



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT-I**

C.P. (IB) No. 797/2024

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 r/w Rule 4 of the
Insolvency and Bankruptcy (Application
to Adjudicating Authority) Rules, 2016.

In the matter of

Catalyst Trusteeship Limited
CIN: [U74999PN1997PLC110262]

...Financial Creditor/ Applicant

Versus

Gutsiness Hospitality Private Limited
CIN: [U45207MH2010PTC200454]

...Corporate Debtor/Respondent

Order Delivered on: 09.01.2025

Coram:

Sh. Prabhat Kumar
Hon'ble Member (Technical)

Sh. Justice V.G Bisht
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor	:	Mr. Priyank Daga, Advocate
For the Corporate Debtor	:	None Present



ORDER

1. This Company Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**"Code"**) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**"IBBI Rules"**) by Catalyst Trusteeship Limited (**"Applicant/Financial Creditor"**) seeking to initiate Corporate Insolvency Resolution Process (**"CIRP"**) against Gutsiness Hospitality Private Limited (**"Respondent/Corporate Debtor"**).

Brief Facts of the case:

2. The **Financial Creditor, Catalyst Trusteeship Limited, formerly known as Milestone Trusteeship Services Private Limited** is a company incorporated on 22.08.1997 under the Companies Act, 1956 having its registered office at GDA House, First Floor, Plot No. 85 S. No. 94 & 95, Bhusari Colony (Right), Kothrud, Pune-411038, Maharashtra, India and has filed this application in its capacity as the Debenture Trustee for Capri Global Capital Limited.
3. The Financial Creditor is engaged in the business to undertake and perform Trust and Agency Business of all kinds including gratuity trusts, IN provident fund trusts etc. and to work as trustee for debentures and debenture stock and to act as receivers, managers etc. and to carry out "Trustees and Executor Business".
4. The **Corporate Debtor, Gutsiness Hospitality Private Limited, formerly known as Archies Developers Private Limited** is a private company incorporated on 25.02.2010, within the meaning of Companies Act, 2013 (**"Act"**), having its registered office at SKM Fabrics Andheri Premises, Plot no. 115, IIS/IT-03 R. K. Paramhans Marg, Andheri (E), Mumbai, Maharashtra, India, 400069. The Corporate Debtor is engaged in the business of in the business of real estate, finance, etc. This Bench has territorial jurisdiction to deal with this petition.

Submissions made by the Financial Creditor:

5. The Financial Creditors submit that around 2017, the Issuer Companies (*private*



limited companies, engaged in the business of builders, contractors, and consultants for all types of real estate developments) required funds for their general corporate purposes, hence to raise these funds, they approached Capri Global Capital Limited ("**CGCL/Subscriber Company**"). The Issuer Companies proposed to issue secured, redeemable, non-convertible, unlisted Zero-Coupon Cumulative Debentures ("**NCDs**") with a face value of Rs. 1,00,000/- (Rupees One Lakh Only) each, through a private placement in compliance with the relevant provisions of the Act and the applicable Rules.

6. It is further submitted by the Financial creditor that, the Subscriber Company subscribed to the said NCDs, each with a face value of Rs. 1,00,000/- for a total value of Rs. 62,10,00,000/- (Rupees Sixty-Two Crore and Ten Lakh Only), by entering into individual Debenture Subscription Agreements ("**DSA**") with each Issuer Company. The details of Issuer Companies and the NCDs issued by each to the Subscriber Company are given as below:

Sr. No.	Name of Issuer Companies	Face value	No. of NCDs
1	Aadrisa Builders Private Limited	100000	850
2	Aashirya Buildcon Private Limited	100000	850
3	Achalapati Devcon Private Limited	100000	960
4	Anchitha Buildspaces Private Limited	100000	950
5	Jasritha Developers Private Limited	100000	900
6	Jasweera Realtors Private Limited	100000	900
7	Unnabh Buildcon Private Limited	100000	800

7. The Financial creditor further submits that as per the terms of the DSA, the Issuer Companies were required to appoint a Debenture Trustee, acting on the instructions of and for the benefit of the Debenture Holders. Accordingly, on 24.03.2017, the Issuer Companies entered into separate Debenture Trustee Deeds, with Milestone



Trusteeship Services Private Limited ("**MTSPL**"), which later amalgamated into Catalyst Trusteeship Limited vide order dated 20.05.2022 passed by the Regional Director, Ministry of Corporate Affairs, Mumbai and all the rights of MTSPL stood transferred to the Financial creditor. All the Debenture Trustee Deeds were dated 11.04.2017 and registered on 13.04.2017.

8. It is further submitted by the Financial creditor that as per the terms of the NCD issuance and Debenture Trust Deeds, the Issuer Companies' obligations to the Subscriber Company under the DSA and other security documents were secured in favor of the Debenture Trustee, as outlined in the DSA. The Corporate Debtor issued a corporate guarantee to the Debenture Trustee for the benefit of the Debenture Holders. As a result, the Corporate Debtor executed separate corporate guarantee agreements with each Issuer Company, the Subscriber Company, and the Debenture Trustee, on behalf of and for the benefit of CGCL and subsequent assignee Debenture Holders. Additionally, under the Debenture Trust Deeds, the Corporate Debtor created a registered first pari-passu charge on Flat No. 21SW (3916 sq. ft. carpet area), in favor of the Debenture Trustee by executing separate Debenture Trust Deeds.
9. The Financial creditor reports that, on 28.06.2017, an Inter-se Agreement was executed between the Issuer Companies, Debenture Holders, and MTSPL, appointing CGCL as the Debenture Holders' Representative. CGCL was authorized to act on behalf of itself and the other Debenture Holders and to coordinate the sharing of the security, as outlined in the respective Debenture Trust Deeds.
10. The Financial creditor submits that, as per the terms of the Debenture Subscription Agreement, the Issuer Companies were required to repay the NCD amount to the Subscriber Company within 50 months from 31.03.2017, however, the Issuer Companies failed to make the repayment. This failure to repay the principal amount and interest constitutes an Event of Default under the DSA. Consequently, the Issuer Companies were issued notices by the Applicant, demanding payment of the overdue amount. Despite this, the Issuer Companies have neglected to pay the outstanding amount and other charges within the stipulated timeframe.
11. It is further submitted by the Financial creditor that, despite several demands, the



Issuer Companies failed to respond or make payments. As a result, the Applicant, acting as the Debenture Trustee for and on behalf of the Subscriber Company/Debenture Holders, invoked the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**“SARFAESI Act, 2002”**). On 28.01.2022, the Applicant issued notices under Section 13(2) of the SARFAESI Act, 2002 to the Issuer Companies, the Corporate Debtor, and to other Guarantors, demanding a total of Rs. 133,34,82,701/- as on 10.01.2022, along with interest until payment is made. The Petitioner/Financial Creditor also intended to issue a Possession Notice under Section 13(4) of the SARFAESI Act, 2002, dated 20.03.2023, but was prevented from doing so and taking symbolic possession of the flat that formed part of the guarantee, which is the subject of the present petition.

12. As a subsequent action, it is submitted that the Applicant initiated proceedings under the SARFAESI Act, 2002 and an order was issued on 24.01.2024 by the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai, in favor of the Applicant, granting permission to take possession of the mortgaged flat. The Applicant then issued an intimation notice to the Issuer Companies, Corporate Debtor, and other Guarantors, and has taken possession of the flat since 23.04.2024.
13. The Financial creditor submits that as per Clause 8.1 of the Corporate Guarantee Agreement, it was agreed between the parties that in the event of default as specified under Clause 1.1 and Clause 17.1.1 of the DSA, the Issuer Companies shall rectify such default within 2 days. In case of failure, the Applicant may at its absolute discretion exercise any rights to recover the outstanding amount by issuing a notice of demand to the guarantor. As further stated in the Corporate Guarantee agreements, the Corporate Debtor agreed to unconditionally, absolutely, and irrevocably guarantee as the primary obligor, not merely as a surety, in the event of any default by the Issuer Company in fulfilling the terms, conditions, and covenants of the Debenture Subscription Agreements or other transaction documents.
14. The Financial creditor reports that, since the Issuer Companies failed to rectify the Event of Default and make the necessary payments as per the notices dated 28.01.2022, and since the liability of the Corporate Debtor and other Guarantors is



co-extensive with that of the Issuer Companies, the Applicant, acting as trustee for the Debenture Holders, issued separate notices on 15.03.2024 ("**Invocation Notice**") to the Corporate Debtor, invoking its guarantee for the defaults each of the Issuer Companies. The notice demanded an aggregate amount of Rs. 1,86,38,86,426/- (Rupees One Hundred Eighty-Six Crore Thirty-Eight Lakhs Eighty-Six Thousand Four Hundred Twenty-Six Only) from the Corporate debtor as of 22.02.2024, along with applicable interest until payment, failing which the Applicant will initiate legal proceedings under the Code. The said notices were received by the Corporate Debtor on 23.03.2024.

15. It is further reported by the Financial creditor that; the Corporate Debtor was given 7 days from the receipt of the said notices to pay the total outstanding amount. However, the Corporate Debtor chose not to respond to the Invocation Notices and has failed to make the payment. As the Corporate Debtor failed to clear the amounts claimed in the Invocation Notices within 7 days of receipt, the default date is established as on 30.03.2024. The total amount in default is Rs. 1,91,81,74,678/- (Rupees One Hundred Ninety-One Crores Eighty-One Lakhs Seventy-Four Thousand Six Hundred and Seventy-Eight Only) as on 30.04.2024, inclusive of interest till the date of repayment.

Findings:

1. Heard learned Counsel for the Financial Creditors and perused the records.
2. The Bench upon perusal of the record takes note that as per the Order dated 19.11.2024 the notice was issued through the Registry. However, the Corporate debtor chose not to enter appearance before this Bench on the said date. In the same order the Corporate debtor was “..*granted last opportunity to enter appearance and to file and place on record Affidavit in Reply well before the adjourned date thereby duly serving a copy to the other side well in advance, failing which, this Bench shall pass consequential orders on the next date of hearing, thereby proceeding the Corporate Debtor ex parte.*”
3. The Bench further notes that, the Corporate debtors failed to enter appearance or file the reply as per order dated 19.11.2024 on the next date of hearing. Hence, this Bench vide order dated 10.12.2024, directed that “*Today even after the matter was called twice,*



none appeared on behalf of the Corporate Debtor and no reply was placed on record. The Corporate Debtor is proceeded ex-parte.”

4. The Counsel for Financial Creditors confirmed the service of the copy of the petition to the IBBI as per order dated 25.10.2024 during the hearing.
5. It has been observed by this Bench that the Corporate Debtor have already been granted various opportunities to appear in person/ or through counsel and to file and place on record their reply to the present petition but neither the Corporate Debtor filed any reply nor their Counsels appeared, thus this Bench decided to proceed ex parte vide the same order. The matter is thus decided on merits based on material available on record.

The following facts are not in dispute:

6. That Debenture Subscription agreements were executed between the Issuer Company, Subscriber company and the Debenture Trustee as on 24.03.2017 for raising funds for the general corporate purpose wherein the Issuer company proposed to issue NCDs of face value of 1,00,000/- each. The total amount of Rs. 62,10,00,000/- was extended to the Corporate Debtor for a consideration in time value of money on the basis of the said Agreement and hence is a Financial Debt within the meaning of Section 5(8) of the IBC. It has been observed that the Subscriber company has issued NCDs each of face value of Rs. 1,00,000/- to the Issuer Company and the same is placed on record through the Transaction Documents each dated 22.03.2017.
7. Hence, there is no dispute over the fact that the Corporate Debtor defaulted in paying the financial debts of more than Rs. 1 Crore (as per Section 4 of the IBC). From evidence and material on record, we also hold that the application is filed by properly authorized person.
8. Upon perusal of the records it can be observed that the Financial creditor has placed on record the Debenture Trust deed which mandates the Issuer company to appoint a Debenture Trustee who is required to act on the instruction of and on behalf of the



Issuer Company, thus there exists a valid contractual relationship between the Applicant with the Issuer company.

9. Additionally, the Financial creditor has also placed on record a Corporate Guarantee agreement between the Issuer company, the Subscriber company and the Debenture Trustee, which clearly sets out that, *“In pursuance of the Company requesting the Guarantor to execute/issue a guarantee and in consideration of the subscription of the Debentures that will be done by the Debenture Holder and parting of the Debenture Subscription Amounts to the Company under the Debenture Subscription Agreement, the Guarantor, at the request of the Company, has agreed to issue and execute this Guarantee, the terms whereof are more particularly set out hereinafter, in favour of the Debenture Trustee on behalf of the Debenture Holder and thereby guarantee to the Debenture Trustee on behalf of the Debenture Holder, the repayment of the Secured Obligations.”*
10. Hence upon the combined reading of the issued NCDs, DSA, the Debenture Trust deed and the Corporate guarantee agreement it can be inferred that the Corporate debtor who is also the Corporate guarantor to the Issuer Companies has defaulted in the payment of outstanding amount of the principal amount Rs. 62,10,00,000/- along with the applicable interest date commuted till 30.04.2024 as per Part IV of the petition to the Financial Creditor who is acting under the instructions and on behalf of the Subscriber Company as a Debenture Trustee.
11. The Bench has also observed upon perusal of the records that the Financial creditor had served notices dated 28.01.2022, under Section 13(2) of the SARFAESI Act, 2002, calling upon the Issuer companies and the Guarantors to repay the overdue loan amount. Subsequently, the accounts of the Issuer companies were classified as Non Performing Asset (“NPA”) on 21.09.2021 by CGCL. The extract of the Notice is given as below:

“Consequent upon the defaults committed by you, your loan account has been classified as Non Performing Asset (NPA) on 21.09.2021 by Capri Global Capital Limited in accordance with the directives and guidelines issued by Reserve Bank of India/National Housing Bank. Therefore, we hereby give you notice under sub-section (2) of section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security



Interest Act, 2002 ("the Act") and call upon you to pay in full and discharge your liabilities to Milestone Trusteeship Services Private Limited acting as trustee and on behalf of Debenture holder(s), amounting to Rs. 4,66,71,895/- (Rupees Four Crores Sixty six Lacs Seventy one Thousand eight Hundred Ninety Five Only) dues of Capri Global Capital Limited, Rs. 133,34,82,7011/- (One Hundred Thirty Three Crores Thirty Four Lacs Eighty Two Thousand Seven Hundred one Only) dues of Dnyaneshwar Trading & Investment Private limited, aggregating to Rs. 138,01,54,596/- (Rupees One Hundred Thirty Eight Crores One Lac Fifty Four Thousand Five Hundred Ninety Six Only) as stated in para 2 above, within 60 (sixty) days from the date of receipt of this notice..."

12. The Bench has also observed that upon failure to respond to or repay the amount on the basis to the SARFAESI Act, 2002 notice, the Financial creditor had received an order dated 24.01.2024 from the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai allowing the Financial creditor to take possession of the mortgaged property and had subsequently taken possession of the same.
13. It can also be noted that the Financial creditor had served a demand notice/invocation notice dated 15.03.2024 to repay the outstanding liability however, nor the Issuer companies or the Corporate debtor has replied to the same or repaid the amount. Hence, it can be inferred from the documents placed on record that the Financial creditor acting on behalf of the Subscriber company had issued the NCDs, the Corporate guarantor invoking its guarantee under the Corporate guarantee agreement was liable to repay the amount in case of default by the principal borrower, the Issuer company, but has failed to comply to its obligations under the terms of the agreement. Hence, there exists a debt and default as per Section 7 of the Code.
14. That there is also no dispute that the Petition is within limitation period in accordance to Article 137 of Limitation Act, 1963 since this company petition was filed on 03.10.2024 and the date of default is given as 30.03.2024 in the Part IV of the petition. Hence, the application falls within the limitation period of three years. On perusal of the IU certificate we notice that the Date of default provided in the IU certificates i.e. 21.09.2021 pertains to the issuer companies.



15. That upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the fact that the Corporate Debtor owes debt to the Financial Creditor. Hence, the debt due and default is established. Hence, this Company Petition is liable to be admitted.
16. The Financial Creditor has proposed the name of Mr. Manoj Sehgal, Registration No: IBBI/IPA-002/IP-N00108/2017-2018/10256, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
17. It is, accordingly, hereby ordered as follows: -
18. We are hereby directing the Suspended Board of Directors to Co-operate with the RP/IRP for smooth functioning of CIRP proceeding with providing necessary documents/information as required by the RP/IRP.
19. There shall be a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 ("Code"), in regard to the following:
- (i) *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;*
 - (ii) *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*
 - (iii) *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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;*
 - (iv) *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

Notwithstanding the above, during the period of moratorium:



- (i) *The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;*
- (ii) *That the provisions of sub-section (1) of section 14 of the Insolvency and Bankruptcy Code, 2016 shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;*

20. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under Section 31(1) of the Code or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.

21. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

22. **Mr. Manoj Sehgal, Registration No: IBBI/IPA-002/IP-N00108/2017-2018/10256**, Email Id: manojsehgal_1121@yahoo.co.in, having registered address at Flat 71, Tower Acacia 2, Vatika City, Sector 49, Gurugram-122 018, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India ("IBBI"). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

23. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 of the Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

24. The Financial Creditor shall deposit a sum of Rs. 2,00,000/- with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are



subject to approval by the Committee of Creditors (CoC) and the amount deposited by the financial creditor shall be refundable in priority over the other debts out of funds available with the Corporate Debtor.

25. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

26. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

Order

In the above circumstances the petition bearing CP (IB) 797/MB/2024 filed by **Catalyst Trusteeship Limited**, the Financial Creditor, under section 7 of the Code r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process against **Gutsiness Hospitality Private Limited**, the Corporate Debtor, is **Admitted**.

Sd/-

Sh. Prabhat Kumar
Member (Technical)

Sd/-

Sh. Justice V.G Bisht
Member (Judicial)

/JJ/