



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-VI, NEW DELHI BENCH**

COMPANY PETITION IB (IBC) NO. 862/ND/2024

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

**SAINA GLOBAL INC.
THROUGH ITS AUTHORIZED REPRESENTATIVE
MR. GAURAV MAINI**

Office at: 11000, Bowen Road,
Rosewell, Georgia-30075

...Financial Creditor/ Applicant

Versus

**ARYAN HIGHER STUDY CONSULTANTS PVT. LTD.
THROUGH ITS DIRECTORS**

Registered Office at: J-5 / 52G, Rajouri Garden,
Tagore Garden, New Delhi -110027

...Corporate Debtor/ Respondent

Order Delivered on: 09.05.2025

CORAM:

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Applicant:

Mr. Vibhor Garg, Mr. Achin Mittal, Ms. Mohak Sharma, Mr. Aditya Parmar, Advs.

For the Respondent:



ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This is a Company Application filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity “the Code”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by **M/s Saina Global Inc.** through its Authorized Representative Mr. Gaurav Maini (hereinafter referred to as ‘Financial Creditor’), seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **M/s Aryan Higher Study Consultants Private Limited** (“Corporate Debtor”).
2. The Corporate Debtor was incorporated on 23.08.2011, having CIN: U74900DL2011PTC223950 under the Companies Act, 1956. Its registered office is at J-5/ 52G, Rajouri Garden, Tagore Garden, New Delhi-110027. Therefore, this Bench has jurisdiction to deal with this petition. The Authorized Share Capital of the Corporate Debtor is Rs. 1,00,00,000/- (Rupees One Crore Only). The Paid-Up Capital of the Corporate Debtor is Rs. 1,00,00,000/- (Rupees One Crore Only).
3. The present application was filed on 18.12.2024 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 1,59,53,112 (Rupees One Crore Fifty- Nine Lacs Fifty- Three Thousand One Hundred and Twelve), which includes a principal sum of Rs. 1,25,94,562/- (USD 1,50,000/- converted to INR, as per conversion rate on 09.10.2024) along with a sum of Rs. 33,58,550/- (USD 40,000/- converted to INR, as per conversion rate on 09.10.2024) i.e., the Accrued share of profit as on alleged date of default i.e. 19.01.2020.
4. The present application was reserved on the issue of maintainability vide Order dated 31.01.2025. Therefore, no notice was issued to the Corporate Debtor at this stage.

Submissions of Learned Counsel appearing for the Applicant are as under: -

5. The details of transactions leading to the filing of this petition as averred by the Financial Creditor/ Applicant is as follows:



- a) In the month of May 2019, the Corporate Debtor through Mr. Manish Pahwa and Ms. Aruna Pahwa approached the financial creditor for a borrowing of USD 1,50,000/- i.e., Rs. 1,25,94,562/-, for building the apartments in Malviya Nagar, New Delhi at the property bearing no. G-3/2, Malviya Nagar, New Delhi-110017.
- b) The Corporate Debtor gave an assurance to the Financial Creditor that the Corporate Debtor will earn a profit of USD 70- 80,000 by selling the said apartments and share the 50% (fifty) of the profit with the Financial Creditor.
- c) The Corporate Debtor promised to return the said borrowings within a period of 6-8 months to the Financial Creditor. Therefore, believing upon the assurances given by the Corporate Debtor, the Financial Creditor agreed to grant the borrowing of USD 1,50,000/- i.e., Rs. 1,25,94,562/- to the Corporate Debtor.
- d) On 18.05.2019 i.e. the Loan Date, the Financial Creditor transferred a sum of USD 1,50,000/- i.e., Rs. 1,25,94,562/- as per conversion rate on 09.10.2024 through WIRE in the bank account of the Corporate Debtor. However, the Corporate Debtor neither repaid the borrowing of USD 1,50,000/- i.e., Rs. 1,25,94,562/- nor paid the 50% (fifty) share of the profits accrued from the said borrowing, as promised.
- e) The Financial Creditor made several requests to the Corporate Debtor on multiple occasions to return the aforesaid borrowings, however, the Corporate Debtor had failed to make the aforesaid payment.
- f) On 09.10.2024, the Financial Creditor had also issued the legal notice to the Corporate Debtor for the repayment of the borrowings of USD 1,90,000/- and the reply to the same has been filed by the Corporate Debtor on 27.10.2024.

Analysis and Findings

6. We have heard the Learned Counsel for the Financial Creditor and perused the averments made in the petition filed by the Applicant. It is pertinent to mention that this Adjudicating Authority vide its Order dated 03.01.2025 directed the Applicant to file an affidavit clearly satisfying that the present transaction falls within the purview of the Financial Debt. Consequently, at this stage, we are only adjudicating upon the issue of maintainability of the present application. Therefore, at this stage,



no notice was issued to the Corporate Debtor. Henceforth, no reply has been filed by the Corporate Debtor.

7. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.
8. The present application is reserved on the issue of maintainability of the instant application on the ground that whether the debt amount claimed by the Applicant falls within the ambit of definition of 'Financial Debt' as laid down under Section 5(8) of the Code. Section 5(8) of IBC defines 'Financial Debt' as "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-materialized 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 maybe prescribed;*
- (e) Receivables sold or discounted other than any receivables sold on non-recourse basis;*
- (f) Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
- (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.”

9. In the present case, it is the case of the Financial Creditor/ Applicant herein that in the month of May 2019, the Corporate Debtor through Mr. Manish Pahwa and Ms. Aruna Pahwa approached the Financial Creditor for a borrowing of USD 1,50,000/- i.e., Rs. 1,25,94,562/-, for building the apartments in Malviya Nagar, New Delhi at the property bearing no. G-3/2, Malviya Nagar, New Delhi-110017 and further promised to return the aforesaid borrowings to the Financial Creditor within a period of 6-8 months. Accordingly, on 18.05.2019, the Financial Creditor transferred a sum of USD 1,50,000/- i.e., Rs. 1,25,94,562/-, through WIRE in the bank account of the Corporate Debtor. The Applicant herein has annexed a copy of the WIRE dated 18.05.2019 in respect of the loan of USD 1,50,000/- which is placed on record as Annexure P-4 along with the application.
10. On the perusal of the documents placed on record, it is observed that there is no bank account statement of either of the Financial Creditor or the Corporate Debtor placed on record which can substantiate the fact that an amount in the nature of Financial Debt was transferred by the Applicant to the Respondent. Further, it is pertinent to mention that the Applicant has not placed anything on record to substantiate the fact as to existence of any Loan Agreement validly entered into between the Applicant and the Respondent. In this regard, we are of the view that mere extending financial assistance to a party could not be considered as a short-term or long-term loan in the absence of a Loan Agreement.
11. It is further observed that the Applicant bases its claim by relying on the copy of the WhatsApp Chat between the directors of the Applicant and the Respondent as a mere proof of the rendering of the financial assistance by the Applicant to the Respondent. In this regard, we are of the view that even if the contention of the Applicant with regard to providing money to the Respondent is taken into consideration, then too, there is nothing on record to substantiate the fact that the aforesaid money was given by the Applicant to the Respondent falls within the means



of 'financial debt' as laid down under Section 5(8) of the Code. Moreover, even with regard to the authenticity of the copy of the whatsapp chat filed with the application, the Applicant has not filed the certificate as required under Section 65B of the Indian Evidence Act, 1872. Therefore, there is no valid document placed on record to prove that disbursements in the nature of 'financial debt' has been made.

12. The Hon'ble NCLAT in Company Appeal (AT)(Ins) No.251 of 2020 in **Pawan Kumar Vs Utsav Securities Pvt. Ltd.** with regards to the Financial Debt has opined that in absence of any written agreement of loan and interest it is difficult to determine the period of repayment. The relevant extract of the said judgment is reproduced hereunder: -

"21. We have considered the submissions; the Financial Creditor has not furnished any document to show that the transaction in question is a loan transaction. So far as the section 10 of Indian Contract Act and Rule 3 (1) (d) of the Rules is concerned we again refer the Prayag Polytech (Supra) in which this Tribunal held that:

"7. As regard relying on Section 10 of the Contract Act, 1872, in our view IBC is a complete code in itself. Section 238 of IBC has overriding effect on provisions inconsistent with IBC. The 'Financial contract' is defined in "Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016" Rule 3(1)(d) requires setting out the terms of the financial debt including tenure etc. We find that Appellant has failed to show any record showing financial debt to be there. As such, we are unable to find any fault in the impugned order while rejecting Section 7 application."

22. With the aforesaid, we are of the view that the Financial Contract as per the Rule 3(1) (d) is must between the corporate Debtor and the Financial Creditor for setting out the terms of a Financial Debt including the tenure of the Debt, interest payable and the date of repayment. In the absence of such Financial Contract, the Financial Creditor has failed to satisfy that when the debt and interest become due and payable.

26. With the aforesaid, we are of the view that the Respondent No. 1 (Financial Creditor) failed to establish when the debt become due and payable and the Corporate Debtor has committed default.

27. Apart from the aforesaid, we have considered the other circumstances. Admittedly, there is no agreement of loan and interest and no



document is to stipulate the period of repayment even from the demand notice and the Application under Section 7 of the IBC. The terms of the loan agreement and other factors are not clear. The Corporate Debtor Company is having authorized and paid up capital Rs. 1 Lacs whereas the Financial Creditor between 16.02.2017 to 22.02.2017 advanced loan of Rs. 6.10 Cr. From the pleadings it is not clear that at relevant time the Corporate Debtor was need of such huge amount and the Financial Creditor agreed to advance unsecured loan for such a huge amount. It is nowhere disclosed that the Corporate Debtor is engaged in which business and the loan and finances was required for which business requirements. The Financial Creditor has not filed copy of their balance sheet for relevant years and also balance sheet of the Corporate Debtor Company.”

13. The Hon’ble NCLAT in Company Appeal (AT) (Ins.) No. 1145 of 2024 in **Imdadali M Momin and Ors. Vs. Pellucid Lifesciences Pvt. Ltd.** decided on 09.09.2024 has held that in absence of any written loan agreement or any other document showing the tenure of the loan or the rate of interest or periodicity of interest payment, loan amount cannot be classified as Financial Debt as defined under Section 5(8) of IBC. The relevant extract of the said judgment is reproduced hereunder: -

*“13. The loan has been provided to the CD by appellants since 2013 i.e. since the inception of the CD as a company and appear to be more in nature of investment than financial debt as it does not fulfill the conditions to be classified as financial debt. In the instant case, **we see absence of any written loan agreement or any other document showing the tenure of the loan or the rate of interest or periodicity of interest payment. In view of the same the aforesaid loans to CD by appellants cannot be classified as financial debt as defined under Section 5 (8) of the Code.** The question of default would only arise if the aforesaid amount is classified as financial debt.”*

14. It is further the contention of the Applicant that the Corporate Debtor provided an assurance to the Financial Creditor/ Applicant that the Corporate Debtor will earn a profit of USD 70- 80,000 by selling the said apartments and share the 50% (fifty) of the profit with the Financial Creditor. Therefore, this sharing of profit constitutes the element of ‘time value of money’ as laid down under Section 5(8) of the Code. It is noteworthy that as claimed by the Applicant, the alleged financial assistance was rendered on the assurance of sharing of 50% of the profits that may be earned by



the Respondent in future by selling the apartments. On the perusal of Section 5(8) of the Code, it is observed that one of the essential aspects of any financial assistance to be termed as the 'financial debt' is the existence of the aspect of 'time value of money'. However, the profit sharing in the instant case is contingent upon the happening of an event of selling apartments and thereafter, earning profits from the same. Therefore, the accrual and sharing of profit in the instant case is mere a probability that may or may not take place, however, the aspect of 'time value of money' as specified in Section 5(8) of the Code must mean to denote a certain transaction that takes place in all probabilities. Hence, it is uncertain as to whether any profit will be shared with the instant Applicant.

15. Furthermore, the aspect of 'time value of money' is associated with accruing interest or any other kind of benefit on the borrowing rendered by the Applicant, however, in the instant case, the aforesaid transaction does not raise any kind of interest or benefit with the passage of time on the alleged amount so lent rather the alleged profit sharing is contingent upon the profit earned by the Respondent by selling the apartments. Reliance is placed upon the decision of the Hon'ble NCLAT in the matter of **Realpro Realty Solutions Private Limited Vs. Sanskar Projects and Housing Limited, Company Appeal (AT) (Insolvency) No. 374 of 2023**, whereby, the Hon'ble NCLAT has observed that where the money was disbursed on account of sharing profits in future then the same does not qualify to fall under the ambit of money disbursed for consideration of 'time value of money'. The relevant extract of the judgment is reproduced hereunder as:

"9. The relevant findings contained in the impugned order are as extracted below:

.....

24. the Applicant had no direct engagement in the functioning of the Respondent. However, the nature of agreement is in the form of an investment in the ratio of 75% & 25% and sharing of profit / losses in the same proportion after completion of the project.....

30. It is true that the said investment was made by the Applicant keeping a commercial objective in its mind specifically considering the prime location and commercial value of the property and with the commercial object to



earn profit in the sale proceeds in exchange of the investment made by it towards development, reconstruction and further sale. The agreement also provides for sharing of losses in the same ratio. The said investment is no term can be said to be a loan to the Respondent against consideration for time value of money. In the case of Mack Soft Tech Pvt Ltd (supra), the amount was disbursed by the financial creditor for construction and development of a real estate project. It was held that this amount would fall under the definition of time value of money but in the present case, it was an investment made by the Applicant on profit / loss sharing basis. In the case of Orator Marketing Pvt. Ltd. (supra), interest free loan was given but the present case relates to investment made by the Applicant in the project on profit / loss sharing basis and therefore, the said investment does not fall under the definition of “financial debt”.

34. Thus, in our clear opinion, the Applicant cannot claim status and benefits as financial creditor as defined under section 5(7) of IBC. No cause of action has accrued in favour of the Applicant to initiate this action as the Applicant neither falls in the category of the “financial creditor” as defined under Section 5 (7) of IBC nor the alleged transaction can be said to be covered within the ambit of “financial debt” as defined under Section 5 (8) of IBC. The application therefore is not maintainable and is required to be dismissed.

15. There are unmistakable signs of reciprocal rights and obligations contained therein besides evidence of common participation as well as sharing of profits and losses in the construction and development of the subject property. This spirit of being profit-sharing partners is well engrained in the Agreement and therefore we are of the considered opinion that the Adjudicating Authority has committed no error in holding that the Appellant by virtue of the funds invested by them in terms of the Agreement cannot claim the status and benefits of a Financial Creditor as defined under Section 5(7) of the IBC.

17.It is therefore settled law that for any debt to be treated as financial debt, the pre-requisite is disbursement of money to the borrower for utilization by the borrower and that the disbursement must be against consideration for time value of money even if it is not interest bearing.

18. Clearly therefore, the present transaction is in the nature of investment for profit and not disbursement for time value of money and hence does not fall within the canvas of financial debt as defined under Section 5(8) of the IBC. The essential elements of financial debt in the



context of IBC consists of disbursal accompanied by consideration for time value of money. The terms and conditions of the Agreement between the Appellant and the Respondent makes it clear that the Appellant was a collaborator and not a financial creditor. There was no disbursement for time value of money by the Appellant within meaning of Section 5(8) of IBC. **The Adjudicating Authority has correctly adverted to the real nature of the transaction between the parties to hold that the same cannot become the basis of filing a Section 7 application.**

20. We concur in the findings of the Adjudicating Authority that the Appellant is not a Financial Creditor in terms of Section 5(7) of IBC and that there was no financial debt in terms of Section 5(8) of IBC and hence the application under Section 7 of the IBC could not be entertained. We see no error in the impugned order.....”

Therefore, in view of the aforesaid judgment, it can be concluded that mere giving of money on account of promise by the Corporate Debtor to share profits in future would not necessarily amount to ‘Financial Debt’ as there is uncertainty as to the existence of element of consideration for the ‘time value of money’. Furthermore, in the instant case, no document has been attached in any of the columns to show particulars of security, record of default, copy of financial contract or any other document to prove the existence of financial debt. Therefore, the instant alleged financial assistance provided by the Applicant herein, falls short of the definition of the ‘financial debt’ as laid down under Section 5(8) of the Code. Therefore, the Applicant herein has failed to prove the existence of ‘financial debt’ only, therefore, the question of ‘default’ by the Corporate Debtor does not arise.

16. In view of the aforesaid facts and circumstances, it is concluded that the Financial Creditor herein has not placed any document on record to substantiate the fact that the alleged transaction falls in any of the category mentioned in Section 5(8) of the Code.

17. In light of the above observations and the judicial pronouncements, this Adjudicating Authority is of the view that the Applicant failed to substantiate the fact that the money provided by the Applicant to the Respondent is a ‘Financial Debt’ as per Section 5(8) of the IBC, 2016. Therefore, the instant application lacks merit and is not maintainable. Accordingly, it is hereby ordered that the instant **COMPANY PETITION IB (IBC)/862(ND) 2024** filed by M/s Saina Global Inc., the Financial Creditor, under section 7 of the Code read with Rule 4(1) of the Insolvency &

 Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s Aryan Higher Study Consultants Private Limited, the Corporate Debtor, stands **dismissed without costs.**

18. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)