NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

1. IA/4596/2024 C.P. (IB)/380(MB)2021

IN THE MATTER OF

SBICAP Trustee Company Limited
VS
Radius Estate Projects Private Limited

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

Order Delivered on 26.11.2026

CORAM:
SH. NILESH SHARMA
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:
For the Applicant: Adv. Ms. Atiksha Jain i/by HN Legal (VC)

For the Respondent/RP: Adv. Mr. Yash Jariwala a/w Adv. Mr. Amir Arsiwala (VC)

ORDER

IA/4596/2024: - The above IA/4596/2024 is listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

Sd/-
NILESH SHARMA
Member (Judicial)

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

//*Zakir*//

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - V

I.A. 4596/2024

IN

C.P. NO. 380(IB)/MB/2021

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the NCLT Rules, 2016.

Suraksha Realty Limited
Having its registered address at:
3, Narayan Building, 23, L.N. Road, Dadar East, Mumbai - 400 014.
Email: harsh@hnlegal.co.in
Contact: 9167511895

... Applicant

Versus

Vithal M. Dahake
Resolution Professional of Radius Estate Projects Private Limited
Having address at:
Incorp Restructuring Services LLP, 405-407, Hind Rajasthan Building, D.S. Phalke Road, Dadar East, Mumbai - 400 014,
and also, at,
Flat No. 2C/22, Bella Building, C Wing, Aditya Garden City Phase 1, Near RMD Sinhgad College, Warje, Pune, Maharashtra - 411 058.
Email: cirp.reppl@gmail.com

... Respondent / Resolution Professional

IN THE MATTER OF:

SBI CAP Trustee Company Limited

... Petitioner

Versus

Radius Estate Projects Private Limited

... Corporate Debtor

Order Pronounced on: 26.11.2026

Coram:

Nilesh Sharma — Member (Judicial)

Charanjeet Singh Gulati — Member (Technical)

Appearances:

For Applicant: Adv. Harsh Behany, Advocate a/w Parth Darji, Adv. i/b HN legal (VC)

For Respondent: Adv. Lovely Singh i/b Adv. Yash Jariwala (PH)

ORDER

1. The present Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") read with Rule 11 of the National Company Law Tribunal Rules, 2016 ("**NCLT Rules**") with following prayers:

   a) *That this Hon'ble Tribunal may pass an order thereby allowing this present Interlocutory Application;*

   b) *That this Hon'ble Tribunal be pleased to pass an order thereby setting aside the decision of the Respondent as contained in the email dated 22nd December 2023, whereby the Respondent had admitted the claim of the Applicant to the tune of Rs. 1,02,05,26,027/- (Rupees One Hundred and Two Crores Five Lakhs Twenty-Six Thousand and Twenty-Seven Only) as unsecured and had rejected the balance claim amount of Rs. 3,28,02,73,973/- (Rupees Three Hundred and Twenty-Eight Crores Two Lakhs Seventy-Three Thousand Nine Hundred and Seventy-Three Only);*

c) *That this Hon'ble Tribunal be pleased to pass to an order thereby directing the Respondent to admit the entire claim of the Applicant being a sum of Rs. 4,30,08,00,000/- (Rupees Four Hundred and Thirty Crores and Eight Lakhs Only) as secured, more particularly set-out in its Claim dated 28th October 2021;*

d) *That this Hon'ble Tribunal be pleased to pass an order thereby directing the Respondent to reclassify the Applicant as a Secured Financial Creditor in the Committee of Creditors of the Corporate Debtor;*

e) *That this Hon'ble Tribunal be pleased to pass an order thereby declaring that the transaction entered into between the Applicant and the Corporate Debtor is not preferential in terms of Section 43 of the Code;*

f) *That pending the hearing and final disposal of the present Interlocutory Application, this Hon'ble Tribunal be pleased to pass an order thereby directing the Respondent to maintain status qua with respect to the corporate insolvency resolution process of the Corporate Debtor;*

g) *That pending the hearing and final disposal of the present Interlocutory Application, this Hon'ble Tribunal be pleased to pass an order thereby directing the Respondent to not to proceed further with the corporate insolvency resolution process of the Corporate Debtor;*

h) *For ad-interim / interim reliefs in terms of prayer clause (a) to (g);*

i) *For costs; and*

j) *Pass any order that this Hon'ble Tribunal may deem fit in the matter.*

2. **Brief and relevant facts as per the Application:**

2.1 The Applicant submits that it is a Financial Creditor of the Corporate Debtor and had subscribed to 225 Redeemable 18% Secured Non-Convertible Debentures ("NCDs"), each having a face value of

Rs.50,00,000/-, aggregating to Rs.112.50 Crores, pursuant to the Debenture Subscription Agreement dated 18.12.2014 ("DSA"). The financial assistance was extended in connection with the "Avenue 54" Project at Willingdon Catholic Colony, Village Bandra, Mumbai Suburban District, being jointly developed by the Corporate Debtor and Sumer Buildcorp Private Limited ("Sumer"). According to the Applicant, the DSA contemplated security by way of a first charge over approximately 50,000 sq. ft. saleable area forming part of the Corporate Debtor's entitlement in the Project.

2.2 The Applicant submits that the registered Deed of Mortgage dated 29.07.2021 created a second charge over the identified units forming part of the Corporate Debtor's entitlement in the Project, subject to the existing first charge of Yes Bank Limited, with provision for its upgrade upon satisfaction of the Yes Bank facilities. The Applicant further submits that the delay between the DSA dated 18.12.2014 and the Deed of Mortgage dated 29.07.2021 was attributable to the Corporate Debtor and arose on account of the subsequent financial facilities availed by it, including those from Yes Bank Limited. It is contended that the difference between the approximately 50,000 sq. ft. saleable area contemplated under the DSA and the 61,803 sq. ft. carpet area covered by the Deed of Mortgage does not affect its entitlement.

2.3 The Applicant submits that the Company Petition filed against the Corporate Debtor was admitted on 06.09.2021 and CIRP commenced, whereupon the Respondent was appointed as Interim Resolution Professional and subsequently confirmed as Resolution Professional. Pursuant to the public announcement, the Applicant submitted its claim in Form C dated 28.10.2021 for Rs.430,08,00,000/-. By email dated 01.12.2021, the Respondent provisionally admitted Rs.98,35,38,914/- as secured, comprising Rs.13.50 Crores towards principal and Rs.84,85,38,914/- towards interest, while keeping the balance amount of Rs.331,72,61,086/- under verification.

2.4 The Applicant submits that, after the CIRP recommenced in January 2023, it was inducted into the CoC as a Secured Financial Creditor with 3.74% voting rights. The Respondent thereafter revised the treatment of the claim. By email dated 05.12.2023, the Respondent stated that Rs.69,56,87,681/- could be partially admitted. Thereafter, by email dated 22.12.2023, the Respondent admitted Rs.1,02,05,26,027/- as unsecured and rejected the balance claim of Rs.3,28,02,73,973/-.

2.5 The Applicant disputed the aforesaid treatment by letter dated 18.01.2024 and requested re-verification of its claim and restoration of its status as a Secured Financial Creditor. It submits that, in the 13th CoC meeting held on 16.02.2024, the Respondent informed the members that the Transactional Audit Report had been finalised and that an avoidance application was being preferred. The Applicant, by letter dated 17.02.2024, requested that the DSA, the Deed of Mortgage and the circumstances surrounding the transaction be considered. The Transaction Audit Report was thereafter finalised on 26.03.2024, and an avoidance application was filed before this Tribunal.

2.6 The Applicant submits that, having initially recognised it as a Secured Financial Creditor and included it in the CoC, the Respondent could not subsequently alter its classification. Reliance is placed upon the decision of the Hon'ble NCLAT in *Union Bank of India v. M/s. Rajdeep Clothing & Advisory Pvt. Ltd., 2022 ibclaw.in 1019 NCLAT*.

2.7 With regard to the allegation of preferential transaction, the Applicant submits that the transaction originated with the DSA dated 18.12.2014, pursuant to which Rs.112.50 Crores had been advanced against subscription to the NCDs and security had been contemplated over the Project. It is submitted that the Deed of Mortgage dated 29.07.2021 was executed in furtherance of the DSA and ought not to be viewed in isolation for determining whether the transaction falls within the look-back period under Section 43 of the Code.

2.8 The Applicant submits that the Transaction Audit Report was indicative in nature and ought not to constitute the sole basis for treating the transaction as preferential. Accordingly, the Applicant seeks, inter alia, setting aside of the rejection of its claim, admission of the entire claim as a secured claim, and restoration of its status as a Secured Financial Creditor.

3. Based on the oral arguments advanced, the Applicant has filed its written submissions, wherein, inter alia, it has stated as under:

3.1 That the amount of Rs.3,28,02,73,973/- forming part of the rejected claim represents the value attributable to 225 Detachable Warrants attached to the NCDs. Each such warrant carried a right to acquire 445 sq. ft. of saleable area in the Project, aggregating to 1,00,125 sq. ft. of saleable area. The Applicant submits that the said entitlement formed part of the contractual arrangement under the DSA.

3.2 That the Respondent's contention that the Detachable Warrants could not be invoked during the moratorium is misconceived. Reliance is placed upon the decision of this Tribunal in *IDBI Bank Limited & Ors. v. Mr. Mohan Lal Jain, Resolution Professional for M/s. KSS Petron Private Limited*, and the judgment of the Hon'ble Supreme Court in *China Development Bank v. Doha Bank Q.P.S.C. & Ors., 2024 INSC 029*, to contend that a claim is not rendered inadmissible merely because the right giving rise to the claim was unmatured or had not been enforced before commencement of CIRP.

3.3 That non-invocation of the Detachable Warrants before commencement of CIRP does not, by itself, render the corresponding claim inadmissible, as the entitlement under the warrants constitutes a contractual right arising from the DSA, which cannot be treated as extinguished merely by the passage of time, particularly when the obligations of the Corporate Debtor remained outstanding.

3.4 Accordingly, the Applicant seeks setting aside of the rejection of Rs.3,28,02,73,973/-, or, in the alternative, liberty to withdraw the

present Application to the extent of the claim relating to the Detachable Warrants and pursue appropriate remedies in respect thereof, without such withdrawal operating as an adjudication on the merits of the said claim

4. **Reply filed by the Respondent:**

4.1 The Respondent submits that the Applicant's claim of Rs. 430,08,00,000/- is founded principally upon the DSA dated 18.12.2014 and the subsequent Deed of Mortgage dated 29.07.2021, and that he has dealt with the Applicant's claim in accordance with the Code, applicable provisions, and the documents furnished by the Applicant, including the Transaction Audit Report.

4.2 The Respondent disputes the existence of a valid and perfected security interest in favour of the Applicant. It is submitted that the Deed of Mortgage created only a second charge subordinate to the first charge of Yes Bank Limited, which remained unsatisfied, and that the condition for upgrading the second charge to a first charge was never fulfilled. It is submitted that verification of the validity and enforceability of the security interest under Regulation 13, does not amount to adjudication. Relying upon *Swiss Ribbons Pvt. Ltd. v. Union of India, Kotak Mahindra Bank Ltd. v. A.P. Enterprises Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 146 of 2021*, and the decisions of this Tribunal in *Union Bank of India v. Era Infra Engineering Ltd. and Bank of Baroda v. Binani Cement Ltd.*, it is stated that the initial classification of a claim may be revised upon further scrutiny and receipt of material.

4.3 With regard to the quantum, the Respondent submits that, according to the records of the Corporate Debtor, Rs.112.50 Crores had been received from the Applicant, out of which Rs.99.50 Crores had already been paid. Accordingly, the Respondent admitted the principal amount of Rs.13.50 Crores along with interest, while disputing the balance amount. With regard to the disputed balance, the Respondent submits

that the Applicant has failed to provide any rationale or computation in support of the exaggerated claim, has not furnished any credible documentation to substantiate the claimed amount, and has rendered no justification for the amount claimed.

4.4 The Respondent submits that M/s Bagchi & Gupta, Chartered Accountants, was appointed as an independent Transaction Auditor and that its report dated 26.03.2024 identified the transaction concerning the Applicant as a preferential transaction under Section 43 of the Code, as the Mortgage Deed dated 29.07.2021 was executed within the applicable look-back period and altered the Applicant's position vis-à-vis other creditors. Upon receipt of the report and consideration of the material furnished by the Applicant, the Respondent reclassified the Applicant's claim from secured to unsecured and rejected the balance claim in discharge of his statutory duties under Section 25(2) of the Code and the applicable Regulations. It is further submitted that an Avoidance Application under Section 43 of the Code was filed before this Tribunal in respect of the transaction

4.5 The Respondent submits that the delay between the DSA dated 18.12.2014 and the Deed of Mortgage dated 29.07.2021 has not been satisfactorily explained and that the alleged security arrangement did not result in a valid security interest capable of being recognised against the assets of the Corporate Debtor.

4.6 In view of the above submissions, the Respondent submits that there is no basis to direct reclassification of the Applicant as a Secured Financial Creditor or admission of the entire claim as secured, and seeks dismissal of the present Application.

5. Based on the oral arguments advanced, the Respondent has filed its written submissions, wherein, inter alia, it has stated as under:

5.1 That subsequent to the filing of the present Application, the controversy relating to the Applicant's secured status and the preferential nature of the Deed of Mortgage has been adjudicated upon. This Tribunal, vide

order dated 10.10.2025 passed in I.A. No.4504/2024, held the Deed of Mortgage dated 29.07.2021 to be a preferential transaction under Section 43 of the Code and directed release of the security. The Applicant's appeal against the said order was dismissed by the Hon'ble NCLAT on 19.05.2026 in Company Appeal (AT) (Insolvency) No.1754 of 2025. The Respondent therefore submits that, in the absence of any stay of the said findings, the Applicant cannot re-agitate the issue of its secured status or seek a declaration that the transaction was not preferential.

5.2 That, in view of the aforesaid subsequent adjudication, the controversy in the present Application has narrowed to the amount of Rs.3,28,02,73,973/- attributed by the Applicant to the Detachable Warrants. It is submitted that the Applicant has accepted the admission of Rs.1,02,05,26,027/- and seeks to pursue the warrant component separately.

5.3 That the amount attributed to the Detachable Warrants was neither separately quantified nor supported by any valuation or computation as on the insolvency commencement date. It is submitted that Form C dated 28.10.2021 merely stated the aggregate claim of Rs.430.08 Crores and did not furnish any separate computation or valuation of the Detachable Warrants.

5.4 That a Detachable Warrant merely confers an option or contractual right to purchase the specified area at the stipulated price and does not itself constitute a debt payable by the Corporate Debtor. According to the Respondent, in the absence of valid exercise followed by non-performance, the warrant does not confer an independent right to receive money and therefore cannot constitute a "claim" under Section 3(6) or a "financial debt" under Section 5(8) of the Code.

5.5 That the Applicant's alleged valuation of the Detachable Warrants proceeds on the basis of the value of the underlying property, although the Applicant would have been required to pay the stipulated

consideration upon exercise of the warrants. It is therefore submitted that the notional value attributed to the underlying property cannot be treated as an amount due and payable by the Corporate Debtor.

5.6 That, even assuming that a claim for damages could arise in respect of non-performance of the contractual right, such claim would arise only upon valid exercise of the warrant followed by failure on the part of the Corporate Debtor to perform the corresponding obligation. According to the Respondent, no such exercise had taken place before commencement of the CIRP.

5.7 That the right to exercise the Detachable Warrants was contractually limited by Clause 5.4 of Schedule 3 to the DSA. It is submitted that the NCD tenure was 37 months and that the right to exercise the warrants was available only after expiry of the NCD tenure and before expiry of 42 months from the date of issue of the Debentures/Warrants. According to the Respondent, the contractual exercise period had expired by 2018 or, at the latest, by January 2019.

5.8 That the Applicant's first notice purporting to exercise the Detachable Warrants was issued only on 19.11.2023, followed by communication dated 08.12.2023 seeking allotment of the area covered by the warrants and its blocking in the Information Memorandum. The Respondent disputes the Applicant's contention that the exercise period continued merely because the NCDs remained unpaid.

5.9 That the Applicant cannot simultaneously treat the Detachable Warrants as having monetary value for the purposes of its claim and seek to retain the right to acquire the underlying property. The Respondent therefore opposes the Applicant's request for liberty to pursue the Detachable Warrants separately.

5.10 The Respondent opposes the Applicant's request for liberty to pursue the Detachable Warrants separately, contending that the warrant component formed part of the claim rejected by the decision dated

22.12.2023 and that permitting such liberty would expose the CIRP to a subsequent claim in respect of the same entitlement.

5.11 The Respondent accordingly submits that the present Application be dismissed and admission of Rs.1,02,05,26,027/- as an unsecured Financial Creditor and rejection of Rs.3,28,02,73,973/- be maintained.

6. **Analysis and Findings**

6.1 We have heard the Ld. Counsels for the parties and perused the documents placed on record.

6.2 The Applicant, claiming to be a Financial Creditor holding 225 Redeemable 18% Secured NCDs of Rs. 112.50 Crores subscribed under the DSA dated 18.12.2014, has challenged the decision of the Respondent communicated by email dated 22.12.2023. By that decision, the Respondent admitted Rs. 1,02,05,26,027/- as an unsecured financial debt and rejected the balance of Rs. 3,28,02,73,973/- out of the claim of Rs. 4,30,08,00,000/- lodged in Form C dated 28.10.2021. The Applicant seeks (i) declaration of its status as a Secured Financial Creditor, (ii) admission of the entire claim as secured, and (iii) a declaration that the Deed of Mortgage dated 29.07.2021 is not a preferential transaction under Section 43 of the Code. By its written submissions, the Applicant contends that the rejected amount represents the value of 225 Detachable Warrants attached to the NCDs and, in the alternative, seeks liberty to withdraw the Application to that extent and pursue appropriate remedies, without such withdrawal operating as an adjudication on merits.

6.3 Per contra, the Respondent submits that the Applicant's claim was duly verified in accordance with the Code and the applicable Regulations. The Respondent disputes the validity and perfection of the alleged security interest, the ownership of the mortgaged properties, and the quantum of the claim. It is further submitted that the Deed of Mortgage dated 29.07.2021 was held to constitute a preferential transaction under Section 43 of the Code, which finding was upheld by the Hon'ble

NCLAT on 19.05.2026. As regards the Detachable Warrants, the Respondent contends that the amount claimed was neither separately quantified nor substantiated, the contractual exercise period had expired, and exercise during the moratorium would contravene Section 14(1)(b) of the Code.

6.4 Before proceeding to adjudication of the dispute, it is important to note that by order dated 10.10.2025 in I.A. No. 4504/2024, this Tribunal has already considered the validity of the Deed of Mortgage dated 29.07.2021 and held the same to be a preferential transaction under Section 43 of the Code. The said order was challenged by the Applicant in Company Appeal (AT) (Insolvency) No. 1754 of 2025, which came to be dismissed by the Hon'ble NCLAT on 19.05.2026. The Applicant has not shown any stay of, or any order setting aside, the aforesaid orders. The Applicant was a party to I.A. No. 4504/2024. The questions whether the Deed of Mortgage created a valid security and whether it was a preferential transaction were therefore directly in issue and have already been decided against the Applicant. The arguments the Applicant raises here, namely that the Deed merely perfected the security contemplated under the DSA, that the Secured Units were carved out in 2018, and that the 2021 execution must not be viewed in isolation for the look-back period, are the same arguments on which it has already been heard. This Tribunal cannot, in the present proceedings, re-examine or take a contrary view on an issue which has already been adjudicated upon and the decision thereon has been affirmed by the Hon'ble NCLAT.

6.5 Accordingly, **prayer (e)**, which seeks a declaration that the Deed of Mortgage dated 29.07.2021 was not a preferential transaction under Section 43 of the Code, cannot be granted. The issue having already been adjudicated upon by this Tribunal and affirmed by the Hon'ble NCLAT, the said prayer is **rejected**.

6.6 As regards **prayer (d)**, seeking reclassification of the Applicant as a Secured Financial Creditor in the CoC, the same also **cannot be**

granted. Once the Deed of Mortgage dated 29.07.2021 has already been held to be a preferential transaction under Section 43 of the Code and the said finding has been affirmed by the Hon'ble NCLAT, the Applicant cannot, in the present proceedings, seek recognition of the security interest arising from the said Deed. The Applicant therefore cannot be directed to be reclassified as a Secured Financial Creditor on the basis of the very security which has already been held to be preferential and directed to be released. Accordingly, **prayer (d)** is also **rejected**.

6.7 We now proceed to consider the Applicant's challenge to the rejection of Rs.3,28,02,73,973/-, which, according to the Applicant, represents the value attributable to 225 Detachable Warrants attached to the NCDs. The relevant extract of the DSA dated 18.12.2014 is as under:

> *"H. Each Detachable Warrant attached to each NCD will carry right to purchase 445 sq. ft. fully constructed saleable area with amenities in the Issuer' Entitlement in the Project at a price of Rs. 10,000/- per sq. ft. saleable area aggregating to approx. 1,00,125 sq. ft. saleable area/ 130 sq. ft. of land area in the Issuer' Entitlement at a price of Rs. 33,000 per sq. ft. of land area aggregating to approx. 29,250 sq. ft. land area/ 300 sq. ft. FSI area in the Issuer' Entitlement at a price of Rs. 15,000 per sq. ft. per FSI area aggregating to approx. 67,500 sq. ft. FSI area ("Warrant Premises").*
>
> *In the event of failure of the Issuer to transfer the Warrant Premises on exercise of option rights available to the Investor under the Detachable Warrants in the manner set out herein, the Investor, holding 225 detachable warrants corresponding 225 debentures, shall become entitled to purchase 25% equity share capital of the issuer from the promoter. The right to become equity shareholder of the Issuer in the manner aforesaid is also attached to the Detachable Warrants.*
>
> *…*

5.4 Such right to acquire property can be exercised only after the expiry of terms of NCDs but before 42 months from the date of issue of Debentures/ Warrants."

6.8 From the aforesaid extract, it is clear that the Applicant's entitlement was a right to purchase/acquire a specified area of constructed space in the Project after the expiry of the terms of NCDs and before the expiry of 42 months from the date of issue of Debentures/Warrants. In the circumstances, it is also relevant to take note of relevant provisions of Section 3 of the Code, which are reproduced hereinbelow:

"3. In this Code, unless the context otherwise requires,—

…

*(6) "**claim**" means-*

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

…"

6.9 Section 3(6) of the Code defines "claim". Clause (a) thereof refers to a right to payment, while clause (b) includes a right to a remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment. In the present case, the contractual entitlement under the Detachable Warrants was, in the first instance, a right to acquire specified saleable area in the Project at the stipulated consideration. It was not, by itself, a right to receive payment from the Corporate Debtor. Therefore, Section 3(6)(a) of the Code is not attracted in the facts of the present case, as the issuance of the Detachable Warrants did not, by itself, give rise to a right to payment or create an

existing monetary liability payable by the Corporate Debtor to the Applicant.

6.10 As regards Section 3(6)(b) of the Code, had the Applicant exercised the right attached to the Detachable Warrants within the contractual period, it would have acquired the right to the specified saleable area, subject to payment of the stipulated consideration, and a failure thereof on the part of the Corporate Debtor to perform its corresponding obligation could have given rise to an appropriate remedy for breach. However, no such exercise took place within the stipulated contractual period. The contractual right was available only for the period expressly provided in Clause 5.4 of Schedule 3. Upon expiry of that period, the right to exercise the option lapsed by efflux of time. No waiver or novation of the exercise period has been shown or established. Consequently, at the relevant subsequent dates, there was no subsisting contractual right capable of being exercised so as to give rise to a right to payment under Section 3(6)(b).

6.11 The Applicant has relied upon the judgment of the Hon'ble Supreme Court in ***China Development Bank v. Doha Bank Q.P.S.C. & Ors., 2024 INSC 029***. This judgment does not carry the Applicant's case further. The said decision proceeded on the existence of an underlying liability to pay money. In the present case, the contractual entitlement under the Detachable Warrants was, in the first instance, an option to acquire property and not a right to payment of money. Before it can give rise to any right, the entitlement under the warrant must be validly exercised and the Corporate Debtor must then have failed to perform. The proposition that a claim is not rendered inadmissible merely because it is unmatured or not enforced before CIRP presupposes that there is an existing right to payment, and that is the very point on which the Applicant fails. Similarly, the reliance placed upon the order of this Tribunal in ***IDBI Bank Limited & Ors. v. Mr. Mohan Lal Jain, Resolution Professional for M/s. KSS Petron Private Limited*** is misplaced. The said proposition cannot assist the Applicant where the

underlying contractual right itself had ceased to be exercisable before commencement of CIRP.

6.12 We may now consider the Applicant's contention in the context of the contractual period prescribed for exercise of the Detachable Warrants. Clause 5.4 of Schedule 3 expressly provides that the right to acquire the property could be exercised only after expiry of the NCD term but before 42 months from the date of issue of the Debentures/Warrants. The Deemed Date of Allotment under the DSA is 19.12.2014, and the tenure of the NCDs is 37 months from that date under Clause 1.4 of Schedule 3. The NCD term therefore ended on 19.01.2018, and the outer limit of 42 months under Clause 5.4 expired on 19.06.2018. The contractual window for exercising the Warrants thus ran from about 19.01.2018 to 19.06.2018.

6.13 The Applicant's first notice purporting to exercise the Detachable Warrants was issued only on 19.11.2023, followed by the communication dated 08.12.2023 seeking allotment of the area covered by the warrants and its blocking in the Information Memorandum. Both communications were issued more than five years after expiry of the contractual exercise period and more than two years after commencement of the CIRP on 06.09.2021. No document demonstrating any waiver or novation of the contractual exercise period has been placed on record. The Applicant therefore had no subsisting contractual right to exercise the Detachable Warrants on the dates of the aforesaid communications.

6.14 Further, the Applicant's quantification of claim is not supported by any material. Form C dated 28.10.2021 stated only the aggregate figure of Rs. 4,30,08,00,000/- and did not separately quantify or value the Detachable Warrants. No valuation or computation of the claim attributable to the warrant component as on the insolvency commencement date was filed with the claim, and none was filed in the Application. The amount of Rs. 3,28,02,73,973/- is arrived at, on the Applicant's own case, by reference to the value of the underlying

1,00,125 sq. ft. of saleable area. On exercise of invocation of detachable warrant, however, the holder would have had to pay the stipulated consideration at the rate of Rs. 10,000/- per sq. ft., which in any case has not been done. The notional value of the underlying property is not an amount due and payable by the Corporate Debtor and cannot be admitted as a debt.

6.15 We now also consider the provisions of Section 5(7) and Section 5(8) of the Code. A "financial creditor" is a person to whom a financial debt is owed, and "financial debt" requires the existence of a debt along with the essential characteristics contemplated under Section 5(8). The Detachable Warrants, in the facts of the present case, merely conferred a contractual option to acquire specified property and did not, by themselves, create a separate monetary debt owed by the Corporate Debtor to the Applicant. In ***Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited, (2020) 8 SCC 401***, the Hon'ble Supreme Court, while examining the essential ingredients of a financial debt, held as under:

> *"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 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 counterindemnity 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."*
>
> *[**Bold for Emphasis**]*

6.16 From the aforesaid, it is noted that the requirement of existence of a debt disbursed against the consideration for the time value of money remains an essential requirement even in respect of the transactions/dealings stated in sub-clauses (a) to (i) of Section 5(8). In the present case, no separate debt arising from the Detachable Warrants having the essential characteristics of a financial debt has been established.

6.17 Independently, from 06.09.2021 the moratorium under Section 14 of the Code was in force. Section 14(1)(b) prohibits the transferring, encumbering, alienating or disposing of any of the assets of the Corporate Debtor. Allotment of 1,00,125 sq. ft. of saleable area to the

Applicant, or blocking of that area in the Information Memorandum as demanded in the notices dated 19.11.2023 and 08.12.2023, would amount to such a transfer or alienation. The Resolution Professional was therefore justified in declining to give effect to such a request made during the CIRP. The Applicant's argument that the moratorium does not extinguish the underlying right is correct as far as it goes, but it does not help the Applicant, particularly when the Applicant has failed to establish a subsisting right capable of being exercised on the relevant dates.

6.18 Further, verification under Regulation 13 does not amount to adjudication of disputed rights. The Respondent examined the documents furnished and rejected the warrant component. Upon examination of the material placed before us, we find no infirmity in the rejection of the amount of Rs.3,28,02,73,973/- attributable to the Detachable Warrants. In this regard, it is relevant to take note of the judgment of Hon'ble NCLAT (Principal Bench, New Delhi) in ***Somani Worsted Ltd. v. Amit Aggarwal RP of Celebration City Projects Pvt. Ltd., (2026) ibclaw.in 1008 NCLAT***, dated 01.09.2026, wherein it was held as under:

> *"51. Once the RP, during the process of verification, found that the Appellant had failed to establish an independent financial debt against the Corporate Debtor, he was justified in revisiting the earlier admission of the claim.* ***The RP is required to verify the genuineness of every claim on the basis of the material available on record and cannot mechanically continue an incorrect admission****.*
>
> *52. In this regard, we take note of Regulation 13 of CIRP Regulations, which is extracted below:*
>
> ***Regulation 13: Verification of claims****.*
>
> *13. (1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date,*

within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

53. ***It can be seen from the Regulation 13(1) that it is the responsibility of RP to regularly update the claims in respect of various creditors based on latest information available with him. Accordingly, we are of the view that the RP has rightly rejected the Appellant's claim upon verification, and the Adjudicating Authority rightly declined to interfere with the said finding of RP****.*

…

56. The Appellant has also relied upon ***Rajnish Jain v. Manoj Kumar Singh & Ors.*** *[(2020) ibclaw.in 409 NCLAT], Company Appeal (AT) (Ins.) No. 519 of 2020 and* ***Byju Raveendran v. Aditya Birla Finance Limited & Ors.*** *[(2025) ibclaw.in 610 NCLAT], Company Appeal (AT) (CH) (Ins.) No. 120 of 2025, to contend that the Resolution Professional had no jurisdiction to review an admitted claim. There is no dispute with the settled principle that a Resolution Professional does not exercise adjudicatory powers. However,* ***in the present case, the Resolution Professional did not adjudicate any disputed rights, but merely verified the claim on the basis of the material available on record and found that the Appellant had failed to establish an independent financial debt against the Corporate Debtor. The rejection of the claim was thus an exercise of the Resolution Professional's statutory duty of verification and updation of claims, and not an adjudication of rights****. Accordingly, the decisions relied*

upon by the Appellant are distinguishable on facts and do not apply to the present case."

[Bold for Emphasis]

6.19 The aforesaid judgment reiterates that the Resolution Professional is not required to mechanically continue an earlier admission of a claim where, upon verification of the material available on record, the claim is found to be unsupported or not established. Such exercise is in discharge of the statutory duty of verification and updation of claims under Regulation 13(1) of the CIRP Regulations, 2016, and does not, by itself, amount to adjudication of disputed rights. In view of the aforesaid, the reliance placed by the Applicant on *Union Bank of India v. M/s. Rajdeep Clothing & Advisory Pvt. Ltd.*, (2022) ibclaw.in 1019 NCLAT, to contend that the Respondent could not subsequently alter the classification of its claim, does not assist the Applicant in the facts of the present case. The rejection of the warrant component, having been undertaken upon verification of the material available on record, cannot be faulted on the ground that the claim had earlier been admitted.

6.20 The Applicant has, in the alternative, sought liberty to withdraw the Application to the extent of the Detachable Warrants and to pursue appropriate remedies separately, without the withdrawal operating as an adjudication on merits. Having considered the Applicant's claim on merits in the present proceedings and having found that no subsisting contractual right or admissible claim in respect of the Detachable Warrants has been established, such liberty cannot be granted.

7. In view of the facts and circumstances of the case and discussion hereinabove, **prayer (b)**, seeking to set aside the Respondent's decision communicated by email dated 22.12.2023, is **rejected**. **Prayer (c)**, seeking admission of the entire claim as secured, also cannot be granted, for the reasons recorded hereinabove, including rejection of the warrant component. **Prayers (f), (g) and (h)**, being interim/ad-interim reliefs pending final disposal of the Application, have become

infructuous. The remaining prayers, being consequential in nature, do not survive for consideration.

8. Accordingly, I.A. No. 4596 of 2024 is **dismissed** and **disposed of**.

Sd/-	**Sd/-**
Nilesh Sharma	**Charanjeet Singh Gulati**
Member (Judicial)	**Member (Technical)**

|Omkar, LRA|