

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER

MS. KAVITA BHATNAGAR
HON'BLE TECHNICAL MEMBER

CP No. (IB)-90/7/JPR/2025

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

IN THE MATTER OF:

M/S EMPIRE HOUSING PROJECTS PRIVATE LIMITED

...Financial Creditor/ Petitioner

VERSUS

M/S NINANIYA ESTATES LIMITED

...Corporate Debtor/ Respondent

MEMO OF PARTIES

M/s Empire Housing Projects Pvt. Ltd.,
By Mr. Tushar Sharma, Authorized Signatory,
FF-1, Vasant Square Mall,
Sector-B, Pocket-5, Vasant Kunj,
South Delhi-110070

...Financial Creditor / Petitioner

VERSUS

M/s Ninaniya Estates Limited,
160, Karni Vihar, Ajmer Road,
Near Rawat Mahila College,
Jaipur, Rajasthan-302021

...Corporate Debtor/ Respondent

For the Financial Creditor

: Amar Vivek, Adv.
Aditya Gauri, Adv.
Damini Srestha, Adv.
Anant Jain, Adv.
Aryan Chhabra, Adv.

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For the Corporate Debtor : Sonal Anand, Adv.
Surbhi Singh, Adv.

Order Pronounced On: 26.05.2026

ORDER

Per: Ms. Kavita Bhatnagar Technical Member

1. The instant Company Petition having *CP No. (IB)-90/7/JPR/2025* has been filed by *M/s Empire Housing Projects Private Limited* ('Petitioner'/ 'Financial Creditor') against *M/s Ninaniya Estates Limited* ('Respondent'/ 'Corporate Debtor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the 'IBC'/ 'Code') seeking initiation of the Corporate Insolvency Resolution Process ('CIRP') against *M/s Ninaniya Estates Limited* ('Corporate Debtor'/ 'Respondent') alleging a default of Rs. Rs. 36,29,67,793.05/- (Rupees Thirty-Six Crores Twenty-Nine Lakhs Sixty-Seven Thousand Seven Hundred Ninety-Three and Five Paise).
2. The Respondent / Corporate Debtor is a private company limited by shares having CIN No. U45201RJ2004PLC019382, incorporated under the Companies Act, 1956 on 09.06.2004, duly registered with the Registrar of Companies, Jaipur. The Registered Office of the Company is situated at *160, Karni Vihar, Ajmer Road, Near Rawat Mahila College, Jaipur, Rajasthan-302021*. The Authorized Share Capital of the Respondent Company is Rs. 52,50,00,000/- (Rupees Fifty-Two Crores Fifty Lakh Only) and the Paid-Up

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Share Capital is Rs. 52,22,77,780/- (Rupees Fifty-Two Crores Twenty-Two Lakh Seventy-Seven Thousand Seven Hundred Eighty). As the company is registered in Rajasthan, hence, it comes under the jurisdiction of NCLT, Jaipur Bench.

Facts of the Case

3. The case of the Financial Creditor, is that the Corporate Debtor approached the FC in the year 2019 with an investment proposal concerning the project being developed by the Corporate Debtor. According to the FC, initially the parties contemplated entering into a Share Subscription arrangement. In pursuance thereof, an aggregate amount of Rs.15.55 Crores came to be transferred by the Financial Creditor to the Corporate Debtor in five tranches between 23.08.2019 and 23.10.2019. The Financial Creditor has relied upon bank statements and proof of transfer in support of the said disbursement.

3.1 The Financial Creditor has stated that although the original intention was to execute a Share Subscription Agreement, the same ultimately did not materialize and the parties mutually agreed that the said amount be treated as a loan/deposit transaction between the parties.

3.2 According to the Financial Creditor, pursuant thereto, the parties executed an Inter Corporate Deposit Agreement dated 16.12.2020 (“ICD-1”), whereby the amount of Rs.15.55 Crores was formally acknowledged as an Inter Corporate Deposit carrying interest @12%

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per annum. The said ICD also stipulated repayment obligations and tenure. The case of the Financial Creditor that under ICD-1 and the subsequent ICD Agreements, the Corporate Debtor repeatedly acknowledged and reaffirmed its liability.

3.3 The Financial Creditor has also pleaded that the Corporate Debtor partly repaid a sum of Rs.50 Lakhs, but the remaining amount together with accrued interest remained outstanding. The Financial Creditor has further stated that due to repeated inability of the Corporate Debtor to discharge its repayment obligations, the parties executed successive ICD Agreements and extension agreements dated: -

- (i) 07.02.2022;
- (ii) 01.04.2023;
- (iii) 21.10.2023;
- (iv) 28.12.2023;
- (v) 29.02.2024;
- (vi) 24.06.2024;
- (vii) 05.08.2024; and
- (viii) 24.02.2025.

3.4 The Financial Creditor has specifically relied upon the ICD dated 07.02.2022 to state that the Corporate Debtor expressly acknowledged that an aggregate amount of Rs.22,21,09,341/- had become due and

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payable including accrued interest and that the same would be repaid by 31.12.2022.

3.5 The Financial Creditor has also relied upon the e-mail dated 27.03.2023 allegedly sent by the Corporate Debtor together with ledger statements acknowledging the liability of Rs.15.55 Crores in the books of account of the Corporate Debtor. The Financial Creditor has also relied upon a balance confirmation dated 29.03.2023 issued on the letterhead of the Corporate Debtor confirming that an outstanding amount of Rs.22,87,72,621/- was payable to the Financial Creditor.

3.6 According to the Financial Creditor, the subsequent ICD Agreements progressively enhanced and restructured the liability by capitalizing interest and extending repayment timelines from time to time. It is the case of the Financial Creditor that under the ICD dated 21.10.2023, the Corporate Debtor acknowledged liability of Rs.25,59,53,252/- and agreed to pay interest @18% per annum.

3.7 The Financial Creditor has further pleaded that under the ICD dated 29.02.2024, the Corporate Debtor acknowledged liability of Rs.27,66,01,213/- payable on or before 24.05.2024. According to the Financial Creditor, the ICD dated 05.08.2024 further acknowledged outstanding liability aggregating to Rs.30,58,12,256/- including principal and accrued interest.

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3.8 The Financial Creditor has heavily relied upon the final ICD/Addendum dated 24.02.2025, according to which the Corporate Debtor allegedly acknowledged consolidated liability of Rs.34,06,26,432/- repayable on or before 30.04.2025. The Financial Creditor has also relied upon various post-dated cheques allegedly issued by the Corporate Debtor corresponding to the said liability. According to the Financial Creditor, when the cheques were presented, they came to be dishonoured. Proceedings under the Negotiable Instruments Act were thereafter instituted before the competent court at Delhi.

3.9 It is further the case of the Financial Creditor that the default stood recorded with NeSL and Form-D issued by NeSL clearly establishes the occurrence of default. The Financial Creditor has further contended in its Written Submissions that out of the nine ICD Agreements, the Corporate Debtor has admitted execution of the first eight ICDs and has disputed only the last ICD dated 24.02.2025.

3.10 According to the Financial Creditor, even if the last ICD is disputed, the repeated acknowledgments, balance confirmations, ledger entries, cheques and admitted ICD Agreements clearly establish existence of financial debt and default. The Financial Creditor has also contended that merely because the Financial Creditor or its representative had

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some connection with the Corporate Debtor at some point of time would not disentitle the Financial Creditor from maintaining proceedings under Section 7 of the Code. In support of its case, the Financial Creditor has relied upon the judgment *Shobhnath & Ors. vs. Prism Industrial Complex Ltd. & Power Trust (Promoter of Hiranmaye Energy Ltd.) vs. Bhuvan Madan* and other judgments.

4. The Corporate Debtor has opposed the Petition and filed detailed Reply and Written Submissions. The principal defence of the Corporate Debtor is that the Financial Creditor has concealed the true nature of the transaction and suppressed material documents from this Tribunal notably Agreement to Sell dated 26.09.2019 and 15.11.2024 and pendency of parallel HARERA proceedings initiated by them in the capacity of home buyer.

- 4.1 According to the Corporate Debtor, the amount transferred by the Financial Creditor was not a loan transaction at all, but was paid towards acquisition of commercial units/space in the project “Prism Portico” being developed by the Corporate Debtor at Sector-89, Gurugram. The Corporate Debtor has specifically pleaded that pursuant to the transfer of money, the parties entered into an Agreement to Sell dated 26.09.2019 concerning retail/studio office suites in the said project.

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- 4.2 It is further the case of the Corporate Debtor that an additional Agreement to Sell dated 15.11.2024 was subsequently executed continuing the same commercial arrangement between the parties. According to the Corporate Debtor, the ATS dated 15.11.2024 specifically provided that the Occupation Certificate/project completion deadline would be 21.01.2027. The Corporate Debtor has further pleaded that *Clause 7.5* of the ATS requires issuance of prior cancellation/refund notice and admittedly no such notice has been issued by the Financial Creditor. It is thus the case of the Corporate Debtor that no crystallized default can arise before expiry of the agreed completion timeline i.e. 21.01.2027.
- 4.3 The Corporate Debtor has also pleaded that the Financial Creditor itself has instituted proceedings before Haryana RERA, Gurugram as a homebuyer concerning the same transaction. According to the Corporate Debtor, the Financial Creditor cannot simultaneously invoke RERA remedies as an allottee/homebuyer and invoke Section 7 as a pure financial creditor.
- 4.4 The Corporate Debtor has also contended that the ICD Agreements were merely collateral/security arrangements executed at the insistence of the Financial Creditor to secure the allotment transaction and did not change the underlying nature of the transaction.

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- 4.5 According to the Corporate Debtor, the ATS itself contained an assured return clause and therefore the so-called “interest” reflected in the ICD Agreements was in reality only assured return under the real-estate arrangement.
- 4.6 The Corporate Debtor has further pleaded that the Financial Creditor’s own Balance Sheet allegedly reflects the amount as “advance towards purchase of land”, thereby supporting the case that the transaction was in substance a real-estate investment arrangement. Another major defence raised by the Corporate Debtor is that the ICD/Addendum dated 24.02.2025 is forged and fabricated and the signatures appearing thereon are not genuine. According to the Corporate Debtor, the alleged ICD dated 24.02.2025 constitutes the very foundation of the alleged default date and once the said document is disputed, the entire default structure becomes seriously disputed and incapable of adjudication under summary insolvency proceedings.
- 4.7 The Corporate Debtor has also alleged that the present proceedings are malicious and constitute misuse of IBC as a recovery mechanism. In support of its case, the Corporate Debtor has relied upon among others on: -

- (i) *Pioneer Urban Land and Infrastructure Ltd. vs. Union of India;*

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- (ii) *Naman Infradevelopers Pvt. Ltd. vs. Metcalfe Properties Pvt. Ltd.;*
- (iii) *S.P. Chengalvaraya Naidu vs. Jagannath;*
- (iv) *Santoshi Finlease Pvt. Ltd. vs. Mothers Pride Dairy India Pvt. Ltd.;*
- (v) *Imdadali M. Momin vs. Pellucid Lifesciences Pvt. Ltd.;* and other judgments.

Analysis and Findings

5. We have heard learned counsel 's for the parties at considerable length and perused the entire material placed on record. The material on record reveals existence of overlapping and parallel commercial arrangements between the parties comprising: -
- (i) Agreements to Sell relating to allotment of commercial units;
 - (ii) Assured return features;
 - (iii) ICD Agreements;
 - (iv) Balance confirmations;
 - (v) Repayment acknowledgments;
 - (vi) Personal guarantees; and
 - (vii) Issuance of cheques.
6. Thus, the principal question before this Adjudicating Authority is not merely whether ICD Agreements exist. Their execution is substantially admitted at least till ICD-8. It being noted that the Agreement to Sell is dated 26.09.2019 and the first ICD is dated 6.12.2020, the real issue is whether the ICD framework genuinely transformed and novated the underlying allotment

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arrangement into a pure financial debt within the meaning of Section 5(8) of the Code.

- 6.1 The Financial Creditor has undoubtedly produced substantial documentary material in support of its case including repeated ICD Agreements, balance confirmations, ledger statements and cheques. The ICD Agreements relied upon by the Financial Creditor contain lender-borrower terminology, quantified repayment obligations, stipulated interest and repayment timelines. Ordinarily, such documents would constitute strong material in support of existence of financial debt.
7. However, the present case contains another equally significant set of documents namely the Agreements to Sell ATS dated 26.09.2019 and 15.11.2024. The ATS dated 15.11.2024 according to the Corporate Debtor, it expressly continued and reaffirmed the allotment arrangement between the parties and fixed the project completion timeline till 21.01.2027 implying that allotment/possession of retail/studio office suites would take place thereafter and that no prior cancellation/refund notice was issued by the FC as per the provision under Clause 7.5 of the ATS and therefore there was no crystallisation of debt.

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- 7.1 This assumes great significance because the Financial Creditor simultaneously contends that the transaction had already transformed into a pure financial debt relationship under the ICD framework.
8. In the considered view of this Tribunal, the simultaneous continuation of the ATS framework till November 2024 creates a substantial issue regarding the true nature of the transaction. Equally important is the admitted fact that the Financial Creditor itself invoked proceedings before HARERA, Gurugram concerning the same project and transaction.
- 8.1 Though initiation of RERA proceedings may not by itself bar proceedings under Section 7, it nevertheless constitutes a relevant circumstance while examining the dominant commercial character of the transaction.
9. The Corporate Debtor has also relied upon the alleged accounting treatment in the Balance Sheet of the Financial Creditor showing the amount as Advance towards purchase of land. Though accounting treatment alone may not conclusively determine the legal nature of the transaction, it is nevertheless a relevant factor which cannot be ignored.
10. The Corporate Debtor has also contended that the assured return clause in the ATS explains the interest component reflected in the ICD structure. Therefore, the material on record discloses a complex commercial

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arrangement involving both real-estate allotment features and debt/security features.

11. The Hon'ble Supreme Court in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India* observed that while examining insolvency proceedings initiated by allottees, the Adjudicating Authority may examine whether the insolvency process is being invoked by speculative investors or for a purpose other than genuine insolvency resolution.
12. The said judgment is relevant in the present matter only to the limited extent that this Tribunal is not divested from examining the real nature of the transaction and related circumstances. Similarly, the judgment of the Hon'ble NCLAT in *Naman Infradevelopers Pvt. Ltd. v. Metcalfe Properties Pvt. Ltd.* reiterates that the Tribunal may examine whether the transaction substantially bears the characteristics of a speculative investment arrangement.
13. The judgments relied upon by the Corporate Debtor concerning concealment and suppression, including *S.P. Chengalvaraya Naidu v. Jagannath*, lay down the settled principle that parties approaching judicial forums must disclose material facts.
14. In the present case, the Agreements to Sell dated 26.09.2019 and 15.11.2024 and the pendency of RERA proceedings were certainly material facts having direct bearing on the nature of the transaction. However, mere non-

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disclosure by itself would not automatically defeat the Petition unless such suppression alters the maintainability of the proceedings. Another significant issue raised by the Corporate Debtor concerns the genuineness of the ICD/Addendum dated 24.02.2025.

15. The Corporate Debtor has specifically disputed the signatures appearing on the said document and alleged forgery. Though the Financial Creditor has attempted to rebut the allegation by relying upon surrounding circumstances including cheque particulars and earlier acknowledgments, the fact remains that the final crystallized liability and default date substantially rest upon the disputed ICD/Addendum dated 24.02.2025 and that this ICD/Addendum is purported to have been executed after the Additional Agreement to Sell dated 15.11.2024.
16. The Hon'ble Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank* has indeed held that where debt and default are established, admission ordinarily follows. However, the said principle necessarily presupposes existence of a clearly established financial debt within the meaning of Section 5(8) of the Code.
17. In the present matter, the controversy itself concerns whether the transaction legally constitutes financial debt at all, or whether it fundamentally remains rooted in a continuing allotment/investment arrangement governed by the ATS framework. The judgments relied upon by the Corporate Debtor in

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Santoshi Finlease Pvt. Ltd. and Imdadali M. Momin reiterate the settled principle that IBC proceedings cannot be converted into substitute recovery proceedings where the basic nature of the alleged financial debt itself remains doubtful.

17.1 The Financial Creditor has relied upon *Shobhnath & Ors. vs. Prism Industrial Complex Ltd.* In the said case, the Hon NCLAT observed that proceedings under Section 7 cannot be rejected merely on allegations concerning conduct of promoters/directors when debt and default are otherwise established. The said judgment turned on its own facts. In the present matter, the issue before this Tribunal is materially different, namely the true nature and character of the underlying transaction itself in light of the simultaneous existence of the ATS framework, RERA proceedings and the disputed ICD/Addendum dated 24.02.2025. Accordingly, the said judgment does not advance the case of the Financial Creditor in the particular facts of the present matter.

17.2 The Financial Creditor has also relied upon *Power Trust (Promoter of Hiranmaye Energy Ltd.) vs. Bhuvan Madan & Ors.* The Hon'ble Supreme Court in the said judgment reiterated the scope of enquiry under Section 7 of the Code while considering existence of debt and default. The proposition laid down therein is well settled. However, in the present case, the controversy itself concerns the basic issue as to

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whether the transaction in question constitutes a financial debt simply under Section 5(8) of the Code, or whether it substantially forms part of a continuing allotment/investment arrangement governed by the ATS framework. Therefore, the said judgment is distinguishable on facts.

18. Further, the Corporate Debtor has also contended that Mr. Tushar Sharma, stated to be the Authorized Representative/Director connected with the Financial Creditor, had at one point of time served as an Additional Director of the Corporate Debtor during the period when the funds were advanced. According to the Corporate Debtor, this circumstance itself renders the present proceedings malicious and collusive. This contention, by itself, does not persuade this Tribunal to reject the Petition, merely because certain individuals may have had prior association with the Corporate Debtor or may have served on its Board at some point of time would not, ipso facto, extinguish an otherwise legally enforceable claim, if such claim otherwise satisfies the requirements of Section 7 of the Code. At the same time, the said circumstance remains a relevant factor while examining the overall nature and commercial character of the transaction between the parties. In the present matter, however, this Tribunal is not rejecting the Petition solely on account of such prior association, but on account of the composite and seriously disputed nature of the underlying transaction itself.

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19. At the same time, this Tribunal is also conscious that the repeated execution of ICD Agreements, balance confirmations and repayment acknowledgments constitute substantial material in favour of the Financial Creditor and therefore the case of the Corporate Debtor cannot be accepted in a simplistic manner either. Nevertheless, the simultaneous continuation of the ATS framework till November 2024, together with the project completion timeline extending till 21.01.2027, creates a serious and substantial issue regarding:

- (i) The true nature of the transaction;
- (ii) Whether novation into financial debt genuinely occurred;
- (iii) Whether the allotment relationship continued to subsist; and
- (iv) Whether the ICD structure merely operated as collateral/security documentation within a larger commercial arrangement.

20. In the considered opinion of this Tribunal, such issues cannot appropriately be adjudicated within the limited summary jurisdiction contemplated under Section 7 of the Code. The Code is intended for resolution of genuine insolvency and not for adjudication of complex and seriously disputed commercial arrangements requiring detailed examination of evidence. While the Adjudicating Authority is not expected to conduct a full-fledged civil trial, it equally cannot ignore substantial and bona fide disputes concerning the basic nature of the transaction itself.

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21. Accordingly, in the peculiar facts and circumstances of the present case, this Tribunal is of the considered opinion that the Financial Creditor has failed to establish a clear and unequivocal financial debt and default warranting admission of CIRP against the Corporate Debtor.

22. **Company Petition (IB) No. 90/7/JPR//2025 is therefore dismissed.**

However, it is clarified that dismissal of the present Petition shall not preclude the Financial Creditor from pursuing such other remedies as may be available in law before the appropriate forum in accordance with law.

No order as to costs.



**REETA KOHLI
JUDICIAL MEMBER**



**KAVITA BHATNAGAR
TECHNICAL MEMBER**