

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 578 of 2025

[Arising out of the Impugned Order dated 04.03.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench, Court-V in I.A. No. 1674 of 2024 in Company Petition (IB) No. 106/MB/2022]

IN THE MATTER OF:

AMISHA IN SKY CREATION PVT. LTD.

Having Its Registered Office At:- Golden Trade Centre,
Rajendra Nagar, Raipur, Chattisgarh-492001

...Appellant(s)

Versus

1.SANDEEP D MAHESHWARI

Resolution Professional of Setubandhan Infrastructure Limited having its registered office at: Stress Credit Resolution Professional Private Limited, B 1305-6, Dosti Elite, Road No. 29, Sion, Mumbai- 400 022 Email - setu.cirp@gmail.com

2.UNIVASTU INDIA LTD.

Bungalow No: 36/B, Madhav Baug, Shivtirth Nagar, Kothrud, Paud Road, Pune- 411038 Email - cs@univastu.com

...Respondent(s)

Present:

For Appellant : Mr. Rachit Mittal, Mr. Shubham Southalia, Mr. Kanishk Raj and Mr. Abhishek Sinha, Advocates.

For Respondents : Mr. Krishnendu Dutta, Sr. Advocate with Mr. Palash S. Singhai, Mr. Lokesh Malik, Mr. Harshal Sareen, Mr. Atika Chaturvedi and Ms. Aashima Gautam, Advocates for RP.

With

Company Appeal (AT) (Insolvency) No. 640 of 2025

IN THE MATTER OF:

SANDEEP D MAHESHWARI

Resolution Professional Setubandhan Infrastructure Limited 807, 8th Floor, B-Wing, East Point, Ghatkopar East, Mumbai 400086 **...Appellant(s)**

Versus

AMISHA IN SKY CREATION PVT. LTD.

Golden Trade Centre, Rajendra Nagar, Raipur, Chhattisgarh 492001

...Respondent No. 1

STATE BANK OF INDIA

State Bank Bhavan, Madame Cama Road, Nariman Point, Mumbai, Maharashtra 400021

**...Proforma
Respondent No. 2**

KOTAK MAHINDRA PRIME LIMITED

27 BKC, C 27, G Block, Bandra Kurla Complex, Andra (E), Mumbai - 400051

**...Proforma
Respondent No. 3**

IL&FS FINANCIAL SERVICES LIMITED

Plot C-22, G Block, Bandra Kurla Complex, Post Box No. 8145, Bandra East, Mumbai 400051

**...Proforma
Respondent No. 4**

UNION BANK OF INDIA

239, Vidhan Bhavan Marg, Nariman Point, Mumbai-400021

**...Proforma
Respondent No. 5**

Present:

For Appellant : Mr. Krishnendu Dutta, Sr. Advocate with Mr. Palash S. Singhai, Mr. Lokesh Malik, Mr. Harshal Sareen, Mr. Atika Chaturvedi and Ms. Aashima Gautam, Advocates.
For Respondents : Mr. Rachit Mittal, Mr. Shubham Southalia, Mr. Kanishk Raj and Mr. Abhishek Sinha, Advocates.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present set of two appeals have been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('IBC' in short) arising out of the Order dated 04.03.2025 (hereinafter referred to as the '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court – V) in I.A No. 1674 of 2024 in CP (IB) No. 106/MB/2022. By the said impugned order, the Adjudicating Authority has dismissed I.A No.

1674 of 2024 filed by the Appellant - Amisha In Sky Creation Pvt. Ltd. ('**Amisha**' in short) and rejected the claim filed by them, aggrieved by which order rejecting their claim, Company Appeal No. 578 of 2025 has been preferred by Amisha. The other appeal vide Company Appeal No. 640 of 2025 has been preferred by Resolution Professional ('**RP**' in short) challenging the impugned order for according the status of secured financial creditor to Amisha.

2. Coming to the salient facts of the case which are relevant to be noticed for consideration of both the appeals at hand, it is noted that the Corporate Debtor – M/s Setubandhan Infrastructure Ltd. (formerly known as “Prakash Constrowell Ltd”) was admitted into the Corporate Insolvency Resolution Process ('**CIRP**' in short). The Corporate Debtor before being admitted into the CIRP had obtained loan facility from State Bank of India ('**SBI**' in short) and for this purpose approached Amisha for mortgaging its properties in favour of the Corporate Debtor with the SBI. On 02.06.2016, the Board of Amisha had authorised Mr. Vishal Mukesh Ahuja, erstwhile Director of Amisha to negotiate and sign a Deed of Agreement with the Corporate Debtor for advancing a loan by way of mortgage of properties with SBI. On 09.08.2016, a notarised Deed of Agreement was executed between Amisha and the Corporate Debtor by which agreement, the Corporate Debtor had agreed to repay the loan to SBI within three years and have the mortgage property of the Amisha released back to them. On 28.03.2017, Amisha had signed a corporate guarantee with SBI mortgaging its properties in favour of the Corporate Debtor and deposited the title deed of the property with the Financial Creditor to secure the loan availed by the Corporate Debtor. In

March 2018, Amisha had informed the Corporate Debtor exercising its right to withdraw the properties mortgaged in favour of the Corporate Debtor following which the Corporate Debtor had addressed a letter on 14.03.2018 to SBI for releasing the property to Amisha. However, no release of the property actually took place. Amisha had again requested the Corporate Debtor to get the properties released from SBI in March, 2019. Eventually, on expiration of the Deed of Agreement, Amisha again addressed a letter on 18.08.2019 calling upon the Corporate Debtor to abide by the terms of the above agreement. In response, the Corporate Debtor on 16.10.2019 denied and disputed the execution of the Deed of Agreement on the ground that the same was signed by a Director of the Corporate Debtor without any authority from the Board of Directors. Thereafter, the matter was not followed up further by Amisha in the seeking release of their property from the Corporate Debtor which subsequently was admitted into CIRP on 28.11.2022. On the appointment of IRP, claims were invited on 30.11.2022, basis which the Committee of Creditors (**CoC** in short) was constituted on 21.12.2022. Amisha filed its claim with the RP on 09.01.2023. The claim of Amisha was rejected by the RP on 18.05.2023. The resolution plan submitted by the Resolution Applicant was approved by the CoC on 26.12.2023. Amisha filed I.A No. 1674 of 2024 before the Adjudicating Authority on 08.04.2025 challenging the rejection of their claim as unsecured financial creditor by the RP. The Adjudicating Authority dismissed the I.A No. 1674 of 2024 on 04.03.2025. However, while dismissing I.A No. 1674 of 2024 and rejecting the claim of Amisha, the Adjudicating Authority reclassified Amisha as a secured financial creditor. Aggrieved by the impugned order, Amisha has preferred

CA(AT)(Ins) No. 578 of 2025 challenging the rejection of its claim while a cross appeal has been filed by the RP vide CA(AT)(Ins) No. 640 of 2025 challenging the categorisation of Amisha as a secured financial creditor by the Adjudicating Authority.

3. Since, the facts in both the appeals are same, we propose to deal with both the appeals together and propose to apply our findings after outlining the common issues.

4. Making submissions on behalf of Amisha, Shri Rachit Mittal, Ld. Counsel submitted that the impugned order was not sustainable in the eyes of law as it dismissed I.A No. 1674 of 2024 on the ground of belated submission of claim in utter disregard of the fact that the RP had rejected the claim of Amisha not on the ground of delay but on merit. Submission was pressed that the RP had rejected the claim of Amisha by wrongly holding that they did not enjoy the status of a financial creditor. When Amisha had executed a Deed of Agreement with the Corporate Debtor which clearly provided for payment of interest @ 1.5 % per month by the Corporate Debtor to Amisha, this clearly showed that there was consideration of time value of money. It was also contended that since the loan was disbursed by the SBI to the Corporate Debtor on the strength of the security created by Amisha, this transaction amounted to be a disbursal and therefore fell within the purview of the term “financial debt” as figuring under Section 5(8) of the IBC. Furthermore, the agreement deed also provided for indemnification and compensation obligation in case of default by the Corporate Debtor which further substantiated the commercial effect of borrowing arising out of indemnities. In support of their contention, reliance was placed on the

judgment of Hon'ble Supreme Court in ***Pioneer Urban Land & Infrastructure Ltd. v. Union of India reported in (2019) 8 SCC 416*** to assert that the absence of direct disbursement of funds does not vitiate the status of Amisha as a financial creditor as Amisha had mortgaged its property to secure the debt of the Corporate Debtor. Hence, it was contended that Amisha qualified as a financial creditor within the meaning of Section 5(7) of the IBC. Submission was also pressed that mortgage constituted a "security interest" within the meaning of Section 3(30) and 3(31) of the IBC. It was therefore contended that it was rightly held by the Adjudicating Authority that Amisha was a secured financial creditor and cannot be treated as a third party and be excluded from the category of secured financial creditors as done by the RP. Since the security interest was fundamentally structured to facilitate a financial debt with time value of money, Amisha deserves to be treated as a secured financial creditor and its claim should be accepted by the RP as it was filed within 90 days of publication inviting claims without any delay. The rejection of claim by the RP was not only arbitrary but beyond the jurisdiction of the RP. It was vehemently contended that the RP had wrongly viewed their status not to be of a financial creditor since the RP is only empowered to collate and verify claims but cannot adjudicate on the status of the claimant.

5. Refuting the contentions made on behalf of Amisha, Shri Krishnendu Dutta, Ld. Sr. Counsel for the Respondent – RP submitted that the though the Adjudicating Authority had correctly rejected the claim of Amisha, it erroneously recategorized Amisha as a secured financial creditor at a time when no such plea or prayer to this effect had even been made by Amisha. Amisha had also not disbursed any funds to the Corporate Debtor which was

essential to fulfil the test of a financial creditor. On the interest component @ 1.5% per month which Amisha was purportedly entitled to receive from the Corporate Debtor on the money borrowed by the Corporate Debtor from SBI as per the Deed of Agreement, it was contended that this did not reflect consideration of time value for money or showed commercial effect of borrowing since Amisha had received certain post-dated cheques towards its payments for mortgaging its property, which cheques are in the nature of fees for lending its property. It was further submitted that the Corporate Debtor vide email dated 16.10.2019 had disputed the validity of the Agreement dated 09.08.2016 claiming that it was executed without proper board authority and not properly registered besides involving a related party under Section 5(24) of the IBC who was already in custody of post-dated cheques issued by the Corporate Debtor which clearly secured Amisha to the extent of its dues. It was also contended that the issuance of postdated cheques, which is a negotiable instrument, is only a promise to pay specified sum of money to a payee at a future date and does not create any mortgage, charge, hypothecation etc. on any property owned by the Corporate Debtor. Thus, the classification of transaction between Amisha and Corporate Debtor as secured financial debt on the basis of issuance of postdated cheque is erroneous. It was asserted that for Amisha to be recognised as a secured creditor, a security interest is required to be created by the Corporate Debtor in its favour through one of the modes specified under Section 3(31) of the IBC, however, no such security interest has been created in favour of the Corporate Debtor. Further, under Section 140 of the Indian Contract Act, 1872, a guarantor can step into the creditor's shoes only upon payment or performance of the guaranteed

debt. In the instant case, guarantee if any, was given by Amisha to SBI and not to the Corporate Debtor nor any payment has been made on behalf of the Corporate Debtor by Amisha. Thus, the guarantee, if any, does not create any right of Amisha against the Corporate Debtor in terms of the definition of a financial Debt as per the provisions of the IBC. Amisha as a guarantor never discharged its liability since no disbursement of debt to the Corporate Debtor ever took place. Notably, when Amisha had filed a claim form claiming to be an unsecured financial creditor and failed to place on record any documentary evidence or proof to substantiate their status of being a secured financial creditor, the Adjudicating Authority could not have accorded this status on their own volition to Amisha.

6. We have heard the Ld. Counsels for both parties and perused the records carefully.

7. Before we outline the issues for our consideration, we would like to take notice of the prayers of Amisha made in IA No. 1674 of 2024 which reads as under:

a) This Hon'ble Tribunal be pleased to admit the claim of the Applicant to the tune of INR 81,05,08,076 (Indian Rupees Eighty-One Crore Five Lacs Eight Thousand Seventy-Six Only) as a financial creditor, details of which are provided in the particulars of claim;

b) In the alternative to (a), this Hon'ble Tribunal be pleased to direct the Respondent No. 1 to admit the claim of the Applicant to the tune of INR 51,28,95,561 (Indian Rupees Fifty-One Crores Twenty-Eight Lakhs Ninety Five Thousand Five Hundred and Sixty-One Only), i.e. the Interest Amount as a financial creditor, details of which are provided in the particulars of claim;

c) This Hon'ble Tribunal be pleased to quash and set-aside all decision of the CoC since its formation, including resolution dated 26 December 2023,

under which the Resolution Plan in respect of the Corporate Debtor came to be approved;

d) This Hon'ble Tribunal be pleased to direct the Respondent No. 1 to form Committee of Creditors in respect of the Corporate Debtor, including Applicant as a financial creditor and only thereafter commence the process of Corporate Insolvency Resolution Process against the Corporate Debtor, including inviting proposals/ Resolution Plan;

e) Pending hearing and final disposal of the present application, this Hon'ble Tribunal be pleased to stay the IA No. IA(IBC)(Plan) -7 of 2024, filed by Respondent No. 1 seeking approval of the Resolution Plan in respect of Corporate Debtor;

f) Such other and further reliefs as this Hon'ble Tribunal be pleased to pass in the facts and circumstances of the present case.

8. At this stage, we may advert our attention to the prayers which had been filed by Amisha and the RP respectively in their respective appeals before this Tribunal which is as reproduced below. The prayers of Amisha in Company Appeal No. 578 of 2025 are as under:

“a) Set aside the order dated 04.03.2025, passed by the Hon'ble National Company Law Tribunal, Mumbai in I.A. No. 1674 of 2024 in Company Petition (IB) No. 106/MB/2022 to the extent of non admission of the claim of the Appellant being the Secured Financial Creditor;

b) Direct Respondent No. 01 to admit the claim of the Appellant to the tune of Rs. 81,05,08,075.61 (Rupees Eighty-One Crore Five Lacs Eight Thousand Seventy Five and Sixty One Paise Only) as a Secured Financial Creditor;

c) Pass any other order(s) which this Hon'ble Appellate Tribunal deems fit and proper as per the facts and circumstances of the case.”

9. The prayers of the RP in Company Appeal No. 640 of 2025 are as under:

“a) The Hon'ble Appellate Authority be pleased to allow the present Appeal and set aside the findings of the Ld. AA in Impugned Order dated 04.03.2025 categorizing the Respondent No 1 as Secured Financial Creditor and uphold the rejection of the claim;

b). pass any other order/direction in the facts and circumstances of the present appeal.”

10. When we look at the impugned order, we find that the Adjudicating Authority had outlined two interrelated issues for their consideration which was firstly, whether Amisha can be considered a secured financial creditor and secondly, whether their claim deserved to be admitted. When we look at the prayers contained in both the appeals filed before this Tribunal, we find that the above two issues delineated by the Adjudicating Authority also constitute the primary issues which need to be answered by us in both appeals.

11. It is the case of Amisha that the RP had rejected their claim without properly appreciating the Deed of Agreement of 2016 and the obligation arising therefrom. That Amisha had mortgaged its properties to enable the Corporate Debtor secure its loan facilities with SBI, that shows that there was disbursement of debt. The RP had failed in its duty to consider the interest component and compensation payable to Amisha by the Corporate Debtor in terms of the Deed of Agreement which clearly demonstrated the consideration of time value for money and the commercial effect of borrowing. It was also contended by Amisha that since Clause 9 of the Deed of Agreement provided that interest was payable by the Corporate Debtor to Amisha for use of their property to secure the loan amount from SBI, the Adjudicating Authority had correctly held that there was consideration for time value of money and hence, this amounted to be a financial debt in terms of Section 5(8) of the IBC. Since there was a return in the form of interest payments for allowing their property to be used, it demonstrated commercial effect of borrowing. Furthermore,

since the Corporate Debtor had agreed to indemnify Amisha against all losses and damages, this further substantiated the fact that Amisha was a secured financial creditor qua the Corporate Debtor in terms of Section 5(7) of the IBC.

12. Per contra, it is the contention of the RP that Amisha has not been able to show that it had disbursed any funds to the Corporate Debtor. Since no disbursement took place in the instant case, which is a mandatory requirement, the amount cannot be termed as a financial debt and, therefore, Amisha cannot be classified as financial creditor. The contention of Amisha that in this case, there was disbursement of money since there was disbursement in the form of property put into mortgage does not satisfy one of the essential ingredients of Section 5(8) of the IBC which is one of the prime requirements. It is also their case that the purported guarantee which was claimed to have been given by Amisha was clearly not to the Corporate Debtor but to SBI. Amisha had only mortgaged their property on behalf of the Corporate Debtor to secure their loan facility from SBI. In such circumstances, SBI clearly emerges to be the financial creditor and not Amisha.

13. For a proper appreciation of what constitutes financial debt, at this stage it may be proper to notice the relevant statutory provisions of IBC which is as reproduced below:

*“5(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—*

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian

Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on nonrecourse basis;

(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);]

g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution; (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;”

14. It would also be instructive to glance at one of the celebrated judgments of the Hon’ble Supreme Court as in **Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited Vs. Axis Bank Ltd. & Ors. (2020) 8 SCC 401** which has lucidly explained the concept of financial debt. This judgement has also been relied upon by the RP. In this judgment, the Hon’ble Apex Court while examining the definition of Financial Debt under Section 5(8) of the IBC emphasised that the essential elements of financial debt is disbursement against time-value of money as noticed in paras 46 and 47 of the said judgment which reads as follows:

“46. 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 purpose 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. It may include any of the methods for raising money or incurring liability by the modes prescribed in sub-clauses (a) to (f) of Section 5(8); it may also include any derivative transaction or counter-indemnity obligation as per sub-clauses (g) and (h) of Section 5(8); and it may also be the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h). The requirement of existence of a 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 sub-clauses (a) to (i) of Section 5(8), even if it is not necessarily stated therein. In any case, the definition, by its very frame, cannot be read so expansive, rather infinitely wide, that the root requirements of ‘disbursement’ against ‘the consideration for the time value of money’ could be forsaken in the manner that any transaction could stand alone to become a financial debt. In other words, any of the transactions stated in the said sub- 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. In yet other words, the essential element of disbursal, and that too against the consideration for time value of money, needs to be found in the genesis of any debt before it may be treated as ‘financial debt’ within the meaning of Section 5(8) of the Code. This debt may be of any nature but a part of it is always required to be carrying, or corresponding to, or at least having some traces of disbursal against consideration for the time value of money.”

47. As noticed, the root requirement for a creditor to become financial creditor for the purpose of Part II of the Code, there must be a financial debt which is owed to that person. He may be the principal creditor to whom the financial debt is owed or he may be an assignee in terms of extended meaning of this definition but, and nevertheless, the requirement of existence of a debt being owed is not forsaken.

(Emphasis supplied)

In the same vein, the RP has also adverted to another judgement of this Tribunal in **Ascot Realty Private Limited Vs. Ajay Kumar Agarwal and**

Others, CA(AT) (Ins) No. 658 of 2020 which also held in para 23 therein that for a debt to become ‘financial debt’ for the purpose of Part II of the IBC, the basic elements are that it ought to be a disbursal against the consideration for time value of money and that the root requirements of ‘disbursement’ against ‘the consideration for the time value of money’ cannot be forsaken.

15. Having taken cognizance of the statutory provisions of IBC and the landmark judgement of the Hon’ble Apex Court and the judgement of this Tribunal echoing the same, we can safely conclude that for any debt to be treated as financial debt, the pre-requisite is disbursal of money to the borrower for utilization by the borrower and that the disbursal must be against consideration for time value of money which need not necessarily be interest-bearing as has been opined by the Hon’ble Supreme Court in ***Orator Marketing (P) Ltd. Vs Samtex Desinz (P) Ltd. (2023) 3 SCC 753.***

16. Coming to the receipt of interest by Amisha in terms of the Deed of Agreement, there is no doubt that the relevant clauses of the said Deed entitled Amisha to receive interest from the Corporate Debtor @ 1.5 % per month on the amount of money borrowed by the Corporate Debtor from the SBI. When we look at the facts of the present case, it is an admitted fact that Amisha and the Corporate Debtor had entered into a Deed of Agreement on 09.08.2016 whereby Amisha had agreed to mortgage some of its properties in favour of SBI to enable the Corporate Debtor to avail finance from the SBI. Amisha had undisputedly mortgaged its property and had also received post-dated cheques towards payment of interest amount @ 1.5% per month to secure the mortgage transaction. However, these post-dated cheques, which were not claimed by Amisha to have been encashed, were at best only a

promise to pay a specified sum of money at a future date without creating any mortgage, charge, hypothecation on any property owned by the Corporate Debtor. Furthermore, Amisha had failed to enforce its security interest i.e. post-dated cheques in its possession and hence, the classification of this transaction as secured financial debt between Amisha and the Corporate Debtor on the basis of issued of post-dated cheques is misconceived.

17. Even when we look at the Guarantee Agreement of 28.03.2017 as placed at page 93 of the Appeal Paper Book ('**APB**' in short), we find that it has been signed between Amisha and SBI. We find the Guarantee Agreement clearly denotes that the parties to the Guarantee Agreement are Amisha and SBI without any mention of the Corporate Debtor. The guarantee had clearly been given by Amisha to the SBI and not to the Corporate Debtor. Furthermore, SBI had accepted the mortgaged properties as guarantee and had even proceeded to sell these assets under SARFAESI proceedings to secure its assets. When neither any payment or disbursal has been made to the Corporate Debtor by Amisha nor was the purported guarantee given by Amisha to the Corporate Debtor, Amisha cannot be seen to rightfully claim its status as a secured financial creditor qua the Corporate Debtor.

18. Clearly, present is not a case where there has been any disbursal of monies by Amisha to the Corporate Debtor. This is admittedly a case where there has been only a set of properties which have been allowed by Amisha to be used as collateral for credit disbursed by SBI to the Corporate Debtor. This mortgage of property cannot assume the character of disbursal of financial debt in terms of Section 5(8) of IBC. It may not be out of place to mention that the Hon'ble Supreme Court in ***New Okhla Industries Development***

Authority Vs. Anand Sonbhadra, (2023) 1 SCC 724 has categorically held that disbursement is an indispensable requirement to constitute a financial debt within the meaning of Section 5(8) and that disbursement must be from the creditor to debtor and therefore while considering the lease which was the subject matter therein it was held that there has been no disbursement of any debt (loan) or any sums by the lessor therein to the lessee. This ratio is also applicable in this case and hence mortgage of properties by Amisha does not meet the test of treatment as a financial debt in terms of Section 5(8) of the IBC. Having come to the above conclusion that the transaction in question of mortgage of properties by Amisha did not amount to be a financial debt in terms of Section 5(8) of the IBC and that Amisha cannot claim the status of a financial creditor in terms of Section 5(7) of the IBC, we therefore do not feel it necessary to go into the finding of the Adjudicating Authority as to whether the RP acted beyond his jurisdiction in going into the legal validity and correctness of Deed of Agreement and Guarantee Agreement in deciding on the non-admissibility of the claims filed by Amisha as a secured financial creditor.

19. Now that we have answered the first issue that Amisha cannot be considered a financial creditor, we come to the second issue framed by us as to whether the claim of Amisha deserved to have been admitted by the RP.

20. However, when we look at the impugned order, we find that the Adjudicating Authority after holding that the RP acted outside of his jurisdiction in rejecting the claim of the Amisha on the grounds of unregistered Deed of Agreement and insufficiency of stamp papers then

proceeded to hold that there was an unwarranted delay on part of the Amisha in filing their claims. It has been held that Amisha ought to have been more vigilant and approached the Adjudicating Authority immediately after the second rejection of its claim by the RP but having filed the present IA No 1674 of 2024 with an unjustifiable delay of nearly a year, the claim cannot be entertained by the Adjudicating Authority in terms of the judgement of the Hon'ble Supreme Court in ***RPS Infrastructure Ltd. V. Mukul Kumar & Anr. in Civil Appeal No. 5590 of 2021.***

21. At this stage, we need to notice how the RP had treated the claims of Amisha. From material available on record, it is clear that the RP had rejected the claim on two occasions viz on 17.01.2023 and 18.05.2023. The first time when the RP rejected the claim and communicated the same to Amisha, it had spelt out three reasons. The above email being self-explanatory, we take notice of the reasons cited therein. For easy reference, we would like to reproduce the email of 17.01.2023 as at page 149 of APB as under:

“We have gone through your claim documents and have the following observations –

- 1. Notarised Deed of Agreement between Amisha and Setubandhan has no mention of monetary consideration or exchange of money.*
- 2. No reference has been given in the said agreement to Annexure 2 which shows interest workings separately.*
- 3. From the documents submitted, it cannot be inferred that there exists financial debt.*

I am therefore not accepting your claim which you may kindly note.”

The second time when the RP rejected the claim on 18.05.2023, it has been noticed by the Adjudicating Authority that he had taken the stand that the claim was not admissible in view of the legal opinion provided by our legal

advisors which legal opinion according to the Adjudicating Authority has not been placed on record.

22. Now that we have noticed the grounds for rejection of the claim by the RP, we now proceed to look at the Claim Form which was submitted by Amisha which is as reproduced hereunder:

FORM C

SUBMISSION OF CLAIM BY FINANCIAL CREDITORS

Date - 09/01/2023

Subject: Submission of claim and proof of claim.

Madam/ Sir,

I, Amisha In Sky Creation Pvt. Ltd., hereby submits this claim in respect of the corporate insolvency resolution process of Setubandhan Infrastructure Limited (formerly known as Prakash Constrowell Limited). The details for the same are set out below:

<i>Relevant Particulars</i>		
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>7.</i>	<i>Details of how and when debt incurred</i>	<i>Setubandhan Infrastructure Limited (formerly known as Prakash Constrowell Limited) having CIN:L45200MH1996PLC095941 was seeking finance (Loan Against Property) from its bank- State Bank of India, Satpur Industrial Branch Nasik (M.II.). For the same, Setubandhan Infrastructure Limited <u>approached us for mortgage our property to raise money from the said bank.</u></i> <i><u>For mortgage in favour of the Setubandhan Infrastructure Limited in State Bank of India we provided our land, Plot No. A21 to A38, A43 to A42, A61 to A62, A82 to A87, A100 to A101</u></i>

		<u>Total Area 16223 Sq. Mt. Sector 4. Kamal Vihar, Raipur Chhattisgarh, and thereafter Setubandhan Infrastructure Limited will get the finance amount from the said bank.</u> <u>As per the Notarised Deed of Agreement dated 09.08.2016, Setubandhan Infrastructure Limited will repay the amount along with interest to the bank within three years and release the aforesaid property from the bank and handover it to us, For the said advance, Setubandhan Infrastructure Limited agrees that it will separately pay 1.5 percent interest per month/ 18 percent yearly interest to the AMISHA IN SKY CREATION PVT. LTD. on the borrowed money from the date of advance which he receives from the bank till the repayment thereof by the Setubandhan Infrastructure Limited to the bank.</u> <u>Further, according to the executed agreement Setubandhan Infrastructure Limited is liable for the interest as well as for appreciation value of our property towards damages and compensation.</u> <u>Both the parties gave their consent to the above terms and conditions and entered into an agreement. The detailed notarised agreement dated 09.08.2016 is enclosed in "Annexure-1".</u>
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(Emphasis supplied)

23. From the above Claim Form C, we find that Amisha had filed its claim as an unsecured financial creditor. Furthermore, the claim in the Claim Form is also predicated on the Deed of Agreement and not on the Guarantee Agreement. There is no mention of any security interest having been created. We have already extracted I.A No. 1674 of 2024 filed by Amisha in the foregoing paragraph 7 above wherein Amisha has on its own depicted its status as that of a financial creditor and not of a secured financial creditor while seeking admission of its claim.

24. It is therefore clear from all angles that Amisha had never claimed the status of secured financial creditor but the Adjudicating Authority on its own has held them to be a secured financial creditor. And it is only at the stage of filing appeal before this Tribunal that now Amisha has contended for the first time that it was a secured financial creditor. We have already dealt with this aspect and come to the conclusion for reasons already elaborated as to why this transaction did not amount to be a financial debt in terms of Section 5(8) of the IBC and that Amisha cannot claim the status of a secured financial creditor. We have therefore no hesitation in holding that the impugned order suffers from grave infirmity in holding Amisha to be a secured financial creditor.

25. But while we have already come to the considered opinion that Amisha does not qualify to be treated as a secured financial creditor, we also cannot lose sight of the fact that in pursuance of the Deed of Agreement, Amisha had mortgaged its properties to secure the loan of the Corporate Debtor and in return was to receive interest @1.5% per month. Furthermore, in this case

the Corporate Debtor had already provided cheques to Amisha to secure their debt as is evident from Clause 7 of the Deed of Agreement as placed at page 77 of APB. We are therefore of the considered view that Amisha was entitled to this amount, and basis this, Amisha was entitled to file their claim but in the category of “other creditors”. On the denial made by the Corporate Debtor with regard to the execution of Deed of Agreement, we are of the view that the Corporate Debtor having once acted upon the terms of the Deed of Agreement deed and secured the loan facility on the strength of the property of the Amisha, it could not have repudiated the existence of the agreement deed thereafter. The Corporate Debtor having executed the Deed of Agreement and also accepted the mortgage of properties basis which they secured the financial facilities from the SBI, the Corporate Debtor cannot be seen to now question the validity of the Deed of Agreement. This would tantamount to be a case of approbation and reprobation by the Corporate Debtor which is impermissible and does not meet our countenance.

26. This brings us to the question as to whether the Adjudicating Authority could have rejected the claim of Amisha on grounds of of delay in filing their claim. We find that the RP had invited claims by publication of Form A on 30.11.2022. The last date for submission of claims was 12.12.2022. Amisha had filed its claim with the RP on 09.01.2023. Thus, the claim had been filed by Amisha within 90 days from the date of invitation of claims and cannot be said to have caused any delay.

27. We further notice that the claim of Amisha was rejected by the RP on 17.01.2023 for the first time. The ground of rejection was definitely not

premised on delay as has already been noticed in the preceding paragraphs. Amisha has claimed that it was in regular touch with the RP even after the first rejection through a series of correspondence for consideration of their claim. The RP however rejected their claim for the second time on 18.05.2023 which reasons are not available on record but ostensibly not on grounds of delay. However, the Adjudicating Authority has held that since the CoC had approved the Resolution Plan on 26.12.2023 and the present IA No1674 of 2024 for admission of claims was filed by the Applicant on 08.04.2024, there was laxity on the part of Amisha in filing their claim. Hence on this perceived ground of delay, the Adjudicating Authority after adverting to the ratio of the judgement of the Hon'ble Apex Court in ***RPS Infrastructure judgement supra*** has ordered rejection of the claims.

28. We have no quarrels with the proposition of law laid down by judgement of the Hon'ble Apex Court in ***RPS Infrastructure judgement supra*** that claims may not be accepted after the plan is approved by the CoC to avoid unleashing of hydra-headed monster of undecided claims on the resolution applicant. But this is not a case where the claim was filed belatedly. Claim was filed by Amisha within 90 days from the date of invitation of claims. Thereafter the rejection of the claim in the first question was being pursued in serious earnest. Thus, there was no overt delay in filing claims for the first time and even the delay, if any, in the challenge to the first-time rejection before the RP was neither intentional nor deliberate. Moreover, the facts of this case are distinguishable from the facts of the ***RPS Infrastructure*** matter as in this case the claims had been filed in time within 90 days for the first

time and the second time too, the file was claimed much before the approval of the plan by the CoC. IBC is a beneficial legislation intended to inter-alia secure equitable treatment of all stakeholders and hence, the substantive rights of Amisha cannot be defeated on procedural grounds of delay in filing of claims when there was actually no such delay. We are therefore of the considered view that the claim of Amisha could not have been rejected by the Adjudicating Authority on grounds of delay. The impugned order cannot be sustained on this count also.

29. Given the above backdrop and aforesaid discussion, we set aside the impugned order. We further dispose of both the appeals in the following manner:

(i) We find no merit in the prayers contained in Company Appeal 578 of 2025. This Appeal stands dismissed.

(ii) We partially allow the prayers contained in Company Appeal 640 of 2025 and set aside the finding contained in the impugned order categorising Amisha as a secured financial creditor. However, we do not find any merit in the prayer of the RP to uphold the impugned order insofar as it ordered rejection of the claim of Amisha.

(iii) We direct that the claim of Amisha may be allowed by the RP after categorising their status as 'other creditor'. In case the plan does not provide for distribution of proceeds to 'other creditors', no further action is required to be taken by the RP. However, in case the resolution plan provides for treatment of claims for 'other creditors', the RP may place before the CoC an addendum to the plan incorporating the claims of Amisha in this category for

its consideration and if approved by the CoC may place the same before the Adjudicating Authority.

(iv) Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date : 12.05.2026.
Sheetal