SL. No.2

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ – HON'BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON'BLE MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 24.11.2023, At 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	**CP (IB) No.50/7/HDB/2020**
NAME OF THE COMPANY	**Vasathi Housing Ltd**
NAME OF THE PETITIONER(S)	**Vasathi Anandi Owners Welfare Association Survey**
NAME OF THE RESPONDENT(S)	**Vasathi Housing Ltd**
UNDER SECTION	**7 of IBC**

ORDER

Orders pronounced, recorded vide separate sheets. In the result, the present petition is not maintainable. Hence, this petition is dismissed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Vamsi

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH - II

CP(IB) No.50/7/HDB/2020

U/s. 7 of IB Code, 2016

In the matter of:

Vasathi Anandi Owners Welfare Association …… ***Financial Creditor***

Vs

Vasathi Housing Limited …… ***Corporate Debtor***

Date of order: 24.11.2023

CORAM:

Hon'ble Rajeev Bhardwaj, Member (Judicial)
Hon'ble Sanjay Puri, Member (Technical)

Counsels present:

For the Operational Creditor : Ms. Mr. P Pratap, Advocate

For the Corporate Debtor : Mr. V. Sethu Madhav Rao, Advocate

Heard on : 06.11.2023

[PER: SANJAY PURI]

ORDER

1. This is an application filed by the Vasathi Anandi Owners Welfare Association (**"VAOWA"**) (**Financial Creditor/ FC Association**) represented by Sunil Kumar Samal, President of Vasathi Anandi Owners Welfare Association under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC, 2016) seeking to initiate CIRP declaring moratorium and appointment of Interim Resolution Professional (IRP) against Corporate Debtor ("**CD**"), Vasathi Housing Limited., for a default of **Rs 5,33,12,287.00** (Rupees Five Crore Thirty Three Lakh Twelve Thousand Two Hundred and Eighty Seven only)

2. The Corporate Debtor was incorporated on 31.01.2009 having Identification Number as U70102TG2009PLC06267 for the purpose of purchasing, taking on lease, selling, developing, improving, leasing, building residential, commercial, social rural and urban townships and other structures with respect to property, and provide conveniences. The registered office is at 8-2-269/S/61, Plot No 61, Safar Society, Banjara Hills Road No 2, Hyderabad, Telangana, 500034. Therefore, this bench has jurisdiction to deal with this application.

3. The present application was filed on 30.11.2019 before this Adjudicating Authority on the ground that CD has defaulted to make a payment of INR 5,33,12,287/- of which the principal is calculated @ 100 Sq. Ft as per agreement of sale i.e., INR 4,76,35,700 and Interest is calculated @ 6.5 % from last payment i.e., INR 56,76,587.

4. It is submitted that CD has developed a residential project 'ANANDI PROJECT' and the FC is a society formed by the homebuyers in that Project. It is submitted by the applicant that 483 apartments were built in this project, where each buyer had paid Rs 100 /Sq Ft of the apartment towards Corpus Fund under agreement of sale entered between homebuyers and CD. The interest accrued on Corpus Fund was meant to be utilized for maintenance of "ANANDI PROJECT" and the Corpus Fund was meant to be held by CD till 31.12.2013. It is also submitted that under terms of agreement of sale it is explicitly stated that collected Corpus Fund along with accrued interest shall be transferred to society (or an institution authorized by society and developer jointly) on 31.12.2013.

5. It is further submitted that CD delivered the possession of apartments to the homebuyers but many of the amenities such as swimming pool, tennis court, shuttle services, promised under agreement of sale pertinent to 'ANANDI PROJECT' are still pending to be executed/developed.

6. It is submitted that on 18.07.2017, FC invited CD for a meeting to discuss regarding corpus fund and other pending works executed by CD and on 09.09.2017, FC and CD had a meeting and the Minutes of meeting were also emailed.

7. It is submitted that on 02.02.2018, CD has responded stating that an amount of INR 2 crores has been transferred to account of society and details of total corpus fund collected as Principal would be shared and it is contended by FC that the payment of INR 2 crores has been paid only on 22.01.2018 viz 10 days prior to reverting to FC.

8. It is contended by FC that CD has paid part (INR 2 crores) of Corpus fund collected from members of FC and there are 483 members in FC as homebuyers with respect to Sq. Ft amount collected is totalling to INR

4,76,35,700 yet the pending amount of corpus fund along with interest has not been paid.

9. It is submitted that on a meeting held on 13.03.2018 between FC and CD for which Minutes of meeting communicated on 21.03.2018. In said meeting CD without disclosing principal amount collected towards Corpus fund of 'ANANDI PROJECT' stated explicitly that an interest of 6.5% shall be paid on the balance corpus fund. It is further submitted that on 22.03.2018, FC agreed to above proposition made by CD.

10. It is contended by FC that despite acknowledgement of amount collected as Corpus fund of 'ANANDI Project' payable to FC with an interest @ 6.5%, CD has not taken any steps and avers that the said amount has been due from 22.01.2018. Calculation of default amount due from Vasathi Housing Limited payable to VAOWA for the corpus fund paid by owner @ Rs 100 per Sq.ft of plinth super built area of each flat is as follows:

Total of super built up area of all 483 apartments	S.ft 4,76,357.52
Total Corpus Fund (rounded to lower hundred)	Rs 4,76,35,700.00
Add interest @ 6.5% from 22.01.2018 for 22 months	Rs 56,76,587.00
Total amount	Rs 5,33,12,287.00
Less amount already paid	Rs 2,00,00,000.00
Balance amount due and in default	Rs 3,33,12,287.00

Submissions of the Corporate Debtor

11. It is claimed that the Applicant is a Society registered under the Telangana Societies Registration Act, 2001 vide Certificate of Registration No. 1490 of 2017 dated November 3, 2017 and to note that

the registration of the FC as Society is not valid pursuant to Section 3(1) of the Telangana Societies Registration Act, 2001. Section 3(1) of the Telangana Societies Registration Act, 2001 is produced below for its ready reference:

> *"Any seven or more persons forming a society which has for its object the promotion of art, fine art, charity, crafts, religion, sports (excluding games of chance), literature, culture, science, political education, philosophy or diffusion of any knowledge or any public purpose may be registered under this Act."*

12. It is thus claimed that the objects of the FC as per its Bye-Laws are meant for the maintenance of common areas and allied activities and which are not in consonance with Section 3(a) of the Telangana Societies Registration Act, 2001 and submits that the very existence of the Society is null and void and this application does not hold any validity, since there is no legal existence of the Society.

13. It is also admitted by CD that it had received an amount of Rs 4,76,33,900 from various Flat Buyers towards Corpus Fund. Out of this amount, a sum of Rs 2,07.20,000 on January 22, 2018, which receipt was admitted and acknowledged by the FC in its Application.

14. CD has also admitted to having collected Maintenance Fees of Rs 1,12.85,148 for the period from May 10. 2015 to May 3, 2018, as per the counter affidavit, besides collecting One Year Advance Maintenance Fees of Rs 1,02.66,355 from all the Flat Owners.

15. The complaint of CD is that FC had intentionally failed to bring out the fact that the CD had incurred the entire cost of maintenance of Common Areas for the period April 4, 2014, to May 3, 2018 and incurred an amount of Rs 4,84,65,405 details of which have been enclosed with the application. It is claimed that there are approximately

3061 entries made by the CD for the expenditure incurred on maintenance for the above-mentioned period and has entry wise original copy of all supporting documents i.e. vouchers, bills and invoices towards the entire expenditure incurred by its towards maintenance fees.

16. The statement of amount collected and spent by the CD is given below:

S.No	***Particulars***	***Amount (Rs.)***
1.	Corpus Fund collected by the CD	4,76,33,900/-
2.	Maintenance Fees collected by the CD from May 10,2015 to May 3,2018	1,12,85,148/-
3.	One Year Advance Maintenance Fees collected	1,02,66,355/-
4.	**Sub-Total (a)**	6,91,85,403/-
5.	Less: Refund of Corpus Fund on January 22, 2018	2,07,20,000/-
6.	Less: Cost of Maintenance of Common Area for the period of April 4,2014 to May 3,2018	4,84,65,405/-
	Sub-Total (b)	***6,91,85,405/-***
	Balance [(a)-(b)]	***(2)***

17. It is stated that the CD has bonafidely utilized the Corpus Fund exclusively for the purpose of maintenance of Common Areas of the Vasathi Anandi, since there was inordinate delay in forming the Society.

18. It is further stated that the Agreement of Sale executed by the CD and Flat Owners, the due date for forming the Society was December 31, 2013, whereas the actual date of registration of the Society was on November 3. 2017, and that CD is not liable to refund any amount to the FC, since the same is spent by the CD for maintenance and refund of corpus as mentioned in the averments

19. The CD also stated that the delay caused in submitting the Counter Affidavit is purely attributable to the FC and the CD denied to provide

access to the Accounting Software maintained and installed at its office to the authorised representatives of the FC. Thereafter it was averred that upon the intervention of this Adjudicating Authority, the FC had permitted the authorised representative of the CD to access Accounting Software on March 03. 2021.

20. It is argued that the FC has not lent any Financial Debt as defined under section 5(8) of the IBC and therefore FC Association cannot be called as a Financial Creditor under section 5(7) of the IBC.

21. It is further argued that there was no agreement between the Petitioner and CD and therefore it cannot be called as a Financial Creditor. Another argument of the Petitioner is that the Bye-Laws and objective clause of the Petitioner Society do not have any provision which allows filing of the present CP and FC has no locus standi in the present CP.

22. It has also been brought to our notice that FC had filed a civil suit in O.S. No. 180 of 2021 before the Hon'ble Principal District Judge, Ranga Reddy District at LB Nagar against CD for recovery of **Rs 3,64,50,166** and also to pay further interest on Rs 2,76,35,700 and CD has been contesting the said suit. It is thus submitted that FC with a malafide intention to find shortcut is adopting arm twisting methodology for recovery of the alleged amounts. It is contended that the proceedings under IB code should not become recovery proceedings. In this connection the CD rely upon the principles laid down by the Hon'ble Apex Court in "***Swiss Ribbons Private Limited Vs Union of India***".

Submissions of FC in the Rejoinder

23. In its rejoinder, FC reiterated the contentions made in the application. In addition, it is submitted that FC Association is a Financial Creditor within the meaning of Section 5(7) of the Code and the amount claimed by FC is duly admitted by CD and the same is within the meaning of

Section 5(8) of the Code as the amount of corpus fund and other amounts due have a commercial effect of borrowing.

24. It is also argued that the amount of Rs.4.84 Crores allegedly claimed by the CD towards the maintenance expenses for the period of 2014-2018 is neither liable to be adjusted nor setoff from the refundable amounts of "Maintenance fee, Advance Maintenance Fee and the Corpus Fund".

25. It is thus submitted that CD is in default in terms of section 3(11) and 3(12) of the Code for the debt that became due and payable to FC on 01.04.2018 when the maintenance responsibilities of the Anandi Vasanthi Apartments are entrusted by CD.

26. It is further averred that FC Association is acting as representative in the interest of 483 flat buyers for claiming the amount of Maintenance fee, Advance Maintenance Fee and the Corpus Fund along with accrued interest which is illegally being withheld by CD since April 2018 which is consideration due against time value of money. In this connection, it is stated that the FC is a legally registered and duly recognized welfare association of the flat owners of Anandi Vasathi Owners welfare association and the FC has approximately 483 flat owners of Anandi Vasathi Apartment on its roll of members. It is thus submitted that CD has been dealing with FC Association since its formation in the year 2017, therefore it is legally estopped by knowledge and agreement to dispute the validity of its registration under the provisions of section 3(1) of the Telangana Society Registration Act, 2001.

27. FC submits that the objects mentioned in Sec.3(1) of the Telangana Societies Registration Act are not exhaustive, rather they are illustrative in nature and therefore the object of FC Association, as mentioned in its Memorandum and Bye-laws, as required under Sec. 4(1) of the Telangana Societies Registration Act, 2001 are valid and enforceable in the eye of law including the maintenance of the present petition for

initiation of Corporate Insolvency Resolution Process against the Corporate Debtor as provided in Sec. 18 of the Telangana Societies Registration Act, 2001 which provides that the Registered Society under this Act shall be a body Corporate and shall have perpetual succession and a common seal and therefore the Society is entitled to enter into any contract, initiate and also defend suits and other legal proceedings and to do all further acts in furtherance of the aims for which it is constituted.

28. It is further submitted that, Section 19 (1) of the Act empowers any officer of the Society authorized on its behalf may bring or defend any action or other legal proceedings touching are concerning any property or any right or any claim of the society and may sue and be sued in its name and any action or legal proceeding shall not abate or be discontinued by the death, resignation or removal from office of any member of the society after the commencement of the proceeding.

29. It is argued that CD has categorically admitted that it has received the sum of Rs 4.76 Crores from the Members of the FC Association towards the Corpus Fund which by itself establishes the case of Corporate Debtor liable to repay the said amount to the FC Association as and when the management of maintenance of the FC Association is transferred to it. However, the Corporate Debtor on 22-01-2018 has transferred only part of the Corpus Fund of Rs.2.07 Crores to the Bank Account of the FC Association

30. It is submitted that CD defaulted in making the payment of the remaining amount of Corpus Fund together with interest till this date and apart from the collection of Rs.4.76 Crores towards Corpus Fund, CD also collected a sum of Rs.1.12 Crores from the Members of FC Association towards the maintenance fee for the period May, 2015 to May, 2018 (3 Years) and similarly, the Corporate Debtor also collected a

sum of Rs. 1.02 Crores from the Members of FC Association towards one year (2015) as advance maintenance fee, without any right to collect the said additional amounts in view of Clauses 13 & 14 of the Agreement of Sale in respect of each of the Flat entered into with each of the Members of the FC Association.

31. It is further claimed that the said additional amounts totalling to Rs.2.25 Crores approx. are also liable to be refunded to the Members of the FC Association as the Corporate Debtor is contractually obliged to utilize only the interest earned on the Corpus Fund of Rs.4.76 Crores up to 31-12- 2013 and thereafter the Corporate Debtor is further contractually obliged to use the interest accrued on the Corpus Fund 31-12-2013 towards the repairs and other utilities etc. and not for the maintenance expenses.

32. It is averred that the Corporate Debtor, having failed to complete the construction of the Flats together with all common amenities including the swimming pool etc. on or before 31- 12-2013 is legally obliged to meet the maintenance expenses whatsoever from out of his pocket and he has no right of whatsoever to collect the same from Members of the FC Association even before the Flats and common amenities are delivered.

33. It is submitted that the details given in Annexure (a) to (d) are absolutely false and fabricated which clearly reveal that they are not the expenses paid towards the maintenance of the FC Association property, instead majority of the expenses are consisting of the salaries of Corporate Debtor office staff, security and housekeeping personnel engaged and also, it is manifestly apparent from the above statement that during 2013 to 2018, there does not arise any payments to the Security, Housekeeping, electrician etc. as the flats were still under construction, as such, no maintenance is expected to arise.

34. It is argued that CD has not filed any evidence in support of the statement of expenditure met by it as per the Statement numbered as 4 (a) to (d). Therefore, the statement itself appears to be suspicious and fraudulent.

35. It is further argued that the admission of receipt of Corpus Fund, maintenance fee from May, 2015 to May, 2018 and further collection of advance maintenance fee, stand to prove that altogether a sum of Rs.6.91 Crores is collected by the CD which is liable to be returned to the FC Association without any adjustment of whatsoever, and the alleged cost of maintenance incurred for the period of April 2014 to May, 2018 is the responsibility of the CD and not liable to be set apart from the refundable amounts of the FC Association.

36. It is thus submitted that CD's contention of the Corpus Fund being utilized exclusively for the maintenance of common areas of the FC Association is a blatant lie and a mis-conceived statement given, and CD was categorically and contractually obliged to use and utilize only the interest accrued out of the Corpus Fund and not the Corpus Fund by itself. Therefore, the CD has deliberately defaulted in transferring the remaining Corpus Fund and other amounts to the FC Association.

37. In the written submissions filed on 14.11.2023, FC has reiterated the submissions made earlier and appended some judgments to support their position. About the civil suit filed by FC, it is submitted that that was filed against CD before Hon'ble District Judge, RR District for recovery of Rs 3.64 crores. It is however contended that the said suit does not impact the pendency of present petition as the present company petition operates in different sphere under different law.

38. It is further submitted that CD is a chronic defaulter to its creditors and is an absolute insolvent company as the CD has not filed its balance sheet after Financial Year ended on 31.03.2019 based on the data

available in MCA website and also CD was earlier admitted in CIRPP by order dated 06.05.2022 of this tribunal in CP(IB) No 66 of 2020, however the same was withdrawn as result of settlement in accordance with Section 12A of IBC.

The Decision

39. We have gone through the documents filed by both the parties and heard the arguments made by the counsels. At the outset, it is imperative to ascertain whether the debt in question can be termed as 'financial debt' within the meaning of section 5(8) of IBC. The Petitioner has sought to present its case under clause (f) of the that section, according to which:

> *(8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—*
> *....*
> *(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
>
> *Explanation. -For the purposes of this sub-clause, -*
>
> *(i)* ***any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing****; and*
>
> *(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate(Regulation and Development) Act, 2016 (16 of 2016);*
>
> *....*

40. In the matters of real estate projects therefore, not every amount raised can be considered as 'financial debt'. The amount raised should be from an 'allottee' and in relation to a 'real estate project'. For both these terms, reference has been made to clauses (d) and (zn) of RERA 2016. It is therefore necessary to consider, whether the amount raised for the

'corpus fund' was under the 'real estate project' as defined in RERA 2016 and referred to in section 5(8)(f) of IBC.

41. Under section 2(zn) of RERA, 2016:

> *"**real estate project" means***
> - *the development of a building or*
> - *a building consisting of apartments, or*
> - *converting an existing building or a part thereof into apartments, or*
> - ***the development of land into plots or apartments,***
>
> *as the case may be**, for the purpose of selling***
> - *all or some of **the said apartments** or plots or building, as the case may be, and*
>
> *includes*
> - *the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;*

42. In this case, while the 'corpus fund' was collected under the agreement of sale of apartments built under 'ANANDI PROJECT', it was only for the purpose of ensuring maintenance of these apartments out of the interest accruing thereon. As per clause 12 of the Agreement of Sale dated 07.02.2013:

> ***"12) The interest free corpus fund shall be paid by the Purchasers as specified in Schedule 3 towards the maintenance of VASATHI ANANDI, prior to the execution and registration of the Sale Deed."***

43. The money @ Rs 100/sq.ft. collected towards 'corpus fund' cannot be said to have been raised under the 'real estate project'. This distinction arises from the fact that this fund was not intended for the development of land into plots or apartments; instead, it was "towards the maintenance" of the constructed apartments.

44. Since the 'corpus fund' was not collected under any real estate project, as seen above, the owners of the apartments, who are before us in the form of a registered society, **cannot be treated as 'allottee'** under section 5(8)(f) of IBC, **in respect of the 'corpus fund'** as the same was not in relation to the real estate project. The term 'allottee' referred in section 5(8)(f) of IBC is also defined in section 2(d) of RERA 2016, to state

> *(d) "**allottee**" in relation to a **real estate project**, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;*

Considering the aforementioned, it is clear that the corpus fund collected with an aim of maintaining the project was not from an allottee under a real estate project within the meaning of Section 5(8)(f) of IBC, and therefore it does not qualify as financial debt.

45. From clause 12 of the Agreement of Sale dated 07.02.2013 (extracted above) it is also clear that the corpus fund being an interest free deposit towards maintenance had no stipulation for any consideration for the time value of the money so deposited, which is an essential feature of any financial debt. As held in the landmark judgment by Hon'ble Supreme Court in '***Anuj Jain, RP for Jaypee Infratech Ltd. vs. Axis Bank Ltd., Civil Appeal Nos. 8512-8527 of 2019***, where it held that:

> *"43. Applying the aforementioned fundamental principles to the definition occurring in Section 5(8) of the Code, we have not an iota of doubt that for a debt to become 'financial debt' for the purposes of Part II of the Code, the basic elements are that it ought to be a disbursal against the consideration for time value of*

> *money. […] The requirement of existence of debt, which is disbursed against the consideration for the time value of money, in our view, remains an essential part even in respect of any of the transactions/dealings stated in clauses (a) to (i) of Section 5(8), even if it is not necessarily stated therein. […] In other words, any of the transactions stated in the said clauses (a) to (i) of Section 5(8) would be falling within the ambit of "financial debt" only if it carries the essential elements stated in the principal clause or at least has the features which could be traced to such essential elements in the principal clause."*

46. Further in '***Pioneer Urban Land Infrastructure Ltd. & Anr. Vs. Union of India & Ors.', Writ Petition (Civil) No. 43 of 2019***, the Apex Court has held as under:

> *"61. In the present context, it is clear that the expression "disburse" would refer to the payment of instalments by the allottee of the real estate developer for the particular purpose of funding the real estate project in which the allottee is to be allotted a flat/apartment. […] Thus far, it is clear that an allottee "disburses" money in the form of advance payments made towards construction of the real estate project.*
>
> *67. […] Piecing the threads together, therefore, so long as an amount is "raised" under a real estate agreement,* ***which is done with profit as the main aim, such amount would be subsumed within Section 5(8)(f) as the sale agreement between developer and home buyer would have the "commercial effect" of a borrowing, in that, money is paid in advance for temporary use so that a flat/apartment is given back to the lender****."*

47. In the aforementioned judgment, the Hon'ble Supreme Court clarified that, in the case of allottee's, only those amounts disbursed with the

primary objective of earning profit can be deemed as financial debt and fall under the purview of the Explanation to Section 5(8)(f).

48. In the present case, it is acknowledged that possession has already been handed over to the allottees, and the issue pertains to the Corpus Fund, which was intended for ensuring the proper maintenance of the project. It cannot be held that the primary motivation for collecting such a corpus fund was profit-oriented.

49. Therefore, in our considered view, the amount in question is akin to a prepayment made to a service provider, with maintenance services being the relevant service in this case. A comprehensive examination of Section 5(8)(f) of the IBC, 2016, in conjunction with the aforementioned judgments, unequivocally establishes that the said amount does not meet the criteria for classification as Financial Debt.

50. A parallel perspective was endorsed by the NCLT Mumbai Bench in the case of ***Innova Premises Co-operative Society Limited v/s Marathon Nextgen Realty Limited, CP (IB) No.1042/MB-IV/2020***, where it was decreed as follows:

> *"12.From the perusal of the Premises Ownership Agreement entered with members of the Applicant Society, it is noticed that the amount claimed due from the Corporate Debtor is on account of surplus of collections made by the Corporate Debtor for maintenance of the building owned by the members of the Applicant Society till the handing over of such maintenance obligation to the condominium formed by such flat owners. The amount so collected was in nature of advances, paid by the flat allottees upon occupation of said flats, towards maintenance charges/taxes recoverable from such flat owners for the period subsequent to the occupation of the flats as well as period of development of the flats. From the perusal of these documents the Bench is of the view of that there is no dispute that this money was collected for the maintenance/taxes payment and there is no default in*

handing over the flats booked by members of the Applicant Society. ***In our considered view the amount in question is akin to the money paid in advance to a service provider for availing services and defraying expenses to be incurred by such service providers in rendition of agreed services.***

13. Since the amount in question is not a financial debt, the Applicant cannot said to be a Financial Creditor so as to make eligible to file an application under section 7 of the Code."

(emphasis supplied)

51. As a sequel to the foregoing observations the present application is not maintainable and the Applicant shall not fall within the meaning of Financial Creditor under section 5(7) of the IBC.

52. It is brought to our notice that the Applicant has filed an *original suit bearing No. 180 of 2021 before the Hon'ble Principal District Judge*, Ranga Reddy District at LB Nagar against the CD for recovery of Rs 3,64,50,166 and also to pay further interest on Rs 2,76,35,700 which is still being contested by the CD. Therefore, it is evident that this application has been filed as an alternative or a shortcut procedure for recovery of dues claimed, which cannot be permitted – as IBC is not a mechanism for recovery of the contested dues.

Accordingly, in our view the present Application is not maintainable. We hereby dismiss the present application filed under Section 7 of the IBC, 2016.

Sd/-

SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

RK/NS