed an affidavit dated 27.03.2026 vide Inward Diary No. D - 2636 placing on record the Master Data of the Respondent LLP, ledger accounts for the financial years 2015-16 to 2025-26, the Partnership Deed dated 20.01.2012, the order dated 30.08.2022 passed in IA No. 690 of 2020 in CP(IB) No. 38 of 2019, the LLP Agreement dated 29.08.2023 along with the Certificate of Conversion, the Sale Deed dated 07.04.2023 pertaining to the aforesaid land, and the Supplementary Agreement dated 24.04.2024. The Applicant has further submitted that the Respondent was originally constituted as

a partnership firm under the name “Om Shiv Builders” and was subsequently converted into “Omshivay Builders LLP”. Copies of the aforesaid documents are annexed as Annexures A to H and are taken on record.

- 18.** In compliance with the order dated 01.04.2026, the Applicant filed an **additional affidavit** dated 08.04.2026 vide Inward Diary No. D - 3075 placing on record the audited financial statements of the erstwhile partnership firm, Form-17 filed under Rule 38(1) of the Limited Liability Partnership Rules, 2009 relating to its conversion into an LLP, and the financial statements of the Respondent LLP for the financial year 2023-24. It is further submitted that upon such conversion, all assets, liabilities, rights and obligations of the partnership firm stood vested in the LLP by operation of law. Copies of the aforesaid documents are annexed as Annexures B, C and D respectively and are taken on record.
- 19.** The Applicant has filed a **Pursis** dated 09.04.2026 vide Inward Diary No. D - 3130 seeking to place on record a legible copy of the financial statements of the Respondent LLP for the financial year 2023-2024. The said financial

statements comprising the Balance Sheet, Statement of Profit and Loss and Notes to Accounts have been annexed therewith as **Annexure-A**. The same are taken on record.

20. The Applicant has filed **Affidavits of Service** both dated 15.04.2026 vide Inward Diary Nos. D-3250 and D-3251 placing on record compliance of the directions contained in the order dated 08.04.2026 regarding service of notice upon the Respondent and the Registrar of Companies. It is submitted that the notice along with a copy of the petition and the order dated 08.04.2026 was served upon the Respondent through e-mail and Speed Post/Dasti Mode, and upon the Registrar of Companies through e-mail and Dasti Mode. Copies of the relevant communications, acknowledgements and proof of service are annexed as Annexures A to D and are taken on record.
21. The Applicant has filed a **Pursis** dated 14.04.2026 seeking to place on record the translated copy of the Sale Deed dated 07.04.2023 in respect of land bearing Revenue Survey Nos. 21/1, 22/1 and 23/1 situated at Sayajipura, Ajwa Road, Vadodara. It is submitted therein that the said Sale Deed pertains to transfer of the aforesaid property for a

consideration of Rs. 3,30,00,000/- and records delivery of possession in favour of the purchaser. The translated copy of the Sale Deed is annexed therewith and marked as **Annexure-A**. The same is taken on record.

- 22.** The Applicant has filed **further Affidavits of Service** dated 22.04.2026 and 08.05.2026 placing on record compliance of the directions contained in the order dated 15.04.2026 regarding service upon the Respondent and the Registrar of Companies. It is submitted that a copy of the order dated 15.04.2026 was served upon the Respondent through Dasti Mode against acknowledgment. Copies of the order and proof of service are annexed as Annexures A and B respectively and are taken on record.
- 23.** Pursuant to the directions issued by this Tribunal on 08.04.2026, the Registrar of Companies, Gujarat, has filed its **Report** dated 25.05.2026 vide Inward Diary No. R-329 placing on record the particulars of the Respondent LLP as available in its records, along with the documents filed by the Respondent at the time of conversion from a partnership firm into a Limited Liability Partnership. The said Report is taken on record.

- 24.** Despite due service of notice upon the Respondent pursuant to the order dated 15.04.2026, acknowledged service having been effected on 17.04.2026, the Respondent failed to enter appearance or participate in the proceedings. An affidavit of service was filed on 06.05.2026. Accordingly, by order dated 10.06.2026, this Tribunal, after noting the continued absence of the Respondent despite several opportunities, directed that the matter shall proceed ex-parte against the Respondent and heard the Applicant accordingly.
- 25.** We have heard the Learned Counsel appearing for the Applicant, perused the pleadings, documents placed on record, the reports filed by the Registrar of Companies, the submissions advanced by the Chairman of the Monitoring Committee of the Applicant Company and the material produced during the course of proceedings.
- 26.** The Petition is founded upon a Work Order dated 25.01.2016 executed between NRS Projects Private Limited and Om Shiv Builders, under which the Applicant claims to have paid a refundable security deposit of Rs.5,00,00,000/-.
- 27.** Before proceeding further, this Adjudicating Authority is required to determine whether the security deposit paid

under the Work Order dated 25.01.2016 satisfies the ingredients of a 'financial debt' under Section 5(8) of the Code, including the requirement of disbursal against consideration for the time value of money. Mere nomenclature of a transaction as a security deposit would not by itself constitute a financial debt unless the statutory ingredients are satisfied.

- 28.** The case of the Applicant is that the said amount of Rs.5,00,00,000/- remained outstanding and, after issuance of a Recall Notice dated 05.06.2024, the Respondent by its reply dated 28.06.2024 acknowledged the liability and expressed inability to repay the amount on account of financial constraints. On the strength of the said documents and the subsequent NeSL record of default, the present Petition under Section 7 has been instituted.
- 29.** However, the surrounding circumstances emerging from the record raise serious concerns regarding the bona fides of the present proceedings. The alleged debt originates from a transaction of the year 2015-16. Notwithstanding the claim that an amount of Rs.5,00,00,000/- remained due and payable, the Applicant has not produced any material

evidencing any substantial recovery effort, legal proceeding, enforcement action or contemporaneous demand for nearly eight years thereafter.

- 30.** On the contrary, the ledger accounts relied upon by the Applicant reflects the amount continuously carried in its books over several financial years without any significant movement or recovery action. The complete absence of any meaningful steps for recovery over such a prolonged period is difficult to reconcile with the conduct of an independent Applicant seeking repayment of a substantial sum.
- 31.** It is further noteworthy that the ledger accounts produced by the Applicant show the amount of Rs.5,00,00,000/- being carried forward year after year from Financial Year 2015-16 onwards without any material adjustment, repayment, interest servicing, restructuring, confirmation of balance or contemporaneous correspondence. Such prolonged dormancy of a substantial claim is inconsistent with ordinary commercial conduct and assumes significance while examining the bona fides of the present proceedings.
- 32.** The record further reveals a significant and continuing connection between the parties. The Partnership Deed of

M/s Om Shiv Builders, executed on 20.01.2012, records Mr. Nimit Rasiklal Sangani as one of the partners of the firm with a 35% share in profits and losses.

- 33.** The subsequent records produced by the Registrar of Companies, including Form-17 and other LLP conversion records, further establish that upon conversion of the partnership firm into Omshivay Builders LLP, Mr. Nimit Sangani became a Designated Partner of the Respondent LLP with effect from 28.08.2023. The ROC records further show that his cessation as Designated Partner was recorded on 24.04.2024.
- 34.** The documents filed pursuant to the directions of this Adjudicating Authority, including Form-17, LLP incorporation records and the report of the Registrar of Companies, further establish that Omshivay Builders LLP came into existence through conversion of the erstwhile partnership firm M/s Om Shiv Builders and that the assets, liabilities, rights and obligations of the firm stood vested in the LLP. The continuity of the entity and the participation of the same set of individuals in both structures forms an important part of the factual matrix.

- 35.** The Tribunal also cannot lose sight of the fact that the transaction forming the basis of the present proceedings arose in the backdrop of Mr. Nimit Sangani's long-standing association with the Respondent, first as a partner of M/s Om Shiv Builders and subsequently as a Designated Partner of Omshivay Builders LLP, while simultaneously remaining associated with the affairs of the Applicant.
- 36.** Equally significant is the fact that the Work Order dated 25.01.2016, which forms the very foundation of the present claim, bears the signature of Mr. Nimit Sangani on behalf of the Applicant. Thus, the same individual who was admittedly aware of and involved in the transaction from its inception on behalf of the Applicant subsequently became part of the management structure of the Respondent itself.
- 37.** During the period from 28.08.2023 to 24.04.2024, he occupied a position that enabled him to have access to the affairs, liabilities and financial position of the Respondent. Prior to that Mr. Nimit Sangani was a partner in the partnership firm holding 35% share. This means Mr. Nimit Sangani had financial interest in both alleged Applicant and the Respondent.

38. The land which was to be developed was sold on 07.04.2023 by the Respondent. During this period and moment Mt. Nimit Sangani was a designated partner in the firm. It is difficult to state that he was unaware of the sale of land. If the land was sold and consideration was received, then why the Respondent did not return the money immediately.
39. There is no correspondence on the record that the alleged Applicant made any communication with the Respondent to return the money considering that the very same land which was the basis of advance of money was sold.
40. The chronology of events of the case assumes considerable significance which demonstrates that the application filed by the Applicant under section 7 of the IBC, 2016 was the only action taken by it against the Respondent raising serious doubts on the transaction and the role of Mr. Nimit Sangani in the transaction. A chronology of events to the extent relevant to the matter on hand is given below:

Date	Event
20.01.2012	OM Shivay Builders was incorporated as a partnership firm in which Mr. Nimit Sangani was a partner having 35% share.
07.01.2016	Rs 2,50,00,000 paid to Om Shiv Builders by

	NRS Projects Limited/FC
11.01.2016	Rs 2,00,00,000 paid to Om Shiv Builders by FC
13.01.2016	Rs 50,00,000 paid to Om Shiv Builders
25.01.2016	Work Order executed between FC and CD and security deposit of ₹5 crore paid.
08.06.2016	Letter by NRS Projects to Om Shiv Builders (Hand Delivered) and stating that an amount of Rs 5,00,00,000 paid in advance as a security deposit.
06.02.2017	Letter by NRS Projects Private Limited to Om Shiv Builders being a reminder of work order. Letter was hand delivered.
02.07.2017, 08.01.2018, 22.06.2018,10.02.2019	Letters by NRS Projects to Om Shiv Builders regarding reminder work order all are similar and hand delivered.
25.07.2019	CIRP initiated against NRS Projects (Applicant).
07.04.2023	Subject land sold by Respondent.
28.08.2023	Section 7 Application shows Respondent was incorporated
28.08.2023	Mr. Nimit Sangani became Designated Partner of LLP.
24.04.2024	Cessation of Nimit Rasiklal Sangani as a Designated Partner of the Respondent.
05.06.2024	Recall Notice issued to OM Shivay Builders and shown as hand delivered.
28.06.2024	Liability acknowledged by Respondent.
Thereafter	NeSL default recorded, and Section 7 petition filed.
05.03.2025	Application under section 7 filed by the FC on DMS Portal

- 41.** Despite the alleged debt having remained outstanding since Financial Year 2015-16, no meaningful recovery proceedings, legal action or enforcement measures were initiated for several years. Even during the period when Mr. Nimit Sangani was associated with the Respondent as a Designated Partner, no material has been placed on record to show any serious effort for recovery of the alleged dues.
- 42.** The continued interest of Mr. Nimit Sangani in both the entities and the one time advance of money raises questions requiring careful scrutiny regarding the circumstances surrounding the transaction and the subsequent invocation of insolvency jurisdiction.
- 43.** Form No.1 (Application under section 7) shows the amount in default of Rs 6,65,50,684.93 which comprises of Rs 5,00,00,000 of principal and Rs 1,652,50,684.93 towards interest at the rate of 18% per annum. Page 17 of the Petition shows that the opening balance as on 01.04.2023 in the ledger account of the FC was Rs 5,00,00,000 payable by the Respondent and closing balance was also Rs 5,00,00,000 suggesting that the claimed interest is not shown in the ledger accounts of various years and it was

computed at the time of filing the petition only.

- 44.** The continued interest of Mr. Nimit Sangani in both the entities and the one time advance of money raises serious doubt on the real nature and purpose of transaction.
- 45.** Nimit Sangani, Kalpesh M. Raiyani, Rahul M. Raiyani, and Mr. Janak G. Malvi are directors of NRS Projects Private Limited. Not much information was available on the records concerning M/s Omshivay Builders LLP and therefore this Adjudicating Authority sought information from the ROC.
- 46.** The Registrar of Companies vide letter of 11.05.2025 submitted that the LLP was incorporated on 28.08.2023 and it has Kalpesh Mansukhbhai Raiyani and Nimit Rasiklal Sangani along with two more persons as designated partners. Therefore, it is clear that at least two persons including Nimit Sangani were directors in the FC and designated partners in the LLP/ Respondent. Nimit Sangani had 25% share in the profit of the LLP.
- 47.** The ROC has also provided a copy of Limited Liability Partnership Agreement of Omshivay Builders LLP. This is made on 29.08.2023. The documents provided contain a

declaration from the erstwhile partners including of Mr. Nimit Sanghani giving consent for the conversion of the said firm (M/s Om Shiv Builders) into the Limited Liability Partnership. LLP has four partners including Nimit Rasiklal Sangani and Kalpesh Mansukhlala Raiyani having 35% and 15% share in the LLP. These two persons are also directors in the NRS Projects Limited. The firm was converted into LLP.

- 48.** Page 51 of the ROC Report is balance sheet of Om Shiv Builder as on 31.07.2023 and its liabilities are Rs 1,54,47,214 as owners' funds, Rs 8,05,86,127 as trade payable, and Rs 55,00,000 as other current liabilities. Rs 55,00,000 is advance from customers. There is no mention of any security deposit or any deposit by any person including the NRS Projects Limited.
- 49.** Therefore, the claim that Rs 5 crores paid was a security not accounted by the partnership firm in its accounts as on 31.07.2023 which is inconsistent with the claim of NRS Projects Limited that the amount is still outstanding.
- 50.** It is only after the cessation of Mr. Nimit Sangani as Designated Partner on 24.04.2024 that the Recall Notice

dated 05.06.2024 came to be issued. The application has been filed on behalf of the Applicant Company through its authorised representative, who had previously been associated with the Respondent. Such overlapping association constitutes a relevant surrounding circumstance while assessing the bona fides of invocation of insolvency jurisdiction.

- 51.** This was followed by the Respondent's reply dated 28.06.2024 acknowledging liability and expressing inability to repay the amount. Shortly thereafter, the alleged default was recorded with NeSL and the present proceedings under Section 7 of the Code came to be instituted.
- 52.** The close proximity between the cessation of Mr. Nimit Sangani from the Respondent, the issuance of the Recall Notice, the procurement of acknowledgment of liability and the filing of the present Petition cannot be ignored.
- 53.** The debt is stated to have existed since 2015-16; however, the events which ultimately furnished the basis for invoking the insolvency jurisdiction of this Adjudicating Authority occurred only after the said change in the management structure of the Respondent.

- 54.** All the letters filed with the Application including the recall notice are shown to have hand delivered. The Application does not have a single document demonstrating the delivery of letters by email or India Post or Courier casting a serious doubt on the timing and genuineness of all the correspondence.
- 55.** The Application states that a copy of work order is annexed as Annexure E on page 21 A. However, page 21 A is a copy of letter dated 08.06.2016 issued by NRS Projects to OM Shiv Builders and refers to work order dated 25.01.2016.
- 56.** This Adjudicating Authority is conscious of the fact that the Respondent ultimately remained absent from the proceedings and was proceeded against ex parte. However, even in an uncontested proceeding under Section 7, the Adjudicating Authority is required to independently satisfy itself regarding the bona fides of the invocation of the insolvency process and is not bound to admit an application merely because the Respondent does not contest the same.
- 57.** Though the Applicant has produced a Record of Default from the Information Utility, such record is only one piece of evidence and does not dispense with the requirement of

establishing the foundational ingredients of a financial debt and a bona fide invocation of the insolvency process.

58. This Adjudicating Authority also notes that the Applicant itself underwent CIRP pursuant to the admission order dated 25.07.2019 in CP(IB) No.38 of 2019 and a Resolution Plan came to be approved on 30.08.2022. The minutes of the Monitoring Committee meetings placed on record show that the present proceedings were under discussion during implementation of the Resolution Plan. Though not determinative by itself, this forms part of the overall factual background in which the present Petition has been instituted.

59. This Adjudicating Authority also notes that the Chairman of the Monitoring Committee of the Applicant Company opposed the present proceedings and questioned the authority and propriety of instituting the Petition during implementation of the Resolution Plan. Since this application is otherwise liable to be rejected, this Adjudicating Authority refrains from rendering any conclusive finding on the objections concerning authorization by the Monitoring Committee, leaving all

rights and contentions of parties open in appropriate proceedings.

- 60.** The material placed on record further shows that Mr. Nimit Sangani continued to occupy a central position in the affairs of the Applicant even after approval of the Resolution Plan dated 30.08.2022. The Monitoring Committee minutes, affidavits and submissions placed before this Adjudicating Authority demonstrate his continuing involvement in the management and implementation of the Resolution Plan.
- 61.** Thus, the person who was aware of the transaction from its inception continued to represent the Applicant while also having been associated with the Respondent as a Designated Partner during the relevant period.
- 62.** Further, despite documentation having been produced, the material on record does not satisfactorily explain why a claim allegedly arising in 2015-16 remained dormant for nearly eight years before being sought to be enforced through insolvency proceedings.
- 63.** Equally significant is the absence of any contemporaneous material demonstrating persistent recovery efforts during

this period. The explanation offered by the Applicant does not adequately address this prolonged and unexplained inaction. The Respondent has not accounted the alleged deposit in its accounts. Due to continued non-response of the Respondent these facts could not be verified from it.

64. In the considered view of this Adjudicating Authority, the cumulative circumstances emerging from the record, namely:-

- i. the origin of the transaction in Financial Year 2015-16;
- ii. No interest was charged or provided in the contemporaneous documents to demonstrate that the money advanced was having elements of a financial debt.
- iii. the prolonged absence of any meaningful recovery action for nearly eight years;
- iv. the admitted involvement of Mr. Nimit Sangani in the transaction on behalf of the Petitioner and his continued position of a partner since 2012 in the Respondent as a partnership firm and then as a LLP. There were at least two common persons in the OC and FC.
- v. The Application notes that the FC came to know of the fact of sale of land by the Respondent to a third party

after going through the records and property search of the said land. This claim raises serious doubt on the motive of the petition considering the fact Mr. Nimit Sangani has filed this petition who was also the partner in the Respondent when the transaction of sale of land took place.

- vi. the access thereby available to him in relation to the affairs and liabilities of the Respondent; and
- vii. the issuance of the Recall Notice dated 05.06.2024, the acknowledgment dated 28.06.2024 and the filing of the present Petition immediately after Mr. Sangani ceased to be a designated partner; and
- viii. the fact that the acknowledgment of liability, which forms the immediate foundation of the present proceedings, came into existence only after the cessation of Mr. Nimit Sangani from the management of the Respondent.
- ix. Filing of application after the land was sold by the firm in which Mr. Nimit Sangani was a 35% partner.

collectively cast serious doubt on the bona fides of the present invocation of the insolvency jurisdiction under Section 7 of the Code.

65. It is clarified that this Adjudicating Authority is not recording any finding of fraud, collusion or illegality against

any individual or entity nor does this order determine any civil rights or liabilities of parties beyond the limited scope of adjudication under Section 7 of the Code.

66. However, while exercising jurisdiction under Section 7 of the Insolvency and Bankruptcy Code, 2016, this Tribunal is not precluded from examining the surrounding circumstances to ascertain whether the insolvency process is being invoked in a bona fide manner and for the purposes contemplated under the Code.

67. There are many issues for which there are no clear answers. For example, claim that the FC came to know of the sale of land by the partnership firm while atleast two persons were partners/directors in the CD and FC. No contemporaneous correspondence other than those filed as hand delivered. The CD not accounting the claim lade by the FC as amount payable. Issue concerning whether the amount claimed bears characteristics of a financial debt. No response from the Respondent.

68. The Hon'ble Supreme Court in ***Swiss Ribbons Pvt. Ltd. v. Union of India Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors., (2019) ibclaw.in 03 SC***, while explaining

the object of the Code, observed that its primary focus is revival and continuation of the corporate debtor and that the Code is not a mere recovery legislation for creditors.

69. Further, the Hon'ble Supreme Court in **Anjani Technoplast Ltd. v. Shubh Gautam (2026) ibclaw.in 209 SC** reiterated that the Insolvency and Bankruptcy Code is not a debt recovery mechanism and that where the insolvency process is invoked as a substitute for debt enforcement rather than genuine insolvency resolution, such invocation would amount to an abuse of the insolvency process.
70. The Hon'ble Supreme Court in **Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd. Civil Appeal No. 2842 of 2020** observed that recognised that the Adjudicating Authority may examine the real nature of transactions and the surrounding circumstances to ensure that the insolvency process is not invoked in a manner inconsistent with the objectives of the Code. The relevant para is extracted below:-

48 The IBC has made provisions for identifying, annulling or disregarding “avoidable transactions” which distressed companies may have undertaken to hamper recovery of

*creditors in the event of the initiation of CIRP. Such avoidable transactions include: (i) preferential transactions under Section 43 of the IBC; (ii) undervalued transactions under Section 45(2) of the IBC; (iii) transactions defrauding creditors under Section 49 of the IBC; and (iv) extortionate transactions under Section 50 of the IBC. **The IBC recognizes that for the success of an insolvency regime, the real nature of the transactions has to be unearthed in order to prevent any person from taking undue benefit of its provisions to the detriment of the rights of legitimate creditors.***

71. The present case is not one where the existence of the claimed liability alone is determinative. Which is also doubtful. The issue which arises for consideration is whether, having regard to the surrounding circumstances discussed hereinabove, the insolvency jurisdiction under Section 7 has been invoked in a manner consistent with the objectives of the Code. It is this limited aspect which has weighed with this Adjudicating Authority while assessing the maintainability of the present Petition.

72. The Hon'ble Supreme Court in ***Vidarbha Industries Power Ltd. v. Axis Bank Ltd. Civil Appeal No. 4633 OF 2021*** held that the existence of a financial debt and default merely

confers a right upon a Applicant to seek initiation of CIRP and that the Adjudicating Authority is required to consider the relevant facts and circumstances of the case while exercising jurisdiction under Section 7: -

61. *In our view, the Appellate Authority (NCLAT) erred in holding that the Adjudicating Authority (NCLT) was only required to see whether there had been a debt and the Corporate Debtor had defaulted in making repayment of the debt, and that these two aspects, if satisfied, would trigger the CIRP. **The existence of a financial debt and default in payment thereof only gave the financial creditor the right to apply for initiation of CIRP. The Adjudicating Authority (NCLT) was require to apply its mind to relevant factors including the feasibility of initiation of CIRP, against an electricity generating company operated under statutory control, the impact of MERC's appeal, pending in this Court, order of APTEL referred to above and the over all financial health and viability of the Corporate Debtor under its existing management.***

87. *Ordinarily, the Adjudicating Authority (NCLT) would have to exercise its discretion to admit an application under Section 7 of the IBC of the IBC and initiate CIRP on satisfaction of the existence of a financial debt and default on the part of the Corporate Debtor in payment of the debt, **unless there are good reasons not to admit the petition.***

- 73.** This Adjudicating Authority is also conscious that the ratio in ***Vidarbha Industries Power Ltd. v. Axis Bank Ltd.*** cannot be applied as a general proposition conferring an unfettered discretion to reject every application despite existence of debt and default. Such discretion is to be exercised sparingly and only upon existence of exceptional circumstances consistent with the objectives of the Code.
- 74.** The circumstances noted herein, though falling short of establishing fraud or collusion, are nevertheless sufficient to create a legitimate apprehension regarding the bona fides of the present proceedings and the purpose for which the insolvency jurisdiction of this Adjudicating Authority has been invoked.
- 75.** Having regard to the cumulative facts and circumstances discussed hereinabove, this Adjudicating Authority is not persuaded that the present Petition represents a bona fide invocation of the Corporate Insolvency Resolution Process for resolution of insolvency of the Respondent. The material on record raises serious doubts as to whether the proceedings have been initiated for purposes consistent with the objectives of the Insolvency and Bankruptcy Code, 2016.

76. In view of the foregoing discussion, this Adjudicating Authority is not satisfied that the present Application warrants admission under Section 7 of the Insolvency and Bankruptcy Code, 2016 and the same is liable to be rejected.

77. Accordingly, this Application **CP (IB) No.113/AHM/2025** is hereby **dismissed**. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities. No order as to costs.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)
Aditi/LRA

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)