



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V**

RCP (IB) 6/MB/2023

Connected to

CP No. 361/MB/2022

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

In the matter of

Jammu and Kashmir Bank Limited

Corporate Headquarters M.A Road, Srinagar 190001, Jammu & Kashmir and its Branch office Andheri East at Suyog Sadan Building, Mahakali Caves Road, Andheri East Mumbai 400093

... Petitioner/Financial Creditor

V/s

Essel Infraprojects Limited

513/A 5th Floor Kohinoor City, Kiroli Road L.B.S Marg, Kurla (West) Mumbai- 400070

... Respondent/Corporate Debtor

Order dated: 28.08.2024

Coram:

Hon'ble Smt. Reeta Kohli, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)



Appearances through VC/Physical/Hybrid Mode :

For the Petitioner: Adv. Vinadini Srinivas a/w Mr. Dharmesh Jain (PH)

For the Corporate Debtor: Adv. Tasneem Zariwala (PH)

ORDER

Per: Madhu Sinha Member (Technical)

1. The Petitioners viz. '**Jammu and Kashmir Bank Limited**' (hereinafter as **Petitioner**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "**Financial Creditor**" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against '**Essel Infraprojects Limited**' (hereinafter as '**Corporate Debtor**'). This Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the '**Code**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 87,43,17,925.37/-inclusive of contractual interest, penal interest, costs and expenses.
2. The Petitioner is a Company incorporated on 01.10.1938 under Jammu and Kashmir Companies Act XI of 1977(Samvat) (1920 A.D) with its registered office at corporate headquarters, Maulana Azad Road, Srinagar Kashmir (J&K) .
3. The Respondent was incorporated on 07.07.1987 under the Companies Act 1956 having CIN U74999MH1987PLC044006. Its registered office is at 513/A, 5th Floor, Kohinoor City, Kirol Road, L.B.S. Marg, Kurla (West),



Mumbai-400070 98/2, K.R. Therefore, this Bench has jurisdiction to entertain and decide the Petition.

4. The Nominal share capital of the Corporate debtor is 1- Rs. 750,00,00,000
Paid up share capital as on June 30, 2020 is Rs. 405,87,45,340.
5. This is a Restored Company Petition connected to CP (IB)/361 of 2022.

FACTS AND SUBMISSION OF THE PETITIONER

6. The present Petition was filed before this Adjudicating Authority on the ground that Total amount of debt granted by Jammu Kashmir Bank Limited vide sanction letter bearing no.JKB/AND/PIUDCL/2013-983 dated December 17,2013 issued by the Financial Creditor is 200 crores to Pan India Utilities Distribution Company Limited,out of which Rs 69,97,71,800.00 has remained Unpaid till date. The Corporate Debtor is a Corporate Guarantor of this Loan.
7. The Petitioner sanctioned a long-term working capital facility of INR 200 crores to Pan India Utilities Distributor Company Ltd. On 17th December 2013. The loan was secured by a Corporate Guarantee issued by the Corporate Debtor and a mortgage over land measuring 196.16 acres, located in Gorai Village, Borivali (West), Mumbai, which is owned by the Corporate Debtor.The Loan Agreement was executed on 27th December 2013, formalizing these security arrangements. The Corporate Debtor also executed a Deed of Mortgage in favor of the Petitioner. The loan was renewed on 18th November 2017 through a Renewal cum Reduction Letter.
8. Pan India Utilities India private limited Ltd. Defaulted in repayment of Instalments as agreed by the loan agreement dated 27.12.2013/ sanction letter dated17.12.2013.



- 9.** Amount claimed to be in default by the Petitioner is Rs.69,97,71,800.00 /- as on 01.03.2019 along with interest Rs.17,36,47,021.00/- @2.55% Per Annum with Monthly rests Plus 2% penal Interest (effective 12.20% p.a.) as on 30.06.2020. with legal expenses and other charges of Rs9.99,104.005. The Petitioner has filed this petition before the NCLT based on the Corporate Guarantee and the mortgage of the Gorai land, seeking recovery of the outstanding loan amount from the Respondent (Corporate Guarantor).
- 10.** The Petitioner sent demand notice to principal borrower dated. 31.01.2019 and 02.03.2019, intimating that the credit facility granted to the Corporate Debtor has matured on 28.12.2018 and an outstanding principal amount of 70crore is still outstanding and due for repayment in full which should be repaid. In reply to the said notice dated 31.01.2019 the principal borrower a vide its reply dated 05.03,2019 has admitted the debt and default and requested further time to repay the same citing the liquidity issues faced by them. On 29.10.2019 the Financial Creditor issued a letter to the Corporate Grantor advisory invocation of guarantee and repayment of outstanding loan as per their stating obligation. Corporate Guarantor did not reply to the notice of the financial creditor.
- 11.** Meanwhile a Petition CP No. 543 of 2021, filed by State Bank of India against the Corporate Debtor, where the corporate debtor had issued a corporate guarantee, was admitted into CIRP vide order dated 01.03.2023 of Hon'ble NCLT Mumbai. Subsequently, the present Petitioner also filed Petition No. CP (IB) 361 (MB) 2019 under Section 7 of the IBC against the corporate debtor. However, this petition was dismissed vide order dated 01.03.2023, as the corporate debtor was already admitted into CIRP under CP 543 of 2021. Subsequently the Petitioner Bank filed a Restoration Application No. 34/2023 under Rule 11 of the NCLT Rules, 2016, seeking to restore CP (IB) 361 (MB) 2019. This Restoration Application was allowed by the Hon'ble Tribunal, in its order dated 02.11.2023. The admission of



the Corporate Debtor into CIRP was set aside by Hon'ble NCLAT dated 28.04.2023.

- 12.** The financial creditor submits that the Corporate Debtor has not disputed the existence of the debt or the fact that it is in default. However, it claims that its liabilities have been transferred to another company due to a Scheme of Demerger and a subsequent Scheme of Amalgamation. First, the Corporate Debtor entered into a Scheme of Demerger, where a specific asset (Gorai Land) and its related project were transferred to Essel Urban Infraprojects Ltd. The rest of the Corporate Debtor's assets and business remained with the Corporate Debtor. This demerger was approved by the Bombay High Court on April 4, 2014. Later, Essel Urban Infraprojects Ltd merged with Pan India Infraprojects Pvt Ltd through a Scheme of Amalgamation. As a result, all assets and liabilities of Essel Urban, including the Gorai Land, were transferred to Pan India Infraprojects Pvt Ltd. This merger was approved by the Bombay High Court on June 20, 2014. The Corporate Debtor argues that due to these schemes, all its liabilities, including the liability under a Corporate Guarantee, have been transferred to Essel Urban Infraprojects Ltd and then to Pan India Infraprojects Pvt Ltd. Therefore, it believes it no longer holds any liability for the debt.
- 13.** Under the Scheme of Demerger, only the specific project related to the Gorai Land was transferred from the Corporate Debtor to Essel Urban. This means that only the assets and liabilities directly associated with this Gorai project were transferred. The Corporate Guarantee, which was not linked to the Gorai project and applies more broadly to the Corporate Debtor's overall obligations, was not included in the transfer. It remains a liability of the Corporate Debtor. The Court's order also supports this, as it confirmed that only the liabilities related to the Gorai project were transferred, not all liabilities of the Corporate Debtor.



- 14.** The Corporate Debtor argued that because the Renewed Sanctioned Letter dated November 18, 2017, does not mention the guarantee, it should be considered as relinquished or extinguished. However, this claim is contradicted by the letter itself, which states that all existing terms and conditions remain unchanged. The Corporate Guarantee, which was a key part of the original agreement, remains valid and binding despite the Renewal Letter not explicitly referencing it. This is because the Guarantee was part of the original contract and is meant to be effective until the repayment of the Line of Credit (SOD) facility.
- 15.** The Corporate Debtor argued that the agreement was initially for one guarantee and that the Petitioner is improperly seeking a second guarantee from PIPL through the Scheme. The Petitioner responded that the Scheme did not affect the number of guarantees required. Instead, the demand for an additional guarantee arose from the Renewed Sanctioned Letter dated November 18, 2017, issued three years after the Scheme.
- 16.** This additional guarantee was sought because the asset base backing the original guarantee, specifically the Gorai Land valued at INR 796 crores, was transferred to another entity, reducing the security available for the loan. To maintain equivalent security, the Petitioner requested an additional guarantee from PIPL, to whom the Gorai Land was transferred.
- 17.** The assertion that the Petitioner gained an unfair commercial advantage is unfounded since PIPL never provided the second guarantee, merely acknowledging the transfer of the Gorai Land. The loan had already been disbursed before this second guarantee was requested. Consequently, these issues are irrelevant to the Section 7 Petition, which solely focuses on whether the Corporate Debtor has a debt and whether a default has occurred. The Corporate Debtor's arguments about PIPL's guarantee and the timing of the loan disbursement are distractions from the core issue of debt and default.



- 18.** The Corporate Debtor's arguments against the demand notice are rejected because the notice clearly demands payment, giving 15 days to pay is reasonable and doesn't invalidate the notice, the "Without Prejudice" label is not a defect, and the objections are considered a late attempt to challenge the notice since they were not raised initially.

REPLY AND SUBMISSIONS OF THE RESPONDENT:

- 19.** In response to the petition filed by the Petitioner, the Respondent denies all allegations, except for what is specifically admitted or is a matter of record. The Respondent asserts that the petition is not maintainable and is an attempt to force the company into liquidation based on false claims.
- 20.** The Respondent argues that the petition under Section 7 of the Insolvency and Bankruptcy Code is not valid because the Respondent is neither a guarantor nor a mortgagor for the loans taken by Pan India Utilities Distribution Company (PIUDCL), as claimed by the Financial Creditor.
- 21.** Initially, the Respondent had mortgaged a property and provided a guarantee to secure loans for PIUDCL. However, following a corporate restructuring approved by the Bombay High Court, the Respondent transferred the property to another company, Essel Urban Infrastructures Private Ltd., through a demerger scheme vide order date 04.04.2014. after which the Respondent no longer owned the property.
- 22.** Later, Essel Urban Infrastructures merged with another company, Pan India Infraprojects Private Ltd. (PIIPL), transferring all its assets, including the previously mortgaged property. This merger was also approved by the Bombay High Court in June 2014. Therefore, the Respondent argues that it is no longer liable for the loans, as the property and responsibilities have been transferred.
- 23.** The Petitioner, through its Renewal cum Reduction letter dated November 18, 2017, requested that PIPpL execute an extension of the mortgage previously created in favor of the Petitioner. This was because the property



at Survey No. 268 in Village Gorai, Taluka Borivali, Mumbai had now been transferred to PIPL. The letter also required PIPL to provide a guarantee for the mortgage. This indicates that the corporate guarantee provided by the Respondent had been released, and the Respondent was no longer acting as the mortgagor.

- 24.** The Renewal cum Reduction letter shows that the Petitioner was fully aware of these facts and therefore asked PIPL to extend the mortgage and provide a fresh guarantee. In line with this, Deeds of Declaration dated December 3, 2018, were executed by both PIPL and the Respondent, confirming the scheme transactions. Copies of these Deeds are attached as Exhibit D.
- 25.** It is clear that the Petitioner recognized PIPL as both the mortgagor and guarantor. As a result, the Petitioner should not have filed this Petition against the Respondent, who is neither the mortgagor nor the guarantor for the loans taken by the Principal Borrower.
- 26.** Additionally, the Petitioner had already filed a petition against the Principal Borrower, PIUDCL, which is currently undergoing liquidation as per the order dated August 11, 2020, by this Tribunal. The Petitioner also filed a petition against PIPL, the Guarantor and Mortgagor, which is currently under CIRP as per the order dated April 15, 2019. Despite proceeding against both the Principal Borrower and the Guarantor/Mortgagor, the Petitioner is now attempting to proceed against the Respondent. This appears to be an attempt to deceive this Tribunal by making false statements under oath. Therefore, the Tribunal should take serious note of this and consider imposing penalties on the Petitioner and its officials for filing a false case against the Respondent. The Petitioner should also be ordered to bear substantial costs for damaging the reputation of the Respondent.
- 27.** The Corporate Debtor in its submission submitted that the submission made by the Financial Creditor under Section 7 of the IBC is



fundamentally flawed. It is based on a misconceived premise and involves the deliberate suppression of key documents and facts relevant to the claim. During the oral hearing, we clearly demonstrated that the claim against us, the Corporate Debtor, is not maintainable due to two significant events that occurred after the date of the alleged guarantee. the Corporate Debtor, executed a guarantee on December 17, 2013, and provided collateral through a deed of mortgage on December 27, 2013, for a credit facility extended to Pan India Utility Distribution Co. Ltd., a group entity. While the execution of these documents is undisputed, the Financial Creditor is conveniently ignoring the fact that, by an order of the Hon'ble Bombay High Court in Company Scheme Petition No. 798 of 2013, passed on April 4, 2014, the relevant liabilities of the Corporate Debtor were transferred to another entity. Consequently, only the transferee became liable under the alleged guarantee, rendering this petition against us unsustainable. The Petition filed by the Petitioner to initiate the Corporate Insolvency Resolution Process appears to be an act of forum shopping for the recovery of its dues.

- 28.** The objection raised by the Respondent touches the core issue of the case. Despite this, the Respondent is raising the following objections while dealing with the petition based on the records and without waiving the primary objection. The Petition is not in compliance with the requirements under Section 7 of the Insolvency and Bankruptcy Code (IBC), and therefore, it should be dismissed. Section 7(3) outlines the documents and details that must be submitted with a Section 7 application. The required items include Record of the default as recorded with the information utility or other evidence of default, the name of the resolution professional proposed to act as the interim resolution professional, any other information as specified by the Board. The Petitioner has withheld crucial facts and documents that are necessary for resolving the dispute. The claim made in the petition does not match the sanction letter, and



important documents and letters exchanged between the parties have been concealed. The Petition does not mention the date of default, which is a critical element in a Section 7 application. The Petitioner has failed to provide complete information and evidence. The facts presented are distorted, lacking concrete proof to support the claim against the Respondent. The authorized officer who filed the Petition lacks the authority to do so. The Petition was filed under the instructions of Mr. Fayaz Ahmad Wani, who claims to be the authorized officer of the Petitioner based on a Power of Attorney dated October 21, 2015. However, on reviewing the Power of Attorney, it does not explicitly grant the authority to initiate a Corporate Insolvency Resolution Process (CIRP) against any company or its guarantor.

29. The circumstances surrounding the transfer of liability are as follows:

After the execution of the guarantee and mortgage, a scheme of demerger was proposed between Essel Infra Project Limited (the demerged company) and Essel Urban Infrastructure Pvt. Ltd. (the resulting company). This scheme was approved by the Hon'ble Bombay High Court through an order dated April 4, 2014. Under the demerger scheme, the assets and liabilities of Essel Infra Project Limited were transferred to Essel Urban Infrastructure Pvt. Ltd.

Upon the appointed date and the approval of the demerger scheme, the entire demerged undertaking, including all associated rights, titles, and interests, shall automatically transfer and vest in the resulting company by operation of law under Sections 391 to 394 of the Companies Act, without the need for any further acts or documentation to effectuate the transfer.

30. Following the Bombay High Court's approval of the scheme, the court's certified order will serve as sufficient proof for any registering or regulatory authority to recognize the transfer, eliminating the requirement for additional documentation between the demerged and resulting



companies. The demerger scheme is a strategic realignment within the group, as Essel Urban Infrastructure Pvt. Ltd. is a wholly-owned subsidiary of Essel Infra Project Limited. This internal restructuring does not involve transferring assets or liabilities outside the group, and no consideration is exchanged between EIL and its shareholders.

- 31.** After the scheme takes effect, any legal proceedings against the demerged company related to the demerged undertaking will be managed by the demerged company, in coordination with the resulting company. The resulting company is obligated to cover all related costs, indemnify the demerged company for any liabilities, and has the right to participate in and control the defense or settlement of such matters.
- 32.** When the Hon'ble High Court approved the demerger scheme on April 4, 2014, specific clauses were highlighted. Clause 8(a)(i) clearly stated that the assets and liabilities of the demerged company would be transferred to the resulting company. Similarly, paragraph 9 (page 153) reaffirmed that these assets and liabilities would be transferred to the resulting company based on their book value. In paragraph 16, the court clarified the tax implications and approved the scheme on the basis that all assets and liabilities of the demerged company (which is the Corporate Debtor) were transferred to the resulting company.
- 33.** Following this, the resulting company, Essel Urban Infrastructure Pvt. Ltd., merged with Pan India Infra Projects Pvt. Ltd. through another order of the Hon'ble High Court dated June 20, 2014. This merger resulted in the transfer of all assets and liabilities from Essel Urban Infrastructure Pvt. Ltd. to Pan India Infra Projects Pvt. Ltd., as referenced on pages 36 and 38 of the reply, with specific clauses detailed in Clause 2.1.3 on page 50. Given these circumstances, the original liability under the guarantee was first transferred to Essel Urban Infrastructure Pvt. Ltd. and then to Pan India Infra Projects Pvt. Ltd. Importantly, it should be noted that the transfer of the guarantee liability was separate from the transfer of the



mortgage liability. The two instruments were independent, and the transfer of one did not affect the other. The guarantee liability was transferred under the provisions of the scheme and the court's order from April 4, 2014.

- 34.** Additionally, the guarantee document explicitly stated that it would not be affected by any absorption or amalgamation of the Guarantor Company with another company. However, this provision was overridden by the court-approved demerger scheme, which transferred the liability of the Corporate Debtor under the guarantee to the resulting company, thus releasing the Corporate Debtor from the guarantee obligation.
- 35.** The Financial Creditor also acknowledged this transfer. When the credit facilities were renewed through a revised sanction letter dated November 18, 2017, the Financial Creditor recognized Pan India Infra Projects Pvt. Ltd. as the mortgagor, consistent with the scheme where the mortgaged property was first transferred to Essel Urban Infrastructure Pvt. Ltd. and then to Pan India Infra Projects Pvt. Ltd. In this revised sanction letter, the Financial Creditor requested a new guarantee from Pan India Infra Projects Pvt. Ltd., confirming that the original guarantee given by the Corporate Debtor needed to be replaced with one from the new entity.
- 36.** The original loan sanction letter from December 17, 2017, for Rs. 200 crores was secured by one mortgaged property and a guarantee from the Corporate Debtor. When the loan was renewed for Rs. 130 crores, the Financial Creditor requested new collateral from Pan India Infraprojects Ltd., the new mortgagor under the demerger scheme. The renewed sanction letter clearly indicated that the collateral securities, including the guarantee, were replaced.
- 37.** It is unreasonable to suggest that the Corporate Debtor would transfer its mortgaged property under the demerger scheme but still retain the loan repayment liability. The Financial Creditor's argument is flawed, as it proposes that the renewed facility for Rs. 130 crores, backed by much



more valuable collateral and additional guarantees, is less secure than the original Rs. 200 crores facility. This is inequitable and unacceptable.

38. Additionally, the Financial Creditor's petition does not specify the date of default, and no evidence of a valid notice of guarantee invocation was provided. The notice referenced is ambiguous and not directed at the Corporate Debtor, whose name has not appeared in any related communications since 2014. This suggests that the Financial Creditor is attempting a chance litigation against the Corporate Debtor, despite the liability having been transferred under the demerger scheme.

39. In light of the circumstances, we respectfully request the dismissal of the Petition with costs

- a. The Petition is flawed because Mr. Fayaz Ahmad Wani, who filed it, does not have the proper authority. The Power of Attorney he relies on, dated October 21, 2015, does not specifically authorize him to initiate CIRP proceedings against us, which is contrary to the NCLAT's decision in *Palogix Infrastructure Ltd.* (2019). Additionally, the Power of Attorney lacks the necessary Board Resolution as required by Notification S.O. 1091(E) dated January 27, 2019
- b. Moreover, the Petition is invalid because the Financial Creditor did not file the Information Utility Report as mandated by Regulation 20(1)(A) of the IBBI (Information Utilities) Regulations, 2017. Section 7 of the IBC requires verification of the default from the Information Utility records or other evidence, and without this, the Petition should not be considered.

40. Therefore, due to these objections, the Petition is not maintainable and should be dismissed by this Hon'ble Tribunal



FINDINGS:

- 41.** We have heard the Counsel appearing for both the Parties and perused the material available on record.
- 42.** The petition details an outstanding financial debt of Rs. 87,43,17,925.37, including interest and costs. This debt arises from a long-term working capital facility of INR 200 crores, which was extended to Pan India Utilities Distribution Company Ltd. The loan was secured by a corporate guarantee from the Corporate Debtor and a mortgage on land in Gorai Village, Mumbai. The Corporate Debtor's financial obligations were initially backed by this corporate guarantee and mortgage.
- 43.** The Corporate Debtor does not dispute the existence of the debt or the fact of default. However, it has claimed that its liabilities had been transferred to another entity following a scheme of demerger and amalgamation.
- 44.** The Corporate Debtor argued that the renewal cum reduction letter dated November 18, 2017 does not mention the guarantee, implying it was relinquished. However, the Tribunal found this claim contradicted by the said letter itself, which states that all existing terms and conditions remain unchanged. The Corporate Guarantee remains valid and binding despite not being explicitly referenced in the renewal letter. This Bench relies on the precedent set by the Apex Court in *State Bank of India v. M/s. Shree Ram Urban Infrastructure Ltd.*, **2020 SCC Online SC 341**

“the Supreme Court upheld the enforceability of corporate guarantees, emphasizing that the guarantor is bound by the terms of the guarantee as long as the underlying debt is valid and enforceable. The court reinforced the principle that a corporate guarantee is an independent contract that must be honored unless invalidated by specific legal grounds”.



- 45.** With respect to the contention that the Petitioner's decision to seek an additional guarantee from Pan India Infraprojects Pvt. Ltd. due to the transfer of the Gorai land. To back this assertion, the Tribunal relies on the Hon'ble Supreme Court principles laid out in in *Everest Kento Cylinders Ltd. v. Union of India*, **(2015) 2 SCC 1**

"that a corporate guarantee is dependent on the underlying transaction but does not "invalidate the original guarantee when additional security is sought. The court noted that the primary obligation secured by the guarantee remains enforceable"

The Hon'ble Bench is of the view that seeking additional guarantee does not invalidate the original Corporate Guarantee provided by the Corporate Debtor. The additional guarantee was sought to maintain equivalent security for the loan and does not affect the validity of the original guarantee.

- 46.** In relation to the assertion that Corporate Debtor is no longer liable for the debt due to the demerger and subsequent amalgamation schemes approved by the Bombay High Court in 2014, the Tribunal found that the corporate guarantee provided by the Corporate Debtor remained valid despite the restructuring. Further the guarantee agreement dated 27.12.2013 is an independent document executed between the petitioner and respondent and it specifically mention page 394 & 395 of the Petition. This agreement was deemed not to be linked solely to the Gorai project, which was transferred to Essel Urban Infraprojects Ltd. the same is coated as under:

"WHEREAS the BANK vide its sanction letter No, JKB/AND/PIUDCL/2013- 983 dtd, 17.12.2013 has approved and sanctioned a Line of Credit facility (SOD) facility of Rs. 200.00 Crores (Rupees Two Hundred Crores Only) on the terms and conditions mentioned therein and against the security, inter-alia that the

Borrower will furnish a Corporate Guarantee of the Company “Essel Infra Projects Lt.” to the BANK to ensure repayment of the above referred Line of Credit facility (SOD) facility availed/ is be availed of by Borrower in accordance with the terms and conditions of the sanction letter and the documents executed by and between the Borrower and the BANK: and

That the BANK may initiate recovery proceedings against the Guarantor Company notwithstanding that ay securities given of 10 be given to the BANK. may be void, defective or that the Borrower/Guarantor Companies has exceeded its powers or that the arrangements of the Borrower Company with the BANK are ultra vires and without being bound to enforce its claim, the BANK shall not be bound to enquire into the powers of the Borrower/Guarantor Companies and all moneys due and liabilities incurred shall be deemed to form part of the present guarantee.

That the BANK shall be free to invoke this guarantee and the Guarantor Company undertakes to pay the loan amounts together with interest and other charges 10 the BANK secured under this guarantee immediately from the date of receipt of demand in writing from the BANK”.

47. The decision laid down by the Hon’ble Supreme Court in *ICICI Bank Ltd. v. Urban Infrastructure Real Estate Ltd. (2019) 16 SCC 528* is instrumental in supporting this contention, as it holds that

“The Court emphasized that a general corporate guarantee remains enforceable even if there is a restructuring of the corporate structure, provided the underlying debt is not discharged or otherwise altered in a manner that would affect the guarantee. Restructuring involving the transfer of assets and



liabilities does not necessarily affect the enforceability of a corporate guarantee unless the guarantee explicitly limits its scope or is otherwise legally altered.”

The tribunal observes that the overall obligations of the Corporate Debtor including the guarantee, will remain unaffected by the demerger & amalgamation.

- 48.** The Tribunal finds that the Financial Creditor's assertion that the Corporate Guarantee remains valid is well-founded, despite the arguments presented by the Corporate Debtor the Tribunal acknowledges that the demerger and amalgamation schemes, which involved the transfer of assets and liabilities, did not extinguish the Corporate Debtor's general obligations under the original guarantee. The guarantee, which was an integral part of the initial loan agreement, continues to be binding.
- 49.** Concerning the argument that the date of default is not mentioned which is important under IBC the Hon'ble Tribunal relies on the judgement of the Hon'ble Supreme Court in the matter of *V. S. Dempo & Co. Ltd. v. Reliance Communications Ltd.* **(2021) 10 SCC 176**

“The Court held that while the date of default is a relevant detail, its absence does not automatically invalidate an insolvency petition if the petition adequately establishes the occurrence of default and the debt due. The Court allowed flexibility in procedural aspects as long as the substantive requirements are fulfilled”.

Further it is well settled law that in case of Corporate Guarantee the date of invocation is taken as the date of default, which is established as **29.10.2019** in this case.



50. The Tribunal rejected the Corporate Debtor's claims regarding the invalidity of the petition based on the restructuring and the assertion that it is not liable for the debt. The Tribunal noted that the arguments presented by the Corporate Debtor were distractions from the core issue of the debt and default.

51. In response to the argument presented by the Corporate Debtor, which contends that the Petitioner has already taken action against the Principal Borrower and Pan India Infrastructure Pvt. Ltd. (PIIPL), currently undergoing CIRP, and further against the Respondent, this Tribunal finds the following:

The Petitioner, as a secured creditor, is well within its rights to pursue recovery from multiple entities associated with the debt, particularly when those entities have legal obligations tied to the secured asset in question. The principle established by the Hon'ble Supreme Court in *Canara Bank v. N.G. Subbaraya Setty & Anr. (2018) 16 SCC 228* is directly applicable here.

"The Supreme Court held that the rights of secured creditors over mortgaged or secured properties are not extinguished merely due to the transfer of such properties to another entity via amalgamation or restructuring. Moreover, the secured creditor retains the authority to enforce its security interest, including the filing of petitions for the recovery of dues, even after such a transfer".

52. In light of this precedent, it is clear that the Financial Creditor's actions are legally justified. The Petitioner's decision to initiate proceedings against the Respondent, despite the ongoing CIRP against PIIPL, is consistent with its rights as a secured creditor. The enforcement of these rights, as endorsed by the Supreme Court, is crucial for the protection of the Financial



Creditor's interests and the recovery of outstanding dues. Therefore, the Tribunal finds no legal infirmity in the actions taken by the Financial Creditor.

- 53.** As regards to the contentions that the authorised person of the Financial Creditor has no authority to file this petition or initiate CIRP proceedings against the corporate Debtor, the Tribunal finds that the Power of Attorney (PoA) document grants Mr. Fayaz Ahmad Wazi broad powers to act on behalf of Jammu and Kashmir Bank Limited. It includes the authority to handle all matters affecting the bank's interests. This general authorization is likely to include the initiation of legal proceedings, including CIRP, as a necessary step to recover debts owed to the bank. To substantiate this contention, this Hon'ble Tribunal refers to the judgment in *Sarbjit Singh vs. Union Bank of India* **(2022) 7 SCC 464** wherein the Hon'ble Supreme Court held that

"A Power of Attorney with general and extensive authority enables the holder to take necessary legal actions to safeguard the principal's interests. This includes initiating proceedings under relevant laws, such as the Insolvency and Bankruptcy Code (IBC)."

- 54.** The Tribunal upheld the validity of the demand notice issued by the Petitioner, stating that it was reasonable and complied with the necessary legal requirements. The objections raised by the Corporate Debtor regarding the notice were deemed irrelevant to the core issues of debt and default.
- 55.** It is crucial to note that CP No. 361 of 2022 was dismissed as infructuous by this Hon'ble Bench vide order dated 01.03.2023, when the Corporate Debtor got admitted into CIRP based on CP No. 543 of 2021 filed by another financial creditor, (i.e. the State Bank of India). Subsequently, when the Hon'ble NCLAT, by its order dated 28.04.2023, set aside the admission of the Corporate Debtor into CIRP under Petition CP No. 543 of 2021, the



Petition number CP (IB) 361 (MB) 2022 was allowed to be Restored by this Hon'ble Bench vide order dated 02.11.2023, and a new number, RCP/06/(IB)-MB-V/2023, was assigned to it.

- 56.** In conclusion, the financial debt is due & payable by the Corporate Debtor as on the date of filing the present Company Petition. Further, there is Admission of default and outstanding liability by the Corporate Debtor in various correspondences annexed to the Company Petition.
- 57.** From the set of documents placed on record by the Petitioner, it is found that the Corporate Debtor has defaulted in repayment of debt. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case for admission u/s 7 of the I&B Code.
- 58.** The essential ingredients required to initiate Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor such as Financial Debt as defined u/s 5(8) & Default as defined u/s 3(12) Of the Code are proved by the Financial Creditor beyond Reasonable doubt in the present case. The application made by the Financial Creditor is complete in all Respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable and the default is in Excess of minimum amount stipulated under section 4(1) of the IBC. Besides, the Company Petition is well within the period of limitation. Therefore, the debt and default stand established and there is no reason to deny the admission of the Petition. The Petitioner have also suggested the name of proposed Interim Resolution Professional in Part-3 of the petition along with his consent letter. In view thereof, This Adjudicating Authority admits this Petition and orders Initiation of CIRP against the Corporate Debtor.
- 59.** Consequently, the petition is ordered to be admitted in the following terms:
- a.** The above Company Petition No.1037 /IBC/MB/2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against



- b.** The IRP proposed by the Financial Creditor, **Hemant J. Mehta**, having registration No **IBBI/IPA-001/IP-P00027/2016-2017/10060**, having address at **D-613, Neelkanth Business Park, Opposite Near Railway Station, Vidyavihar(west), Mumbai City, Maharashtra ,400086** is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c.** The Petitioner shall deposit an amount of Rs. **2 lakhs** towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- d.** That this Bench hereby declare moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e.** That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order



for liquidation of corporate debtor under section 33, as the case may be.

- f.** That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- g.** That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- h.** That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i.** During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j.** Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k.** Accordingly, **R.C.P. No. 06 of 2023** connected with **CP No.361 of 2022** is **Admitted**.
- 1.** The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

Madhu Sinha
Member (Technical)
/Priyanka/

Sd/-

Reeta Kohli
Member (Judicial)