



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IN

C.P.(IB) – 30/ND/2026

C.P.(IB) – 31/ND/2026

C.P.(IB) – 32/ND/2026

And

C.P.(IB) – 36/ND/2026

IN THE MATTER OF C.P.(IB) – 30/ND/2026:

(Under Section: 7 of IBC, 2016)

J.C. Flowers Asset Reconstruction Pvt. Ltd.

Through its authorized representative:

Ayush Agrawal

Unit No. 203-206, 2nd Floor Wing A,

Inspire BKC, Bandra (East),

Mumbai - 400051

**... Petitioner/
Financial Creditor**

Versus

Imagine Habitat Private Limited

307 & 308, 3rd Floor, Midas,

Sahar Plaza Andheri Kurla Road,

Andheri (East) Mumbai – 400059

**... Respondent/
Corporate Debtor**

IN THE MATTER OF C.P.(IB) – 31/ND/2026:

(Under Section: 7 of IBC, 2016)

J.C. Flowers Asset Reconstruction Pvt. Ltd.

Through its authorized representative:

Ayush Agrawal

Unit No. 203-206, 2nd Floor Wing A,

Inspire BKC, Bandra (East),

Mumbai - 400051

**... Petitioner/
Financial Creditor**

Versus

Imagine Residence Private Limited

307 & 308, 3rd Floor, Midas,

Sahar Plaza Andheri Kurla Road,

(IB)-30/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Habitat Pvt. Ltd.

(IB)-31/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Residence Pvt. Ltd.

(IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.

(IB)-36/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Estate Pvt. Ltd.



Andheri (East) Mumbai – 400059

**... Respondent/
Corporate Debtor**

IN THE MATTER OF C.P.(IB) – 32/ND/2026:
(Under Section: 7 of IBC, 2016)

J.C. Flowers Asset Reconstruction Pvt. Ltd.

Through its authorized representative:

Ayush Agrawal

Unit No. 203-206, 2nd Floor Wing A,

Inspire BKC, Bandra (East),

Mumbai - 400051

**... Petitioner/
Financial Creditor**

Versus

Imagine Home Private Limited

307 & 308, 3rd Floor, Midas,

Sahar Plaza Andheri Kurla Road,

Andheri (East) Mumbai – 400059

**... Respondent/
Corporate Debtor**

IN THE MATTER OF C.P.(IB) – 36/ND/2026:
(Under Section: 7 of IBC, 2016)

J.C. Flowers Asset Reconstruction Pvt. Ltd.

Through its authorized representative:

Ayush Agrawal

Unit No. 203-206, 2nd Floor Wing A,

Inspire BKC, Bandra (East),

Mumbai - 400051

**... Petitioner/
Financial Creditor**

Versus

Imagine Estate Private Limited

307 & 308, 3rd Floor, Midas,

Sahar Plaza Andheri Kurla Road,

Andheri (East) Mumbai – 400059

**... Respondent/
Corporate Debtor**

Order delivered on: 07.04.2026

(IB)-30/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Habitat Pvt. Ltd.

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(IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.

(IB)-36/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Estate Pvt. Ltd.



CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

MS. REENA SINHA PURI, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Sidhant Kumar Marwah, Adv. Ritesh Kumar, Adv. Naanya Chandok, Adv. Naman Gowda, Adv. Ekssha Kashyap, Adv. Siddhant Ahirwal

For the Respondent : Sr. Adv. Sunil Fernandes, Adv. Udipto Koushik Sharma, Adv. Kumar Shubham, Adv. Srishti Agarwal, Adv. Kailash Ram

ORDER

PER: SHRI ASHOK KUMAR BHARDWAJ, MEMBER (J)

As can be seen from the pleadings available on DMS, the IB-30/ND/2026, IB-31/ND/2026, IB-32/ND/2026 and IB-36/ND/2026 are interlinked and have a common umbilical cord, thus are taken up for decision regarding admission thereof in terms of a common order.

2. To caption broad factual position, we derive the facts from IB-30/ND/2026. The Petitioner J.C. Flowers Asset Reconstruction Pvt. Ltd. a company incorporated under the Companies Act, 2013 is registered as an asset reconstruction company pursuant to Section 3 of the SARFAESI Act.

3. The Respondents in four petitions viz. Imagine Habitat Pvt. Ltd., Imagine Residence Pvt. Ltd., Imagine Home Pvt. Ltd. and Imagine Estate Pvt. Ltd. are Private Limited companies incorporated under the Companies Act, 2013. They are wholly owned subsidiary of RAB Enterprises (India) Private Limited ("**RAB**") promoted by Mr. Rana Kapoor and Ms. Bindu Kapoor ("**RAB**")

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(IB)-31/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Residence Pvt. Ltd.

(IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.

(IB)-36/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Estate Pvt. Ltd.



Promoters”). In and around 2017, RAB approached Samman Capital Limited (**SCL**), previously known as Indiabulls Housing Finance Limited, seeking financial facilities for its business purposes. As a sequel, SCL and its subsidiary viz. Indiabulls Commercial Credit Limited (**ICCL**), sanctioned and disbursed various loan facilities in favour of RAB Group of Companies, including the Corporate Debtor and Bliss House Private Limited (**Principal Debtor**).

4. SCL sanctioned and disbursed amounts of Rs. 70 Crores and 105 Crores vide Loan Agreements dated 05.09.2018 and 29.03.2019 as financial facilities to the Principal Debtor viz. Bliss House Private Limited. In order to secure the Loan, following documents were executed:-

- a. Personal Guarantees by Mr. Rana Kapoor and Mrs. Bindu Kapoor (**“Personal Guarantors”**) to stand as guarantors for the Loan Agreement dated 05 September 2018 and the Subject Loan Agreement and assuring repayment of the above sum upon failure by the Principal Borrower to repay the same.
- b. A Deed of Hypothecation dated 22 March 2019 (**“Subject Hypothecation Deed”**), hypothecated the receivables arising from the properties mentioned therein, in favour of the lender i.e., SCL.

5. The tenure of Loan Agreement was six months, with repayment to be done by way of EMIs described under the Loan Agreements. The Loan Agreement detailed multiple “Events of “Default”, the occurrence whereof could entitle SCL to recall the Loan Agreement dated 05.09.2018 and Subject Loan Agreement dated 29.03.2019 and to demand immediate repayment of

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(IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.
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the debt including interest and all other charges. Such default included, “Material Adverse Effect” like effect on the ability of any of the Obligor under the Loan Agreements to perform their obligations. The Loan Agreement also stipulated that all the obligors of the Principal Borrowers i.e. Personal Guarantor, Mortgagers, Hypothecators, and Pledgers are jointly and severally liable for the repayment of dues owed by the Principal Debtor.

6. Since the Corporate Debtors herein are hypothecators in terms of the Deed of Hypothecation dated 22.03.2019, they are also obligors qua the loan facility availed by the Principal Debtor. During the tenure of the Subject Loan Agreement dated 22.03.2019, the repayment ability of the Personal Guarantors viz. Mr. Rana Kapoor and Mrs. Bindu Kapoor was materially affected on account of criminal investigation initiated by the Directorate of Enforcement (DoE) and the Central Bureau of India (CBI) qua their activities. Resultantly, SCL formed a reasonable apprehension that the repayment ability of the Principal Debtor and its obligors was materially affected.

7. Ergo, the SCL issued notice dated 09.03.2020 recalling the financial facilities extended in terms of the Loan Agreement dated 05.09.2018 and the Subject Loan Agreement dated 22.03.2019, calling upon the Principal Debtor and / or its obligors including the Corporate Debtors herein before us to repay the outstanding amount within 05 days, failing which the recall notice was to be treated as invocation of all security documents.

8. The SCL also invoked the Arbitration Clause under the Subject Loan Agreement and preferred a petition under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim measures in relation to the Loan

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Agreement dated 05.09.2018 and Subject Loan Agreement dated 22.03.2019. In terms of the order dated 13.03.2020 passed in the petition preferred under Section 9 of the Arbitration and Conciliation Act, 1996, Hon'ble High Court of Delhi directed the Principal Debtor to maintain status quo regarding the securities offered under Loan Agreement dated 05.09.2018 and the Subject Loan Agreement dated 22.03.2019.

9. As the Principal Debtor / Borrower / Obligors did not respond to the Loan Recall Notice and did not repay the amount of debt, SCL issued notices dated 14.03.2020 to the Principal Debtor and Obligors including the Corporate Debtors. The Arbitral Proceedings initiated by SCL culminated in Arbitral Award dated 28.02.2023 in favour of SCL wherein the liability of the Principal Debtor and its Obligors was crystalised and they were directed to pay a sum of Rs. 1,96,87,24,418/- along with interest.

10. The Principal Debtor assailed the award dated 28.02.2023 by preferring a petition under Section 34 of the Arbitration and Conciliation Act, 1996. The petition is still pending before Hon'ble High Court. On 29.09.2025, the Petitioner issued a Demand Notice to the Corporate Debtors invoking their status as Obligors under the Subject Loan Agreement dated 22.03.2019 calling upon them to repay a sum of Rs. 260,32,53,778.61/- within a period of 7 days. The Corporate Debtors refused the service of the notice as also did not pay the demanded amount. Thus, the Petitioner has alleged default in repayment of Rs. 258,74,50,829/- by the Corporate Debtors, being Obligors qua the financial facility.



11. The Petitioner has also alleged separate defaults by the Corporate Debtors in respect of the financial facilities availed by them as Principal Debtors. The relevant excerpts of Part-IV of all the petitions reads thus:-

(IB)-30/ND/2026

PART IV			
PARTICULARS OF FINANCIAL DEBT			
1	TOTAL AMOUNT OF DEBT GRANTED AND DATE OF DISBURSEMENT	Date of Agreement	Disbursed Amount
		29.03.2019	INR 105 Crore
2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR THE COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	The brief facts of the case are as follows:	
		1. The Petitioner, J.C. FLOWERS ASSET RECONSTRUCTION PVT. LTD, a company incorporated under the Companies Act, 2013 and registered as an asset reconstruction company pursuant to Section 3 of the SARFAESI (as hereinafter defined), having its registered office at Unit No. 203-206, 2nd Floor, Wing A, Inspire BKC, Bandra Kurla Complex, Bandra (East), Mumbai – 400051 and a branch office at 1st Floor, Hotel Aloft, 5B, IGI T3 Road, Aerocity, New Delhi – 110037, acting in its capacity as trustee of JCF ARC TRUST 2024-25/33. 2. The Respondent, Bliss House Private Limited (also referred to as “Corporate Debtor”) is a private limited company incorporated under the Companies Act, 2013 and is engaged in the business of construction and real estate. The Corporate Debtor is a wholly owned subsidiary of RAB Enterprises (India) Private Limited (“RAB”), promoted by Ms. Bindu Kapoor, the wife of Mr. Rana Kapoor (“RAB Promoters”). Mr. Rana Kapoor was the founder and promoter of Yes Bank Limited (“Yes Bank”). <u>LOAN TRANSACTIONS BETWEEN SCL AND CORPORATE DEBTOR</u> 3. In and around 2017, RAB approached Sammaan Capital Limited (“SCL”), the predecessor-in-interest of the Petitioner, to avail various loan facilities, in favour of its wholly owned subsidiaries.	

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	4. Subsequently, SCL and its subsidiary Indiabulls Commercial Credit Limited (“ICCL”), sanctioned and disbursed various loan facilities in favour of multiple entities, including the following - a) Bliss House Private Limited b) Imagine Estate Private Limited c) Bliss Agri and Eco Tourism Private Limited d) Bliss Abode Private Limited e) Bliss Villa Private Limited f) Imagine Home Private Limited g) Imagine Habitat Private Limited h) Imagine Residence Private Limited These subsidiaries are collectively referred as “RAB Entities”. 5. Among the RAB Entities, SCL sanctioned and disbursed a loan facility to the
	Corporate Debtor by way of the Loan Agreement dated 29 March 2019 of INR 105 Crores. (“Bliss House Loan/Bliss House Loan Agreement”) A copy of the Loan Agreement dated 29 March 2019 is annexed herewith and marked as <u>Annexure P-3</u>. 6. The funds under Bliss House Loan were disbursed on 30 March 2019. 7. It must be noted that SCL had also granted and disbursed another loan for a sum of Rs. 70 crore vide another Loan Agreement (“the other Loan Agreement”), which has not been assigned to the Financial Creditor herein. As such, the present Petition is also being instituted on the strength of the Bliss House Loan mentioned above, which stands assigned to the Financial Creditor as of date. 8. The principal terms of the Bliss House Loan Agreement relevant for the adjudication of this Petition are set out below:
	<u>DEFAULT OF CORPORATE DEBTOR UNDER SEPARATE LOAN FACILITIES AVAILED FROM SAMMAAN CAPITAL LIMITED</u> 37. Besides acting as a hypothecator and thus an obligor under the Subject Loan Agreement, the Corporate Debtor itself also availed loan facilities worth Rs. 140 Crores from SCL. The details of the said loan facilities are set out below:

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(IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.
(IB)-36/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Estate Pvt. Ltd.



	(i) Loan Agreement dated 05 September 2018 for Rs. 60 Crores. (ii) Loan Agreement dated 29 March 2019 for Rs. 80 Crores. ("SCL Loan") It must be noted that only the SCL Loan has been assigned to the Petitioner herein and the Petitioner's claim is restricted to the SCL Loan. 38. The SCL Loan and the Loan Agreement dated 05 September 2018 availed by the Corporate Debtor herein were sanctioned as part of the overall facility of ~Rs. 1600 Crores availed by the RAB Group of Companies. A copy of the Loan Agreement dated 29 March 2019 executed between Sammaan Capital Limited and the Corporate Debtor is annexed herewith and marked as <u>Annexure P-10</u>.
	39. The terms of the Subject Loan Agreement and SCL Loan are identical and the SCL Loan was secured <i>inter alia</i> by a joint Deed of Personal Guarantee dated 29 March 2019 executed by RAB Promoters. A copy of the joint Deed of Guarantee dated 29 March 2019 are annexed herewith and marked as <u>Annexure P-11</u>. 40. Upon occurrence of the Material Adverse Effect in the repayment ability of RAB Promoters and the Event of Default as set out in paragraphs 14 to 27 above, the SCL Loan and the Loan Agreement dated 05 September 2018 availed by the Corporate Debtor herein, were recalled on 09 March 2020 ("SCL Recall Notice"). By the SCL Recall Notice, the Corporate Debtor was called upon to repay the outstanding sum of Rs. 141,36,93,779/- under the SCL Loan and the Loan Agreement dated 05 September 2018 availed by the Corporate Debtor, on or before 14 March 2020. A copy of the Loan Recall Notice dated 09 March 2020 issued by Sammaan Capital Limited to the Corporate Debtor is annexed herewith and marked as <u>Annexure P-12</u>.

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(IB)-31/ND/2026

PART IV

PARTICULARS OF FINANCIAL DEBT				
1	TOTAL AMOUNT OF DEBT GRANTED	Date of Agreement	Disbursed Amount	Date of Disbursement
	AND DATE OF DISBURSEMENT	29.03.2019	INR 105 Crore	30.03.2019
2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR THE COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	The brief facts of the case are as follows: 1. The Petitioner, J.C. FLOWERS ASSET RECONSTRUCTION PVT. LTD, a company incorporated under the Companies Act, 2013 and registered as an asset reconstruction company pursuant to Section 3 of the SARFAESI (as hereinafter defined), having its registered office at Unit No. 203-206, 2nd Floor, Wing A, Inspire BKC, Bandra Kurla Complex, Bandra (East), Mumbai – 400051 and a branch office at 1st Floor, Hotel Aloft, 5B, IGI T3 Road, Aerocity, New Delhi – 110037 acting in its capacity as trustee of JCF ARC TRUST 2024-25/33. 2. The Corporate Debtor, Imagine Residence Private Limited was incorporated on 12 June 2013 under the Companies Act. The Corporate Debtor is a wholly owned subsidiary of RAB Enterprises (India) Private Limited (“RAB”), promoted by Mr. Rana Kapoor and Ms. Bindu Kapoor (“RAB Promoters”). The RAB Promoters are former founders and promoters of Yes Bank Limited (“Yes Bank”).		
		<u>LOAN TRANSACTION OF BLISS HOUSE PRIVATE LIMITED, THE PRINCIPAL BORROWER</u> 3. In 2017, RAB approached Sammaan Capital Limited (“SCL”) to avail loan facilities, aggregating to INR 1,600 Crores, in favour of eight (8) of its wholly owned subsidiaries (“RAB Group of Companies”). 4. On the strength of the financial wherewithal and repayment capacity of the RAB Promoters, SCL and its subsidiary Indiabulls Commercial Credit Limited (“ICCL”), sanctioned and disbursed various loan facilities in favour of RAB Group of Companies, including the following: (i) Bliss House Private Limited (“Principal Borrower”)		

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 (IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.
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		(ii) Imagine Residence Private Limited (the “Corporate Debtor”) (iii) Bliss Agri and Eco Tourism Private Limited (iv) Bliss Villa (Delhi) Private Limited (v) Bliss Abode Private Limited (vi) Imagine Home Private Limited (vii) Imagine Habitat Private Limited (viii) Imagine Estate Private Limited
		5. Among the RAB Group of Companies, the loan facilities sanctioned and disbursed by SCL in favour of the Principal Borrower i.e., Bliss House Private Limited are set out below: a. Loan Agreement dated 05 September 2018 of INR 70 Crores. b. Loan Agreement dated 29 March 2019 of INR 105 Crores. (“Subject Loan Agreement”) A copy of the Loan Agreement dated 29 March 2019 is annexed herewith and marked as <u>Annexure P-3</u>. It is submitted that the Petitioner herein is restricting its claim to the Subject Loan Agreement as only that loan agreement has been assigned to the Petitioner. For the sake of completeness, the reference to the other loan agreement is also being made. 6. In order to secure the repayment of the above sums, the following securities were furnished – (a) Personal Guarantees by Mr. Rana Kapoor sums, the following securities were furnished – (a) Personal Guarantees by Mr. Rana Kapoor and Mrs. Bindu Kapoor (“Personal Guarantors”) to stand as guarantors for both the Loan Agreement dated 05 September 2018 and the Subject Loan Agreement, and assuring repayment of the above sum upon failure by the Corporate Debtor to repay the same. To this end, two joint Deeds of Guarantee were executed by the Personal Guarantors in favour of SCL, with both the Deeds of Guarantee executed on 05.09.2018. A copy of the two Deeds of Guarantee executed by Mr. Rana Kapoor and Mrs. Bindu Kapoor in favour of Sammaan Capital Limited are annexed herewith and marked as <u>Annexure P-4(Colly)</u>.
		A copy of the two Deeds of Guarantee executed by Mr. Rana Kapoor and Mrs. Bindu Kapoor in favour of Sammaan Capital Limited are annexed herewith and marked as <u>Annexure P-4(Colly)</u>.

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(IB)-31/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Residence Pvt. Ltd.

(IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.

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		(b) To further secure the Subject Loan Agreement, the Corporate Debtor, by way of a Deed of Hypothecation dated 22 March 2019 ("Subject Hypothecation Deed"), hypothecated the receivables arising from the properties mentioned therein, in favour of the lender i.e., SCL. Resultantly, the Corporate Debtor is a hypothecator under the Subject Loan Agreement, as defined therein and detailed hereinbelow. A copy of the Deed of Hypothecation dated 22 March 2019 is annexed herewith and marked as Annexure P-5.
		7. The relevant terms of the Subject Loan Agreement can be summarized as follows – a. The tenure of the Subject Loan Agreement was 60 months from the date of disbursement under the Agreement or any part thereof. b. Clause 1.1 stipulates the following – i. The guarantors, hypothecators, mortgagors, pledgors together constitute "Obligors" under the Subject Loan Agreement. ii. "Borrower's Dues" includes outstanding principal loan amount and other amounts due/payable as per the Loan Documents and/or any other loan agreement(s) entered between (a) the borrower(s) and (b) the lender. iii. "Material Adverse Effect" includes a material adverse effect on the ability of the Obligors to perform their obligations. c. Clause 2.1 stipulates that all Obligors of the Principal Borrower i.e., Bliss House Private Limited, are jointly and severally liable for repayment of the Borrower's Dues. Clause 9.2.2 further stipulates that the obligations under the Subject Loan Agreement are valid, binding and enforceable against the Obligors of Corporate Debtor. The relevant extracts of Clauses 2.1 and 9.2.2 are reproduced below:

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	"2.1. Loan Amount *** <i>The Obligor(s) shall be jointly and severally liable to pay the Borrower's Dues to the Lender."</i> <i>"9.2.2. The obligations expressed to be assumed in each Loan Documents are and will be legal, valid, binding and enforceable against the Obligor(s), the Obligor(s)' heirs, executors, successors, assigns and estate as if, they had been parties hereto. The Obligor(s)' heirs, executors, successors, assigns & legal representatives shall have no right or interest in the Security and on or after occurrence of an Event of Default under the Loan Documents, the Lender shall be entitled to sell or dispose of the Security on such terms and in such manner as the Lender deems fit upon, inter alia, happening of an Event of Default."</i>
	d. Clause 3 read with Schedule I – The Subject Loan Agreement are to be repaid in specified instalments over a period of sixty (60) months from the date of disbursal. The last instalment under the Subject Loan Agreement fell due on 4 April 2024. e. Clause 12.1.8 – A Material Adverse Effect constitutes an "Event of Default". f. Clause 12.2 – Upon occurrence of an Event of Default including a Material Adverse Effect as set out above, lender may recall the loan and the Borrower's Dues become repayable immediately by the borrower and its Obligors. g. Clause 16 – Any default by Obligors under their respective loan facilities would also constitute a default under

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(IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.
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	the Subject Loan Agreement. 8. In accordance with Clause 1.1, the Corporate Debtor is an Obligor of the Principal Borrower under the Subject Loan Agreement.
	Hundred and Twenty-Nine) ("Default Amount 1"). <u>DEFAULT OF CORPORATE DEBTOR UNDER SEPARATE LOAN FACILITIES AVAILED FROM SAMMAAN CAPITAL LIMITED</u> 37. Besides acting as a hypothecator and thus an obligor under the Subject Loan Agreement, the Corporate Debtor itself also availed loan facilities worth Rs. 145 Crores from SCL, The details of the SCL Loans are set out below: (i) Loan Agreement dated 05 September 2018 for INR 60 Crores. (ii) Loan Agreement dated 29 March 2019 for INR 85 Crores. ("SCL Loan") It must be noted that only the SCL Loan has been assigned to the Petitioner herein and the Petitioner's claim is restricted to the SCL Loan. 38. The SCL Loan and the Loan Agreement dated 05 September 2018 availed by the Corporate Debtor herein were sanctioned as part of the overall facility of ~Rs. 1600 Crores availed by the RAB Group of Companies. A copy of the Loan Agreement dated 29 March 2019 executed between Sammaan
	Capital Limited and the Corporate Debtor is annexed herewith and marked as <u>Annexure P-10</u>. 39. The terms of the Subject Loan Agreement and SCL Loan are identical and was secured <i>inter alia</i> by a Deed of Personal Guarantee dated 29 March 2019 executed by RAB Promoters. A copy of the Deed of Guarantee dated 29 March 2019 are annexed herewith and marked as <u>Annexure P-11</u>. 40. Upon occurrence of the Material Adverse Effect in the repayment ability of RAB Promoters and the Event of Default as set out in paragraphs 14 to 27 above, the SCL Loan and the Loan Agreement dated 05 September 2018 availed by the Corporate Debtor herein,

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	were recalled on 9 March 2020 (“SCL Recall Notice”). By the SCL Recall Notice, the Corporate Debtor was called upon to repay the outstanding sum of INR 146,89,06,151/- under the SCL Loan and the Loan Agreement dated 05 September 2018 along with interest, on or before 14 March 2020. A copy of the Loan Recall Notice dated 09 March 2020 issued by Sammaan Capital Limited to the Corporate Debtor is annexed herewith and marked as Annexure P-12.
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(IB)-32/ND/2026

PART IV

PARTICULARS OF FINANCIAL DEBT				
1	TOTAL AMOUNT OF DEBT GRANTED	Date of Agreement	Disbursed Amount	Date of Disbursement
	AND DATE OF DISBURSEMENT	29.03.2019	INR 105 Crore	30.03.2019
2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR THE COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	The brief facts of the case are as follows: 1. The Petitioner, J.C. FLOWERS ASSET RECONSTRUCTION PVT. LTD, a company incorporated under the Companies Act, 2013 and registered as an asset reconstruction company pursuant to Section 3 of the SARFAESI (as hereinafter defined), having its registered office at Unit No. 203-206, 2nd Floor, Wing A, Inspire BKC, Bandra Kurla Complex, Bandra (East), Mumbai – 400051 and a branch office at 1st Floor, Hotel Aloft, 5B, IGI T3 Road, Aerocity, New Delhi – 110037 acting in its capacity as trustee of JCF ARC TRUST 2024-25/33. 2. The Corporate Debtor, Imagine Home Private Limited was incorporated on 31 May 2013 under the Companies Act. The Corporate Debtor is a wholly owned subsidiary of RAB Enterprises (India) Private Limited (“RAB”), promoted by Mr. Rana Kapoor and Ms. Bindu		

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 (IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.
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	Kapoor (“RAB Promoters”). The RAB Promoters are former founders and promoters of Yes Bank Limited (“Yes Bank”).
	<u>LOAN TRANSACTION OF BLISS HOUSE PRIVATE LIMITED, THE PRINCIPAL BORROWER</u> 3. In 2017, RAB approached Sammaan Capital Limited (“SCL”) to avail loan facilities, aggregating to INR 1,600 Crores, in favour of eight (8) of its wholly owned subsidiaries (“RAB Group of Companies”). 4. On the strength of the financial wherewithal and repayment capacity of the RAB Promoters, SCL and its subsidiary Indiabulls Commercial Credit Limited (“ICCL”), sanctioned and disbursed various loan facilities in favour of RAB Group of Companies, including the following: (i) Bliss House Private Limited (“Principal Borrower”) (ii) Imagine Home Private Limited (the “Corporate Debtor”) (iii) Bliss Agri and Eco Tourism Private Limited (iv) Bliss Villa (Delhi) Private Limited (v) Bliss Abode Private Limited (vi) Imagine Estate Private Limited (vii) Imagine Habitat Private Limited (viii) Imagine Residence Private Limited
	5. Among the RAB Group of Companies, the loan facilities sanctioned and disbursed by SCL in favour of the Principal Borrower i.e Bliss House Private Limited are set out below: a. Loan Agreement dated 05 September 2018 of INR 70 Crores. b. Loan Agreement dated 29 March 2019 of INR 105 Crores. (“Subject Loan Agreement”) A copy of the Loan Agreement dated 29 March 2019 is annexed herewith and marked as <u>Annexure P-3</u>. It is submitted that the Petitioner herein is restricting its claim to the Subject Loan Agreement as only that loan agreement has been assigned to the Petitioner. For the sake of completeness, the reference to the other loan agreement is also being made. 6. In order to secure the repayment of the above sums, the following securities were furnished – (a) Personal Guarantees by Mr. Rana Kapoor and Mrs. Bindu Kapoor (“Personal

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 (IB)-31/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Residence Pvt. Ltd.
 (IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.
 (IB)-36/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Estate Pvt. Ltd.



	Guarantors”) to stand as guarantors for both the Loan Agreement dated 05 September 2018 and the Subject Loan Agreement, and assuring repayment of the
	above sum upon failure by the Corporate Debtor to repay the same. To this end, two joint Deeds of Guarantee were executed by the Personal Guarantors in favour of SCL, with both the Deeds of Guarantee executed on 05.09.2018. A copy of the two Deeds of Guarantee executed by Mr. Rana Kapoor and Mrs. Bindu Kapoor in favour of Sammaan Capital Limited are annexed herewith and marked as <u>Annexure P-4(Colly)</u>. (b) To further secure the Subject Loan Agreement, the Corporate Debtor, by way of a Deed of Hypothecation dated 22 March 2019 (“Subject Hypothecation Deed”), hypothecated the receivables arising from the properties mentioned therein, in favour of the lender i.e., SCL. Resultantly, the Corporate Debtor is a hypothecator under the Subject Loan Agreement, as defined therein and detailed hereinbelow. A copy of the Deed of Hypothecation dated 22 March 2019 is annexed herewith and marked as <u>Annexure P-5</u>.
	7. The relevant terms of the Subject Loan Agreement can be summarized as follows – a. The tenure of the Subject Loan Agreement was 60 months from the date of disbursement under the Agreement or any part thereof. b. Clause 1.1 stipulates the following - i. The guarantors, hypothecators, mortgagors, pledgors together constitute “Obligors” under the Subject Loan Agreement. ii. “Borrower’s Dues” includes outstanding principal loan amount and other amounts due/payable as per the Loan Documents and/or any other loan agreement(s) entered between (a) the borrower(s) and (b) the lender. iii. “Material Adverse Effect” includes a material adverse effect on the ability of the

(IB)-30/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Habitat Pvt. Ltd.

(IB)-31/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Residence Pvt. Ltd.

(IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.

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	Obligors to perform their obligations. c. Clause 2.1 stipulates that all Obligors of the Principal Borrower
	i.e., Bliss House Private Limited, are jointly and severally liable for repayment of the Borrower's Dues. Clause 9.2.2 further stipulates that the obligations under the Subject Loan Agreement are valid, binding and enforceable against the Obligors of Corporate Debtor. The relevant extracts of Clauses 2.1 and 9.2.2 are reproduced below: <i>"2.1. Loan Amount</i> <i>... The Obligor(s) shall be jointly and severally liable to pay the Borrower's Dues to the Lender."</i> <i>"9.2.2. The obligations expressed to be assumed in each Loan Documents are and will be legal, valid, binding and enforceable against the Obligor(s), the Obligor(s)' heirs, executors, successors, assigns and estate as if, they had been parties hereto. The Obligor(s)' heirs, executors, successors, assigns & legal representatives shall have no right or interest in the Security and on or after occurrence of an Event of Default under the Loan Documents, the Lender shall be entitled to sell or dispose of the Security on such terms and</i>
	<i>in such manner as the Lender deems fit upon, inter alia, happening of an Event of Default."</i> d. Clause 3 read with Schedule I – The Subject Loan Agreement are to be repaid in specified instalments over a period of sixty (60) months from the date of disbursal. The last instalment under Subject Loan Agreement fell due on 05 April 2024. e. Clause 12.1.8 – A Material Adverse Effect constitutes an "Event of Default". f. Clause 12.2 – Upon occurrence of an Event of Default including a Material Adverse Effect as set out above, lender may recall the loan and the Borrower's Dues become repayable immediately by the borrower and its Obligors. g. Clause 16 – Any default by Obligors

(IB)-30/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Habitat Pvt. Ltd.
(IB)-31/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Residence Pvt. Ltd.
(IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.
(IB)-36/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Estate Pvt. Ltd.



		under their respective loan facilities would also constitute a default under the Subject Loan Agreement.
		8. In accordance with Clause 1.1, the Corporate Debtor is an Obligor of the Principal Borrower under the Subject Loan Agreement.
		<u>DEFAULT OF CORPORATE DEBTOR UNDER SEPARATE LOAN FACILITIES AVAILED FROM SAMMAAN CAPITAL LIMITED</u> 37. Besides acting as a hypothecator and thus an obligor under the Subject Loan Agreement, the Corporate Debtor itself also availed loan facilities worth Rs. 145 Crores from SCL, The details of the SCL Loans are set out below: (i) Loan Agreement dated 05 September 2018 for INR 60 Crores. (ii) Loan Agreement dated 29 March 2019 for INR 85 Crores. ("SCL Loan") It must be noted that only the SCL Loan has been assigned to the Petitioner herein and the Petitioner's claim is restricted to the SCL Loan. 38. The SCL Loan and the Loan Agreement dated 05 September 2018 availed by the Corporate Debtor herein were sanctioned as part of the overall facility of ~Rs. 1600 Crores availed by the RAB Group of Companies. A copy of the Loan Agreement dated 29 March 2019 executed between Sammaan Capital Limited and the Corporate Debtor is annexed herewith and marked as <u>Annexure P-10</u>. 39. The terms of the Subject Loan Agreement and SCL Loan are identical and the SCL Loan was secured <i>inter alia</i> by a Deed of Personal Guarantee dated 29 March 2019 executed by RAB Promoters. A copy of the Deed of Guarantee dated 29 March 2019 are annexed herewith and marked as <u>Annexure P-11</u>. 40. Upon occurrence of the Material Adverse Effect in the repayment ability of RAB Promoters and the Event of Default as set out in paragraphs 14 to 27 above, the SCL Loan and the Loan Agreement dated 05 September



	2018 availed by the Corporate Debtor herein, were recalled on 9 March 2020 ("SCL Recall Notice"). By the SCL Recall Notice, the Corporate Debtor was called upon to repay the outstanding sum of INR 146,23,59,375/- under the SCL Loan the Loan Agreement dated 05 September 2018 along with interest, on or before 14 March 2020.
	A copy of the Loan Recall Notice dated 09 March 2020 issued by Sammaan Capital Limited to the Corporate Debtor is annexed herewith and marked as <u>Annexure P-12</u> .

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(IB)-32/ND/2026

PART IV

PARTICULARS OF FINANCIAL DEBT				
1	TOTAL AMOUNT OF DEBT GRANTED AND DATE OF DISBURSEMENT	Date of Agreement	Disbursed Amount	Date of Disbursement
		29.03.2019	INR 105 Crore	30.03.2019
2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR THE COMPUTATIO	The brief facts of the case are as follows: 1. The Petitioner, J.C. FLOWERS ASSET RECONSTRUCTION PVT. LTD, a company incorporated under the Companies Act, 2013 and registered as an asset reconstruction company pursuant to Section 3 of the SARFAESI (as hereinafter defined), having its registered office at Unit No. 203-206, 2nd Floor, Wing A, Inspire BKC, Bandra Kurla Complex, Bandra (East), Mumbai – 400051 and a branch office at 1st Floor, Hotel Aloft, 5B, IGI T3 Road, Aerocity, New Delhi – 110037 acting in its capacity as trustee of JCF		

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 (IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.
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N OF AMOUNT AND DAYS OF DEFAULT IN	ARC TRUST 2024-25/33 and of JCF ARC Trust 2024-25/37. 2. The Corporate Debtor, Imagine Estate Private Limited was incorporated on 11 December
TABULAR FORM)	2007 under the Companies Act 1956. The Corporate Debtor is a wholly owned subsidiary of RAB Enterprises (India) Private Limited ("RAB"), promoted by Mr. Rana Kapoor and Ms. Bindu Kapoor ("RAB Promoters"). The RAB Promoters are former founders and promoters of Yes Bank Limited ("Yes Bank"). <u>LOAN TRANSACTION OF BLISS HOUSE PRIVATE LIMITED, THE PRINCIPAL BORROWER</u> 3. In 2017, RAB approached Sammaan Capital Limited ("SCL") to avail loan facilities, aggregating to INR 1,600 Crores, in favour of eight (8) of its wholly owned subsidiaries ("RAB Group Companies"). 4. On the strength of the financial wherewithal and repayment capacity of the RAB Promoters, SCL and its subsidiary Indiabulls Commercial Credit Limited ("ICCL"), sanctioned and disbursed various loan facilities in favour of RAB Group of Companies, including the following: (i) Bliss House Private Limited ("Principal Borrower") (ii) Imagine Estate Private Limited (the "Corporate Debtor")
	(iii) Bliss Agri and Eco Tourism Private Limited (iv) Bliss Villa Private Limited (v) Bliss Abode Private Limited (vi) Imagine Home Private Limited (vii) Imagine Habitat Private Limited (viii) Imagine Residence Private Limited 5. Among the RAB Group of Companies, the loan facilities sanctioned and disbursed by SCL in favour of the Corporate Debtor are set out below: a. Loan Agreement dated 05 September 2018 of INR 70 Crores. b. Loan Agreement dated 29 March 2019 of INR 105 Crores. ("Subject Loan Agreement") A copy of the Loan Agreement dated 29 March 2019 is annexed herewith and marked as <u>Annexure P-3</u>. 6. In order to secure the repayment of the above sums, the following securities were furnished:

(IB)-30/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Habitat Pvt. Ltd.

(IB)-31/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Residence Pvt. Ltd.

(IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.

(IB)-36/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Estate Pvt. Ltd.



	and Mrs. Bindu Kapoor (“Personal Guarantors”) to stand as guarantors for both the Loan Agreement dated 05 September 2018 and the Subject Loan Agreement, and assuring repayment of the above sum upon failure by the Corporate Debtor to repay the same. To this end, two joint Deeds of Guarantee were executed by the Personal Guarantors in favour of SCL, with both the Deeds of Guarantee executed on 05.09.2018. A copy of the two Deeds of Guarantee executed by Mr. Rana Kapoor and Mrs. Bindu Kapoor in favour of Sammaan Capital Limited are annexed herewith and marked as <u>Annexure P-4(Colly)</u>. (b) To further secure the Subject Loan Agreement, the Corporate Debtor, by way of a Deed of Hypothecation dated 22 March 2019 (“Subject Hypothecation Deed”), hypothecated the receivables arising from the properties mentioned therein, in favour of the lender i.e., SCL. Resultantly, the Corporate Debtor is a hypothecator under the Subject Loan Agreement, as defined therein and detailed hereinbelow. A copy of the Deed of Hypothecation dated 22 March 2019 is annexed herewith and marked as <u>Annexure P-5</u>.
	7. The relevant terms of the Subject Loan Agreement can be summarized as follows – a. The tenure of the Loan Agreements was 60 months from the date of disbursement under the Agreement or any part thereof. b. Clause 1.1 stipulates the following – i. The guarantors, hypothecators, mortgagors, pledgors together constitute “Obligors” under the Loan Agreements. ii. “Borrower’s Dues” includes outstanding principal loan amount and other amounts due/payable as per the Loan Documents and/or any other loan agreement(s) entered between (a) the borrower(s) and (b) the lender. iii. “Material Adverse Effect”



		effect on the ability of the Obligors to perform their obligations. c. Clause 2.1 stipulates that all Obligors of the Principal Borrower
		i.e., Bliss House Private Limited, are jointly and severally liable for repayment of the Borrower's Dues. Clause 9.2.2 further stipulates that the obligations under Loan Agreements are valid, binding and enforceable against the Obligors of Corporate Debtor. The relevant extracts of Clauses 2.1 and 9.2.2 are reproduced below: <i>"2.1. Loan Amount</i> <i>... The Obligor(s) shall be jointly and severally liable to pay the Borrower's Dues to the Lender."</i> <i>"9.2.2. The obligations expressed to be assumed in each Loan Documents are and will be legal, valid, binding and enforceable against the Obligor(s), the Obligor(s)' heirs, executors, successors, assigns and estate as if, they had been parties hereto. The Obligor(s)' heirs, executors, successors, assigns & legal representatives shall have no right or interest in the Security and on or after occurrence of an Event of Default under the Loan Documents, the Lender shall be entitled to sell or dispose of the Security on such terms and</i>
		<i>in such manner as the Lender deems fit upon, inter alia, happening of an Event of Default."</i> d. Clause 3 read with Schedule I – The Bliss House Loans are to be repaid in specified instalments over a period of sixty (60) months from the date of disbursal. The last instalment under Subject Loan Agreement fell due on 4 April 2024.

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(IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.
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	e. Clause 12.1.8 – A Material Adverse Effect constitutes an “Event of Default”. f. Clause 12.2 – Upon occurrence of an Event of Default including a Material Adverse Effect as set out above, lender may recall the loan and the Borrower’s Dues become repayable immediately by the borrower and its Obligor. g. Clause 16 – Any default by Obligor under their respective loan facilities would also constitute a default under the Loan Agreements. 8. In accordance with Clause 1.1, the Corporate Debtor is an Obligor of the Principal Borrower under Subject Loan Agreement.
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	<u>DEFAULT OF CORPORATE DEBTOR UNDER SEPARATE LOAN FACILITIES AVAILED FROM INDIABULLS COMMERCIAL CREDIT LIMITED</u>
	37. Besides acting as a hypothecator and thus an obligor under the Subject Loan Agreement, the Corporate Debtor itself also availed loan facilities worth Rs. 346 Crores from Indiabulls Commercial Credit Limited (“ICCL”), a sister concern of SCL (“ICCL Loans”). The details of the ICCL Loans are set out below: (i) Loan Agreement dated 7 October 2019 bearing no. S000241043 for INR 172 Crores (ii) Loan Agreement dated 7 October 2019 bearing no. S000241044 for INR 174 Crores 38. These ICCL Loans were sanctioned as part of the overall facility of ~Rs. 1600 Crores availed by the RAB Group of Companies. A copy of the Loan Agreements dated 07 October 2019 executed between Indiabulls Commercial Credit Limited and the Corporate Debtor is annexed herewith and marked as <u>Annexure P-10(Colly)</u>.

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 (IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.
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	39. The terms of the Subject Loan Agreement and ICCL Loans are identical and the ICCL Loans were secured <i>inter alia</i> by a Deed of Personal Guarantee dated 4 October 2019 executed by RAB Promoters.
	A copy of the Deeds of Guarantee dated 04 October 2019 are annexed herewith and marked as <u>Annexure P-11(Colly)</u>. 40. Upon occurrence of the Material Adverse Effect in the repayment ability of RAB Promoters and the Event of Default as set out in paragraphs 14 to 27 above, the ICCL Loans were recalled on 9 March 2020 ("ICCL Recall Notice"). By the ICCL Recall Notice, the Corporate Debtor was called upon to repay the outstanding sum of INR 3,59,40,75,000/- under the ICCL Loans, on or before 14 March 2020. A copy of the Loan Recall Notice dated 09 March 2020 issued by Indiabulls Commercial Credit Limited to the Corporate Debtor is annexed herewith and marked as <u>Annexure P-12</u>.

12. An Assignment Agreement dated 29.03.2025 was executed between SCL and the Petitioner before us, in terms of which SCL assigned its rights, interests and claims arising out of the Subject Loan Agreement and the SCL loan and the security documents in relation to the Subject Loan Agreement to the Petitioner. The Petitioner has preferred the present petition as assignee.

13. The replies filed on behalf of all the Corporate Debtors / Respondents are *pari materia*. For convenience, we extract relevant excerpt from the reply filed in Company Petition (IB) No. 30 of 2026, as under:-

"5. The facts relevant for the purpose of adjudication of the present Petition are laid out below:

*a. The Respondent along with principal borrower are a wholly owned subsidiary of RAB Enterprises (India) Private Limited ("**RAB**").*

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RAB's group companies such as the Respondent and the principal borrower availed various loan facilities from IHFL, including:

- i. The principal borrower entered into two loan agreements with IHFL, worth Rs. 70 crore and Rs. 105 crore. The Respondent along with other group companies entered into a Deed of Hypothecation dated 22.03.2019 to hypothecate certain assets by way of first – ranking charge in favour of the lender, as security for the dues payable against the principal borrower's Rs. 105 crore loan ("**Hypothecation Deed**"). These assets inter alia included a duplex apartment 'Unit 5' at a project named as 'Sesen' in Mumbai, Maharashtra (owned by the Respondent), valued by IHFL at Rs. 110 Crores even when the construction was only partly complete ("**Sesen property**"). A copy of IHFL's valuation report dated 31.08.2018 for the Sesen property is annexed hereto and marked as **Annexure – R1**.
 - ii. The Respondent also availed two loans from IHFL through a Loan Agreement dated 05.09.2018 for Rs. 60 Crores, as well as for Rs. 80 Crores, in their capacity as a principal borrower. The Sesen property was also mortgaged against the Rs. 80 crore loan, through a mortgage deed dated 16.08.2019.
- b. Cl. 1.1 of the aforesaid Loan Agreements defines 'Borrower's Dues' as the outstanding principal amount and other amounts due/payable as per the relevant Loan Agreements and/or any other loan agreements entered into between the borrower and the lender, including any interest, default interest, fees, costs, charges, expenses and other sums whatsoever payable by the Obligor (s) to the lender. The term 'Obligor(s)' is defined as a party to the Loan Documents who is either a borrower, hypothecator, guarantor, mortgagor, pledgor and/or any other person providing security to secure the borrower's obligations towards the Borrower's Dues.



Clause 12 of the Loan Agreements, worded identically, provided numerous 'Events of Default' which would give rise to a breach of the Agreements. Clause 12.1.8 is most pertinent for the purposes of the present proceedings. Clause 12.1.8 of the Loan Agreements provided that if any event or circumstance occurred which the Lender (IHFL) believed is likely to have a 'Material Adverse Effect', or if any circumstance or event occurred, which in the opinion of Lender would or was likely to prejudicially or adversely affect in any manner, the ability / capacity of the Obligor (s) to perform or comply with their obligations under the Loan Documents to repay the dues, the said event would constitute an 'Event of Default'. Even though the terms of Clause 12.1.8 were unduly favorably biased for IHFL and left everything to its sole discretion, the Respondent as a principal borrower had no choice but to accede to the terms of the unilateral and one – sided Agreements.

- c. Schedule II of the principal borrower's Rs. 105 crore loan and Respondent's Rs. 80 crore loan required them to only undertake interest payments from the date of first disbursal, i.e., 05.04.2019 up till 05.11.2021 (first two and a half years of the loan tenure), and the principal payments were required to be made thereafter up till 05.04.2024, i.e., the end of the loan's tenure. This arrangement provided sufficient comfort to the Respondent, while at the same time causing substantial profits for IHFL through the regular interest payments. A perusal of the Statement of Accounts dated 30.06.2020 and 08.09.2020 for the principal borrower's Rs. 105 crore loan and the Respondent's Rs. 80 crore loan would indicate that there was no contravention of the terms of repayment under Schedule II on either the principal borrower or Respondent's part. Copies of the Statement of Accounts dated 30.06.2020 and 08.09.2020 for the loan worth Rs. 105 crore granted to Bliss House Private Limited are annexed hereto and marked as **Annexure – R2**



(Colly). Copies of the Statement of Accounts dated 30.06.2020 and 08.09.2020 for the Respondent's Rs. 80 crore loan are annexed hereto and marked as **Annexure – R3 (Colly).**

d. Accordingly, as of 08.03.2020, the Respondent as well as the principal borrower had ensured that it had diligently undertaken the interest payments, and consequently, there was no default of the terms of the Loan Agreements. Despite the same, on 09.03.2020, to the Respondent's shock, IHFL issued the 2020 LRNs for both the principal borrower's Rs. 105 crore loan and the Respondent's Rs. 80 crore loan, recalling the loan facilities and called upon the Respondent to repay:

- i. An outstanding amount of Rs. 189,27,34,375/- (Rupees One Hundred Eighty – Nine Crore Twenty – Seven Lakh Thirty – Four Thousand Three Hundred Seventy – Five Only) along with Rs. 83,81,048/- (Rupees Eighty – Three Lakh Eighty – One Thousand Forty - Eight Only) towards TDS within a period of 5 days, in its capacity as an Obligor to the principal borrower's loan of Rs. 105 crore;
- ii. An outstanding amount of Rs. 140,71,56,250/- (Rupees One Hundred Forty Crores Seventy – One Lakh Fifty – Six Thousand Two Hundred and Fifty only) along with Rs. 65,37,259/- (Rupees Sixty – Five Lakh Thirty – Seven Thousand Two Hundred and Fifty – Nine only), towards TDS within a period of 5 days, with respect to the Respondent's Rs. 80 crore loan.

It is pertinent to mention that the 2020 LRNs were issued without any prior default notice in relation to the Respondent's payment obligations under the Loan Agreements.

e. IHFL through the 2020 LRNs alleged that the 'Event of Default' had already occurred as a result of 'Material Adverse Effect' under the aforesaid Loan Agreements. Pertinently, the 2020 LRNs failed to

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provide any justification and reasoning or furnish and / or elaborate in any manner upon the alleged ‘Event of Default’, and failed to consider that the principal borrower and Respondent had not defaulted on a single payment till the date of issuance of the 2020 LRNs. Indeed, with respect to the Respondent’s loan as a principal borrower, the Respondent had maintained an impeccable track record of timely interest and TDS payments on the aforesaid loans. There was no cogent evidence or averment in the 2020 LRNs indicating why the Respondent or principal borrower would be unable to undertake the payments under the aforesaid Loan Agreements subsequently. These vague and unsubstantiated 2020 LRNs have subsequently been utilized by IHFL in connivance with parties such as JCF to harass the Respondent and other related entities across multiple ill – founded proceedings and forum shopping across legislations and courts.

*f. On 08.04.2020, the principal borrower as well as the Respondent wrote to IHFL objecting to issuance of the 2020 LRNs. Copies of the emails dated 08.04.2020 issued by the Respondent and Bliss House Private Limited are annexed hereto and marked as **Annexure – R4 (Colly)**.*

*g. Considering the dispute resolution scheme under the Rs. 105 crore loan as well as the Respondent’s Rs. 80 crore loan, arbitral proceedings were initiated by IHFL and finally concluded on 08.05.2021, wherein, the Ld. Sole Arbitrator appointed by IHFL reserved the matter for the purposes of passing awards (“**IHFL Arbitration**”). After a significant delay of one (1) year, nine (9) months and twenty (20) days, the Ld. Sole Arbitrator proceeded to issue similarly – worded Awards on 28.02.2023. Accordingly, the said Awards were passed with a significant delay and without considering that the 2020 LRNs were issued without any justification or reasoning, and that the 2020 LRNs were in violation*

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of mandatory RBI Circulars and the Hon'ble Supreme Court's judgment in *Small Scale Industrial Manufactures Assn. v. Union of India*, (2021) 8 SCC 511, premised solely on post – facto justifications:

- i. The Ld. Sole Arbitrator failed to consider that the justification for invoking the 2020 LRNs were entirely introduced post the issuance of the LRN and was not a part of the 2020 LRNs in any manner whatsoever. The sole justification for the invocation, being the involvement of one of the guarantors in unrelated legal proceedings, was not present in the 2020 LRNs, and was only introduced later through pleadings before the Ld. Sole Arbitrator in the IHFL Arbitration; entirely introduced post the issuance of the LRN and was not a part of the 2020 LRNs in any manner whatsoever. The sole justification for the invocation, being the involvement of one of the guarantors in unrelated legal proceedings, was not present in the 2020 LRNs, and was only introduced later through pleadings before the Ld. Sole Arbitrator in the IHFL Arbitration;
- ii. The Ld. Sole Arbitrator failed to consider that as per RBI Circulars dated 27.03.2020, 17.04.2020 and 23.05.2020 ("**RBI Circulars**"), all commercial banks and Non – Banking Finance Companies ("**NBFCs**") were required to provide a moratorium on instalments due between 01.03.2020 and 31.08.2020. With respect to the RBI Circulars, before the Hon'ble Supreme Court in *Small Scale Industrial Manufactures Assn. v. Union of India*, (2021) 8 SCC 511, the counsel for the RBI categorically submitted that the Circular dated 27.03.2020 shall be applicable to all banks, NBFCs etc., mandatorily, and the same was recorded by the Hon'ble Supreme Court while disposing of the matter. It is pertinent to note that the Hon'ble Supreme Court did not leave an iota of discretion in the hands of financial institutions, when it

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came to the application of the RBI Circular. A copy of the RBI Circular dated 27.03.2020 along with the Statement on Developmental and Regulatory Policies is annexed hereto and marked as **Annexure – R5**. Copies of the RBI Circulars dated 17.04.2020 and 23.05.2020 are annexed hereto and marked as **Annexure – R6 (Colly)**. iii. The Awards, with respect to certain group companies, seems to hold all Obligors to the Loan Agreements jointly and severally liable for the entire sum awarded, without considering that the Obligor's liability extended only to a small portion of the loans granted by IHFL;

iv. The Awards are also vitiated by the fact that the same was delivered after an unsubstantiated and inexplicable delay of 1 year, 9 months and 20 days from the date on which the Awards were reserved, meaning that the same is grossly against the public policy of India.

h. Aggrieved by the said Awards rendered by the Ld. Sole Arbitrator in the IHFL Arbitration, the principal borrower as well as the Respondent, preferred petitions under Section 34 of the Arbitration Act before the Hon'ble High Court of Delhi in August 2023, assailing the legality of the aforesaid Awards on the grounds that the same is patently illegal and in contravention of the fundamental arbitration policy of Indian law (collectively referred to as "**Section 34 Petitions**"). It is submitted that the aforesaid petitions are currently pending adjudication before the Hon'ble High Court of Delhi and are listed next on 27.03.2026. A copy of the Respondent's Petition under Section 34 of the Arbitration Act, bearing OMP (Comm) No. 362 of 2023, is annexed hereto and marked as **Annexure – R7**. A copy of the principal borrower, Bliss House Private Limited's Petition under Section 34 of the Arbitration Act, bearing OMP (Comm) No. 365 of 2023, is annexed hereto and marked as **Annexure – R8**."

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14. The Petitioner was represented by Advocate Siddharth Kumar Marwaha while the Respondents were represented by Mr. Sunil Fernades, Sr. Advocate. Mr. Fernades advanced common submissions in respect of all the four petitions. He contended:-

- a. The petitions are not maintainable also for the reason that the execution of Deed of Hypothecation would not make the executors of the deed as Financial Debtor or Guarantor.
- b. The present petitions are not amenable to jurisdiction of New Delhi Bench, for the simple reason that the registered offices of the Corporate Debtors do not lie within its territorial jurisdiction.
- c. There was no debt due or default committed on the date of issuance of Recall Notice dated 09.03.2020, by the Corporate Debtors.
- d. The present petitions have been preferred only for the execution of the Arbitral Award.
- e. Since, the basis of the present proceedings is Arbitral Award, which is under challenged before Hon'ble High Court, the present petitions are not maintainable.
- f. The petition is barred by limitation.

15. The Petitioner filed its written submissions, espousing therein that the Corporate Debtors are jointly and severally liable for the debt procured by the Principal Debtors, in terms of clauses 2.1 and 12.2 of Loan Agreement. Relying upon the Arbitral Award, the Petitioner has buttressed that in terms thereof the amount of debt and default committed in repayment thereof was

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crystalised. Having reiterated the factual backdrop in brief therein, in the written submissions the Petitioner canvassed that Section 5(5A) of IBC defines Corporate Guarantor as a corporate person who is the surety under a contract of guarantee. Section 126 of the Contract Act, 1872, defines a contract of guarantee as an undertaking to discharge the debt of a third person in case of default. In the present case, the Respondent undertook to discharge the BH Debt in case of default by Bliss House on a clear reading of the terms of the BH Loan Agreement and the DoH. Clause 2.1 of the BH Loan Agreement amplify that Respondent in its capacity as Obligor undertook to make good the repayment of debt extended under the Agreement. The clause 12.2 of Agreement stipulates that upon the occurrence of an event of default, the lender is entitled to recall the loan and the outstanding amount therein become payable by the Obligors.

16. The emphasis laid by the Petitioner in the written submissions filed on its behalf is that clause 2.2.4 of the BH Loan Agreement in addition casted an obligation on the obligors including the Corporate Debtors to make good any shortfall after sale of the securities under the BH Loan Agreement for discharge of BH debt from any source whatsoever. According to the Petitioner, in terms of the order dated 21.01.2026 passed by this Tribunal in the proceedings qua the Principal Debtor, it is established that the Corporate Debtors are debtors in default.

17. We heard the counsels for the parties and perused the record. Mr. Sunil Fernande, Ld. Sr. Counsel for the Corporate Debtors argued with vehemence that the execution of a Deed of Hypothecation by the Corporate Debtors would

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not make them liable as Corporate Guarantors. It is seen from the common Deed of Hypothecation executed by all the Corporate Debtors before us that the expression **Obligor(s)** would mean the Borrower(s), the Hypothecator(s), the Guarantor(s), the Mortgagor(s), the Pledgor(s) and / or any other person providing Security to secure the Borrower(s) obligations under the Loan Documents including the Borrower's Dues and / or who is or becomes a party (other than the Lender) to the Loan Documents. The relevant excerpt of the Hypothecation Deed reads thus:-

DEED OF HYPOTHECATION

THIS DEED OF HYPOTHECATION ("Deed") executed this this ___th day of ___ 2019.

1 i. M/s. Imagine Estate Private Limited a company as defined in the Companies Act, 2013, with its registered office situated at 15th Floor, Tower 2A, One Indiabulls Centre, Senapati Bapat Marg, Lower Parel, Mumbai-400013 and having Corporate Identity Number: U45200MH2007PTC174021

ii. M/s. Bliss Agri and Eco Tourism Private Limited a company as defined in the Companies Act, 2013, with its registered office situated at 15th Floor, Tower 2A, One Indiabulls Centre, Senapati Bapat Marg, Lower Parel, Mumbai-400013 and having Corporate Identity Number: U01100MH2009PTC322829

iii. M/s. Imagine Property Private Limited a company as defined in the Companies Act, 2013, with its registered office situated at 15th Floor, Tower 2A, One Indiabulls Centre, Senapati Bapat Marg, Lower Parel, Mumbai-400013 and having Corporate Identity Number: U45201MH2007PTC173493

iv. M/s. Bliss Apartment (Mumbai) Private Limited a company as defined in the Companies Act, 2013, with its registered office situated at 15th Floor, Tower 2A, One Indiabulls Centre, Senapati Bapat Marg, Lower Parel, Mumbai-400013 and having Corporate Identity Number: U70109MH2011PTC217428

v. M/s. Imagine Home Private Limited a company as defined in the Companies Act, 2013, with its registered office situated at 15th Floor, Tower 2A, One Indiabulls Centre, Senapati Bapat Marg, Lower Parel, Mumbai-400013 and having Corporate Identity Number: U70100MH2013PTC243868

vi. M/s. Imagine Habitat Private Limited a company as defined in the Companies Act, 2013, with its registered office situated at 15th Floor, Tower 2A, One Indiabulls Centre, Senapati Bapat Marg, Lower Parel, Mumbai-400013 and having Corporate Identity Number: U70102MH2013PTC244525

vii. M/s. Imagine Residence Private Limited a company as defined in the Companies Act, 2013, with its registered office situated at 15th Floor, Tower 2A, One Indiabulls Centre, Senapati Bapat Marg, Lower Parel, Mumbai-400013 and having Corporate Identity Number: U70109MH2013PTC244326

(hereinafter collectively referred to as the "**Hypothecator(s)**", which expression shall, unless it be repugnant to the subject or context thereof, include its/his/her successors and permitted assigns);

in favour of .

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in favour of .

2. M/s. Indiabulls Housing Finance Limited, a company as defined in the Companies Act, 2013, with its registered office situated at M - 62 & 63, 1st Floor, Connaught Place, New Delhi 110001 and having Corporate Identity Number: L65922DL2005PLC136029 (hereinafter referred to as the "Lender or "Hypothecatee", which expression shall, unless repugnant to the subject, context or meaning thereof, be deemed to mean and include its successors and assigns).

Each of the parties mentioned above, are hereinafter collectively referred to as the "Parties" and individually as a "Party".

WHEREAS:

- A. Pursuant to the loan agreement(s) the date(s) of which is/are mentioned in the Schedule III hereunder and/or any amendment(s)/addendum(s) thereto ("Loan Agreement(s)") entered into between (a) the Borrower(s) (as mentioned in Schedule III hereunder), and (b) the Lender, the Lender has lent and advanced or agreed to lend and advance to the Borrower(s) and the Borrower(s) has/have borrowed or agreed to borrow from the Lender on the terms and conditions contained in the Loan Agreement(s) and related Loan Documents, loan(s) amount as mentioned in Schedule III hereunder ("Loan(s)").
- B. The Parties hereto have agreed that the Borrower's Dues (as defined in the Loan Agreement(s)) together with all other monies whatsoever payable by the Obligor(s) (as defined in the Loan Agreement(s)) under the Loan Documents (as defined in the Loan Agreement(s)) shall be secured, inter alia, by a first-ranking charge by way of hypothecation in favour of the Lender, on the Hypothecated Asset(s) (as defined hereunder).
- C. The Hypothecator(s) have agreed to execute this Deed in the manner hereinafter expressed.
- D. If not defined in this Deed, the capitalised terms used in this Deed shall have the same meaning as ascribed to such terms in the Loan Agreement(s)/Loan Documents (defined below). In this Deed, the term (i) "Borrower(s)" means the company (ies)/person(s)/firm(s) named in Schedule III hereunder as the Borrower(s) and whose address(s) and other details are also mentioned in Schedule III hereunder. The term "Borrower(s)" shall include the Co-Borrower(s), if any, named in Schedule III hereunder; (ii) "Loan Documents" means (a) the Loan Agreement(s) and/or (b) all other agreement(s), application(s), form(s), undertaking(s), document(s), letter(s), deed(s), memorandum(s), declaration(s) and/or power of attorney(s) evidencing, securing, governing or otherwise pertaining/relating to the Loan(s)/Borrower's Dues/security/guarantee and includes any amendatory, modificatory or supplemental agreement thereto; (iii) "Borrower's Dues" means the outstanding principal amount of the Loan and other amounts due/payable as per the Loan Documents and/or any other loan agreement(s) entered between (a) the Borrower(s) and (b) the Lender, including any interest, Default Interest, fees, costs, charges, expenses and other sums whatsoever payable by the Obligor(s) to the Lender; (iv) "Obligor(s)" means the Borrower(s), the Hypothecator(s), the Guarantor(s), the Mortgagor(s), the Pledgor(s) and/or any other persons providing Security to secure the Borrower(s)' obligations under the Loan Documents including the Borrower's Dues and/or who is or becomes a party (other than the Lender) to the Loan Documents.; (v) "Properties" means the properties more particularly mentioned in Schedule I hereunder; (vi) "Receivables" means the entire sale proceeds, advance, allotment money, rent, lease rentals, license fees, security deposit(s) and/or other receivables received or to be received (on and from the date of this Agreement) by, *inter alia*, the Obligor(s) from all the concerned persons, including the buyer(s), transferee(s), allottee(s), lessee(s), sub-lessee(s), developer(s), tenant(s) and/or licensees of the Properties and/or any portion or unit thereof and/or any other properties as mutually agreed between the Lender and the Obligor(s), from time to time, pursuant to any application(s), agreement(s), document(s) and/or contract(s) for, *inter alia*, sale, transfer, allotment, assignment, development, lease, sub-lease, renting and/or license of the Properties and/or any portion or unit thereof and/or any other properties as mutually agreed between the Lender and the Obligor(s). (vii) "Hypothecated Asset(s)" means the (i) Receivables, (ii) all the present and/or future rights, title, interest, benefits and entitlements, of whatsoever nature, of the Hypothecator(s) in relation to or in connection with the assets more particularly mentioned in Schedule II hereunder and/or any portion or unit thereof; and/or (iii) any other asset(s) hypothecated/charged or to be hypothecated/charged as Security in favour of the Lender by the Hypothecator(s) from time to time.

18. The Deed of Hypothecation further stipulates that the Hypothecators are under obligation to cause the Borrower to pay / repay the Borrowers dues

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as defined in the Loan Agreement and all other outstanding amount under the Loan Document to the Lender. The clause 1 of the Deed reads thus:-

1. *In consideration of the Lender having lent and advanced and/or agreed to lend and advance the Loan(s) to the Borrower(s) for the purposes and subject to the terms and conditions set out in the Loan Documents, the Hypothecator(s) hereby covenant with the Lender that it/they shall cause the Borrower(s) to pay/repay the Borrower's Dues (as defined in the Loan Agreement(s)) and all other outstanding amount under the Loan Documents to the Lender and that the Hypothecator(s) shall duly observe and perform all the terms and conditions of the Loan Documents, as amended from time to time."*

19. From the aforementioned, it is clear that the Corporate Debtors before us stood as surety for repayment of the amount of debt borrowed by the Principal Debtor from the Lender, thus it would not be gainsaid that the Corporate Debtors stood as Corporate Guarantor qua the financial facility availed by the Principal Debtor viz. Bliss House Pvt. Ltd. In **China Development Bank vs. Doha Bank Q.P.S.C. and Ors.** (Civil Appeals No. 7298 of 2022 with Nos. 7328, 7407, 7615 of 2022 and 7434 of 2023) decided on 20.12.2024 [reported as (2025) 7 Supreme Court Cases 729], it could be viewed that a contract becomes a guarantee when the same is to perform the promise or discharge the liability of a third person in case of default. In the said judgment, the Hon'ble Supreme Court further ruled that going by the title, Deed of Hypothecation (DoH) is a document creating Hypothecation which means the process of using an asset as collateral for a loan which acts as a protection to the Lender when the Borrower does not repay the loan,

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however, the name of the document is not a decisive factor and only because the title of the document contains the word “Hypothecation”, it cannot be concluded that guarantee is not a part of the document. Relevant excerpt of the judgment reads thus:-

“52. The appellants are claiming that their case is covered by sub-clause (i) of clause (8) of Section 5 IBC. Under sub-clause (i), the amount of any liability in respect of any guarantee of the items referred to in sub-clauses (a) to (h) becomes a financial debt. Therefore, when sub-clause (i) of Section 5(8) is applicable, it is not necessary that the financial creditor actually tenders any amount to the corporate debtor. In this case, the appellants are claiming that the amount of liability covered by sub-clause (i) is in respect of money borrowed by the RCom entities (excluding the corporate debtor) against payment of interest under the facility agreements. There is no dispute that facilities were granted by the appellants to RCom entities. The amount of any liability in respect of any of the guarantees for money borrowed against the payment of interest is a financial debt under Section 5(8) IBC.

53. *"Guarantee" is defined under Section 126 of the Contract Act, which reads thus:*

*"126. **"Contract of guarantee", "surety", "principal debtor" and "creditor".**-- A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written."*



54. *A contract becomes a guarantee when the contract is to perform the promise or discharge the liability of a third person in case of default. Thus, when a person enters into a contract to perform or discharge the liability of a third party, the contract becomes a contract of guarantee.*

55. *Section 127 of the Contract Act reads thus:*

"127. Consideration for guarantee. Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee."

56. *Hence, any promise made or anything done for the benefit of principal debtor may be sufficient consideration to the surety for giving guarantee.*

Effect of Clause 5(iii) of DoH read with MSTA

Relevance of nomenclature of DoH

57. *If we go by the title, DoH is a document creating hypothecation. In short, hypothecation means the process of using an asset as collateral for a loan. It acts as a protection to the lender when the borrower does not repay the loan.*

58. *Only the title of a document cannot be a decisive factor in deciding the nature of the document or the transactions affected by the document. In CCE & Service Tax v. Northern Operating Systems (P) Ltd. 17, in paras 53 to 55, this Court held thus: (SCC pp. 121-22)*

"53. From the above discussion, it is evident, that prior to July 2012, what had to be seen was whether a: (a) person provided service, (b) directly or indirectly, (c) in any manner for recruitment or supply of manpower, (d) temporarily or otherwise. After the amendment, all activities carried out by one person for another, for a consideration, are deemed services, except certain specified excluded categories. One of the excluded category is the provision of service by an employee to the employer in relation to his employment.

54. One of the cardinal principles of interpretation of documents, is that the nomenclature of any contract, or document, is not



decisive of its nature. An overall reading of the document, and its effect, is to be seen by the courts. Thus, in State of Orissa v. Titaghur Paper Mills Co. Ltd. 18 it was held as follows: (SCC p. 371, para 120)

120. It is true that the nomenclature and description given to a contract is not determinative of the real nature of the document or of the transaction thereunder. These, however, have to be determined from all the terms and clauses of the document and all the rights and results flowing therefrom and not by picking and choosing certain clauses and the ultimate effect or result as the Court did in Orient Paper Mills case.

This principle was reiterated in Prakash Roadlines (P) Ltd. v. Oriental Fire & General Insurance Co. Ltd.

55. The task of this Court, therefore is to, upon an overall reading of the materials presented by the parties, discern the true nature of the relationship between the seconded employees and the assessee, and the nature of the service provided in that context-by the overseas group company to the assessee." (emphasis in original and supplied)

59. *As held in B.K. Muniraju v. State of Karnataka 10, a sentence or a term in a contract does not determine the real nature of the contract. It is true that the courts should not rewrite the contract while making an attempt to interpret it. However, in D.N. Revri¹¹, in para 7, this Court held thus: (D.N. Revri casell, SCC p. 151)*

"7. It must be remembered that a contract is a commercial document between the parties and it must be interpreted in such a manner as to give efficacy to the contract rather than to invalidate it. It would not be right while interpreting a contract, entered into between two lay parties, to apply strict rules of construction which are ordinarily applicable to a conveyance and other formal documents. The meaning of such a contract must be gathered by adopting a common sense approach and it must not be allowed to be thwarted by a narrow, pedantic and legalistic interpretation."

(emphasis supplied)

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60. *Therefore, the name of the document is not a decisive factor. Only because the title of the document contains the word hypothecation, we cannot conclude that guarantee is not a part of this document.”*

19. Also, in **J.C. Flowers Asset Reconstruction Pvt. Ltd. v. Vithal M. Dahake (RP) [Comp. App. (AT) (Ins) No. 1801 of 2024 and I.A. No. 6576, 6577 of 2024] (2026) ibclaw.in 218 NCLAT**, Hon’ble NCLAT viewed that even a mortgager who commit to repay the amount of debt is Corporate Debtor / Guarantor within the meaning of Section 5(8) of IBC. Paras 66-69 and 92 of the judgment reads thus:-

“66. It has been brought out that hon’ble Supreme Court in China Development Bank v. Doha Bank Q.P.S.C. & Ors. [(2024) ibclaw.in 340 SC] : (Civil Appeal No. 7298 of 2022) Para 44-60 has conclusively settled the issue that where a document contains a covenant to pay, coupled with a security enforcement mechanism, the arrangement assumes the character of a contract of guarantee, giving rise to a financial debt under Section 5(8) of the Code. In the said case, Clause 2 of the Deed of Hypothecation (DOH) expressly contained a “covenant to pay”, whereby the Corporate Debtor undertook to repay the secured facilities to the Security Trustee. Further, Clause 5(iii) empowered the Security Trustee to take possession of and enforce the hypothecated assets upon default. Hon’ble Supreme Court held that the Security Trustee was acting on behalf of and for the benefit of the Secured Lenders, and consequently, the Corporate Debtor, Secured Lenders, and Security Trustee were parties to a composite arrangement wherein the Corporate Debtor had undertaken to discharge the liability of the Secured Lenders. Such undertaking was held to be in the nature of a guarantee under Section 126 of the Indian Contract Act, 1872, and therefore constituted a “financial debt” under Section 5(8) of the Code.”

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“67. If we apply the above ratio to the present case, the Deed of Mortgage dated 12.05.2016, contains a clear “Covenant to Pay” (Clause 3), whereby the Corporate Debtor has undertaken to repay the Mortgage Debt in accordance with the financing documents. In addition, thereto, the Mortgage Deed confers upon the Mortgagee the right to enforce the mortgaged properties upon default, and further provides that the Corporate Debtor shall remain personally liable for any deficiency even after enforcement. Similarly, we observe that Deed of Mortgage dated 12.05.2016 in clause D expressly stipulates that: “The Mortgagor and the Mortgagee have agreed that the mortgage and charge on the Mortgaged Properties shall be by way of a legal mortgage in English form by way of a registered mortgage deed being these presents.” Thus, the Deed of Mortgage dated 12.05.2016 qualifies as an English Mortgage under Section 58(e) of the Transfer of Property Act, 1872. Consequently, under of the Deed of Mortgage dated 12.05.2016, the Appellant is entitled to recover the mortgage money directly from the REPPL in the event of default by the Principal Borrower. It is worth noting that Clause 8 Deed of Mortgage dated 12.05.2016 further amplify Mortgagee’s authority to reassign, re-convey, or re-transfer upon repayment, affirming that all essential attributes of an English Mortgage are satisfied. We do not agree to the pleading of the Respondent No on this issue noted earlier.”

“68. We also take into consideration that this Appellate Tribunal in, *Rajeev R. Jain vs Aasan Corporate Solutions Private Limited* and another [[\(2022\) ibclaw.in 31 NCLAT](#)] : (2022 SCC Online NCLAT 25), held that where a mortgage deed contains a covenant to pay, it constitutes an English Mortgage under Section 58(e) of the Transfer of Property Act, 1872, creating a direct financial liability on the mortgagor and qualifying the creditor as a financial creditor under Section 5(8) of the Code.



“69. It is noted that SRRPL was sanctioned a Term Loan of Rs. 350 Crores by Yes Bank, of which Rs. 111 Crores was disbursed towards construction and development expenses, including balancing tenant settlement costs for the REPPL’s project “Avenue 54.” Thereby, in a way REPPL directly benefited from such disbursement and thus derived a commercial effect of borrowing. This is substantiated by the Development Agreements executed between the REPPL and Sumer Buildcorp Pvt. Ltd. (“SBPL”), whereby development rights over 50% of the “Avenue 54” project were transferred to the SRRPL in exchange for 1,50,000 sq. ft. of saleable area. Hence, the REPPL is the direct beneficiary of the loan proceeds. Accordingly, the Appellant’s claim arises from a transaction having the commercial effect of borrowing and falls within Sections 5(8)(f), 5(8)(h), and 5(8)(i) of the Code.”

XXX

“92. We consider that a Deed of Mortgage dated 12.05.2016 and Supplementary Deed of Mortgage dated 06.02.2018 executed between the Appellant, SRRPL and REPPL, whereby the REPPL expressly undertook liability for repayment of the Secured Obligations. The Deed of Mortgage dated 12.05.2016 contains a “Covenant to Pay” clause, satisfying the ingredients of an English Mortgage under Section 58 of the Transfer of Property Act, 1882 (“TPA”), rendering the REPPL liable to repay the mortgage debt.”

20. In Canara Bank Overseas Branch Rep. by Senior Manager vs. Archean Industries Pvt. Ltd. and Anr. with etc. (Civil Appeal No. 13861 of 2024) decided on 17.03.2026, Hon’ble Supreme Court ruled that a contract of guarantee is an undertaking to perform the promise or discharge the liability of a third person in case of his default. In the said case, Archean Industries Pvt. Ltd. had written a letter undertaking to remit the freight

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payable to the vessel owner. The undertaking given by it was perceived as Guarantee to pay the amount and the Archean Industries Pvt. Ltd. was held independently liable to pay the amount of debt. Para 15.1 of the judgment reads thus:-

“15.1 A reading of the aforesaid provisions indicates that a contract of guarantee is an undertaking to perform the promise or discharge the liability of a third person, in case of his default. It is essentially a voluntary act of taking up the burden of a third party, who has received or is about to receive some benefit and has failed to make the payment. The guarantor is called the “surety” and person in default is called the “Principal Debtor”.

21. In the wake of the aforementioned, we are left with no doubt that the Corporate Debtors before us have the liability as Corporate Guarantors towards the lender.

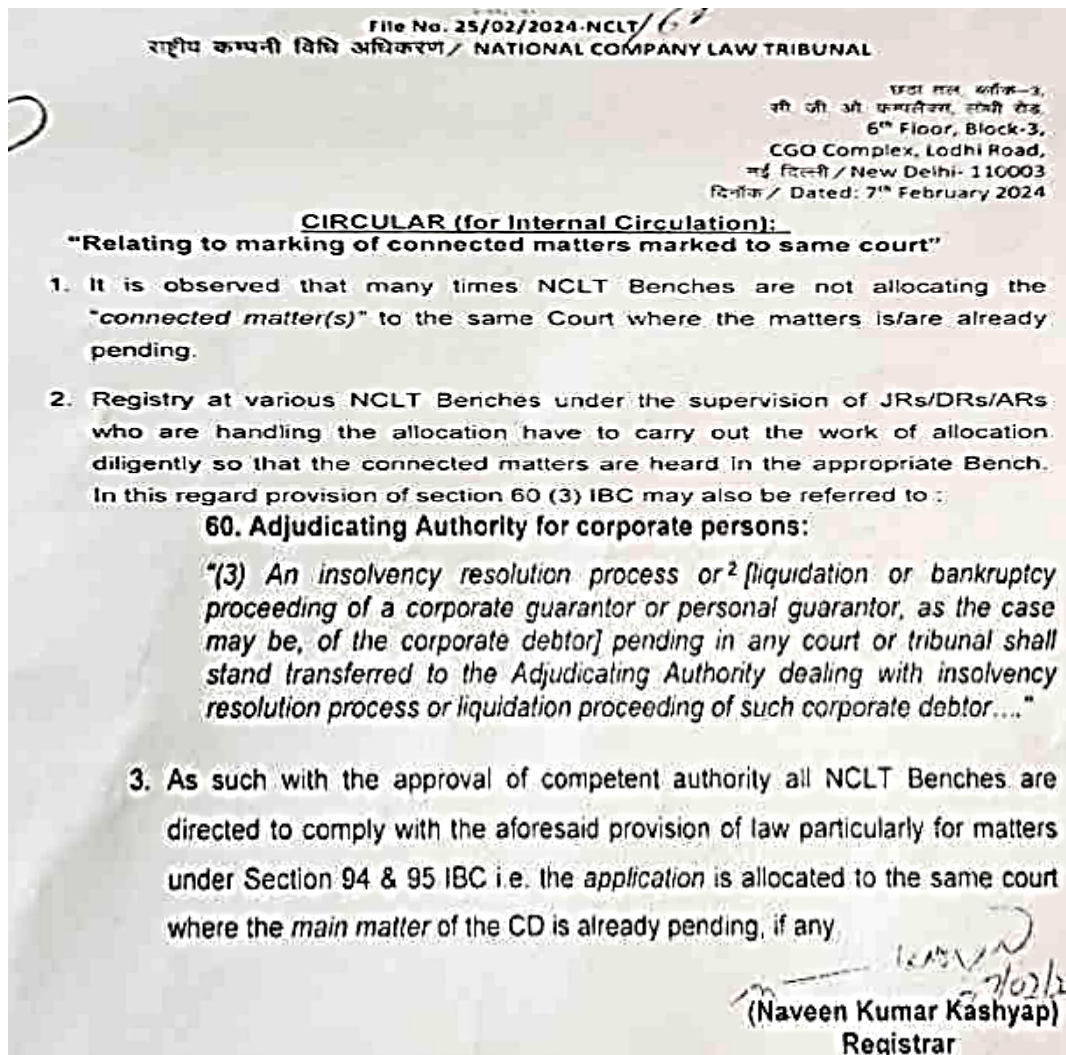
22. To meet the plea of jurisdiction of this Bench, raised on behalf of the Corporate Debtors, the Petitioner explained that in terms of the provisions of Section 60(2) of the Code, an application related with CIRP of a Corporate Guarantor is required to be filed before the same Tribunal before which the Principal Debtor is undergoing CIRP.

23. As far as the issue of maintainability of the petitions is concerned, as can be seen from the from Section 60(2) of IBC, 2016, where a CIRP for liquidation proceeding of a CD is pending before a NCLT, an application related to the Insolvency Resolution or liquidation of bankruptcy of the corporate Guarantor or personal guarantor as the case may be of such CD shall be filed before such National Company Law Tribunal. Besides as per

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Section 60(3) of IBC, 2016, an Insolvency Resolution Process or [liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor] pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency and resolution process or liquidation proceeding of such corporate debtor. In due deference to the aforementioned provisions contained in the Code, this Tribunal (President, NCLT) issued a circular dated 07.02.2024 providing that the matter should be allocated to different benches, in due regard to the provisions of Section 60(3) of the Code. The circular reads thus:-



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24. Though Section 60(2) of the Code use the expression NCLT, but as the National Company Law Tribunal is only one, the expression, “pending before a National Company Law Tribunal” referred to in the Section need to be read as “pending before a Bench of the NCLT”. The issue is squarely covered by the judgment of Hon’ble NCLAT in **S. Vasudevan Suspended Director of Tuscan Consultants and Developers Private Limited vs. IDBI Trusteeship Services Limited and Another** [Company Appeal (AT) (CH) (Ins) No. 362/2023 (IA Nos. 1100, 1101, 1105/2023, 818 & 987/2025)] decided on 01.08.2025 reported as 2025 SCC OnLine NCLAT 1259. The relevant excerpt of the judgment reads thus:-

"60. Adjudicating Authority for corporate persons.-

- (1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.*
- (2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or 1 [liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before such National Company Law Tribunal.*
- (3) An insolvency resolution process or 2 [liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor] pending in any court or tribunal shall stand transferred to the Adjudicating Authority*

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dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

- (4) *The National Company Law Tribunal shall be vested with all the powers of the Debts Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2).*
- (5) *Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of-*
- (a) any application or proceeding by or against the corporate debtor or corporate person;*
 - (b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and*
 - (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.*
- (6) *Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded."*

9. *What would be relevant to note at this stage from the above is that the aforesaid provision under Section 60(2) creates an exception to the general prescription of Section 60(1) permitting initiation of insolvency proceedings against a Corporate Person (e.g. Corporate Guarantor, Personal Guarantor as the case may be) before a NCLT, other than the NCLT in whose jurisdiction the registered office of such Corporate Person, is situated, provided that, the CIRP proceedings (or)*

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liquidation proceedings of the Corporate Debtor to which such Corporate Person is linked, is already pending before such NCLT.

10. In the instant case, the following dates become relevant for consideration, for examining the applicability of Section 60(1) of the Code as it has been referred to by the learned counsel for the Appellant in the Written Submissions filed by him. The same is extracted hereunder:-

	Ozone Projects Private Limited (Principal Borrower)	Tuscan Consultants & Developers Private Ltd. (Corporate Guarantor)
Date of Filing of Application u/s. 7	5th August 2022	19th September 2022
Date of Registration	27th February 2023	2nd May 2023
Date of First Hearing	11th April 2023	11th May 2023
Date of initiation of CIRP	1st May 2023	9th October 2023 (Impugned Order)

11. According to the schedule of dates which has been given by the Appellant and tabulated herein above, the Application under Section 7 of the Code as against the Ozone Projects Private Limited, the Principal Borrower, at the behest of the Financial Creditor, was filed before the learned NCLT, Chennai, on 05.08.2022, the same got registered as such on 27.02.2023, the date of first hearing of the aforesaid proceedings was fixed on 11.04.2023 and the said Application was admitted by the learned NCLT on 01.05.2023. On the other hand, in the case of Tuscan Consultants and Developers Pvt. Ltd., (the Corporate Debtor), the Application under Section 7 of the Code was filed before the learned NCLT, Chennai, on 19.09.2022, the said application got registered on 02.05.2023, the first hearing was conducted on 11.05.2023, and the application was admitted by the learned NCLT on 09.10.2023 by an order which is the Impugned Order in the instant Appeal. Learned counsel for the Appellant contends that on the date when the application under Section 7 of the Code was filed against the Corporate Debtor, that is, 19.09.2022, no

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CIRP proceedings against Ozone Projects was pending before the learned NCLT, Chennai, as the said CIRP proceedings commenced only on 01.05.2023, that only Section 7 Application was pending and hence learned NCLT, Chennai, lacked jurisdiction to permit the filing of the Section 7 Application against the Corporate Debtor.

12. There are three terms used in the statute, as listed below, on which the entire argument of the learned counsel for the Appellant is constructed.

a) the word '**pending**' as used under Section 60(2) of the I & B Code, 2016,

b) the phrase '**initiation date**' as referred to under Section 5(11) of the I & B Code, 2016, and

c) the phrase '**insolvency commencement date**' as referred to under Section 5(12) of the I & B Code, 2016.

13. The word 'Pending' has not been defined in the Code: but "initiation date" and "insolvency commencement date" have been defined under Section 5(11) and Section 5(12) of the I & B Code, 2016, and they become relevant for consideration in the instant case. The said definitions are extracted hereunder:-

"5(11) "initiation date" means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process;

5(12) "insolvency commencement date" means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under Sections 7, 9 or Section 10, as the case may be;"

14. The learned counsel for the Appellant has further submitted that, the proceedings drawn by Respondent No. 1 before the learned NCLT Chennai, against the Corporate Debtor will be barred, on grounds of lack of jurisdiction in the light of the provision contained under Section

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60(1) and 60(2) of the I & B Code, 2016, since there is a fundamental lack of jurisdiction with the learned Adjudicating Authority, Chennai, to entertain the Application under Section 7 against the Corporate Debtor and that, as such the order, which has been passed, would amount to be an erroneous conclusion. He has further contended that he could not raise this issue of lack of jurisdiction before the Ld. NCLT, Chennai, because his right to file the reply was closed by an order dated 04.09.2023 and the recall application under Section 60(5) of the I & B Code, 2016, filed by him for recalling the said order, was dismissed, thereby closing his right to file Written Submissions and hence he was precluded to raise the objection with regards to the issue of lack of jurisdiction, and the implications of Section 60(1) to be read with Section 60(2) of the I & B Code, 2016, before the learned NCLT. He has also submitted that his application filed under Section 65 of the Code, placing on record the conduct and the fraud perpetrated by the Respondent No. 1, by indulging in evergreening of the loan account through coercion which could have had a bearing, was not considered while passing the impugned order.

15. Coming back to the issue of lack of jurisdiction of Ld. NCLT, Chennai, the learned counsel for the Appellant has argued that, if the implication of Section 60(2) of the I & B Code, 2016, is taken into consideration, it clearly prescribes that in case the CIRP or liquidation process of a Corporate Debtor is pending before a NCLT, then an application relating to insolvency resolution of a Corporate Guarantor or Personal Guarantor shall be filed before such NCLT, that, in the instant case, only an application under Section 7 had been filed on 05.08.2022 against the Principal Borrower, pendency of such application cannot be termed as pendency of CIRP proceedings within the ambit of Section 60 (2) of the code and hence the initiation of the CIRP against M/s. Tuscan Consultants & Developers Pvt. Ltd., the Corporate Debtor herein before learned NCLT, Chennai by way of



CP/IB/01/CHE/2023 was bad in the eyes of law, owing to the fact that the office of the Appellant was situated in Bangalore.

16. He has submitted that the aforesaid principle could be very well culled out from the Judgment, rendered by the learned NCLAT in the matter of *State Bank of India v. Mahendra Kumar Jajodia* as rendered in **CA (AT) (Ins) No. 60/2022**. In particular, he has referred to para 8 of the said judgment, which is extracted hereunder: -

"8. The use of words 'a' and 'such' before National Company Law Tribunal clearly indicates that Section 60(2) was applicable only when a CIRP or Liquidation Proceeding of a Corporate Debtor is **pending** before NCLT. The object is that when a CIRP or Liquidation application relating to Insolvency Process of a Corporate Guarantor or Personal Guarantor should be filed before the same NCLT. **This was to avoid two different NCLT to take up CIRP of Corporate Guarantor. Section 60(2) is applicable only when CIRP or Liquidation Proceeding of a Corporate Debtor is pending, when CIRP or Liquidation Proceeding are not pending with regard to the Corporate Debtor there is no applicability of Section 60(2).**"

17. The above extract holds that the principles of Section 60(2) will be attracted only when there are pending proceedings against the Corporate Debtor. The Appellant's counsel contends that since herein, there was no proceeding pending against the Ozone Projects, the Principal Borrower, Section 60(2) will have no applicability, and the learned NCLT, Chennai, will have no jurisdiction to entertain the Section 7 application against M/s. Tuscan Consultants & Developers Pvt. Ltd., the Corporate Debtor.

18. He contends that, the implication of Section 60(2) of the I & B Code, 2016, will only come into play only when a CIRP or a Liquidation Proceedings against the Principal Borrower (Ozone Projects) is actually '**pending**' before the learned NCLT, Chennai, in order to draw the proceeding against the Corporate Debtor i.e., M/s. Tuscan Consultants & Developers Pvt. Ltd., by overriding the

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embargo of Section 60(1) of the I & B Code, 2016, and by attracting the exceptions contained under Section 60(2) of the I & B Code, 2016. What he intends to argue is that, initiation of a CIRP proceedings before the learned NCLT, Chennai, by attracting the provisions of Section 60(2) of I & B Code, 2016, is possible only when "**a CIRP or a Liquidation Proceedings against the respective Corporate Debtor (Principal Borrower in this case) is pending before the same NCLT**", and that, when CIRP or a Liquidation Process is not pending as regard to the said Corporate Debtor, the provisions of Section 60(2) of the I & B Code, 2016, cannot be invoked.

19. The schedule of dates as given by the Appellant, shows that the CIRP process, as against the Ozone Projects, i.e., the Principal Borrower under same financial assistance agreement stood initiated from the date of filing of Section 7 Application, i.e., 05.08.2022. As against the above, the date of filing of the Section 7 application against the present Corporate Debtor (M/s. Tuscan consultants and Developers Pvt. Ltd.) is 19.09.2022, which is much later to the date of filing of Section 7 application against the Principal Borrower, that is, 05.08.2022, which makes it clear that the proceedings against the Principal Borrower is already "**pending**" adjudication before the learned NCLT, Chennai, when Section 7 application was filed against the present Corporate Debtor. Hence, in the light of the provisions contained under Section 60 (2) of the I & B Code, 2016, since a prior proceedings as against the present Corporate Debtor. Hence, in the light of the provisions contained under Section 60 (2) of the I & B Code, 2016, since a prior proceedings as against the Principle Borrower, already stood instituted before the learned NCLT Chennai, on 05.08.2022, and was pending and since the liabilities were flowing from a common Debenture Trust Deed and its terms contained therein, the implication of Section 60(2) of the I & B Code, 2016, would be attracted for drawing a proceedings under Section 7

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of the Code against the Corporate Guarantor to the Principal Borrower, (the Corporate Debtor herein i.e., M/s. Tuscan Consultants and Developers) before the learned NCLT, Chennai, only. For the purposes of Section 60 (2) of the I & B Code, 2016, pendency of CIRP proceedings would ordinarily mean that CIRP has been initiated by filing an application under Section 7(1) of the I & B Code, 2016 before the concerned learned NCLT and the same is pending consideration. Thus filing of Section 7 application itself against the principle borrower and pendency of the same before Learned NCLT would have to be treated to be a pendency of the proceedings, for the purpose of initiating CIRP proceedings against the Corporate Debtor before the same learned NCLT under Section 60(2) of the Code irrespective of the stipulations of Section 60(1) of the Code. Thus, the contention of the Appellant that there was no pending proceedings against the Principal Borrower on the date of filing of the Section 7 application against M/s. Tuscan Consultants & Developers Pvt. Ltd., that is 19.09.2022, is not tenable.

20. The argument being extended by the learned counsel for the Appellant in the light of the observations made in Para 8 of the Judgment of the State Bank of India v. Mahendra Kumar Jajodia is that a mere initiation of CIRP by filing a Section 7 application will not lead to pendency of CIRP proceeding, that pendency of CIRP proceedings will happen only after commencement of CIRP proceedings which is triggered by admission of the said Section 7 Application by learned Adjudicating Authority under Section 7(5)(a) of the Code and that only the pendency after commencement of CIRP will qualify to be a 'CIRP proceeding pending to attract provision of Section 60(2). This interpretation is absolutely a misconception because, for the interpretation of any provision of law, we will have to examine the same against the basic objective of the particular statute. The exception, being carved out under Section 60(2) is for



the purposes to ensure that the insolvency is resolved at the earliest and does not get side tracked by multiplicity of proceedings at different NCLTs, leading to conflict of interests, situations or decisions particularly when the matter engaging consideration arises out of same transactions between the creditors and the Principal Borrower and its guarantors where the rights or the liabilities flowing from the relevant documents are required to be interpreted commonly in all connected cases. The ratio in this regard, as laid down by the Hon'ble Apex Court in para 33 of its Judgment in Embassy Property Development Private Limited v. State of Karnataka, is extracted hereunder: -

"33. Sub-section (4) of Section 60 of the IBC, 2016 states that the NCLT will have all the powers of the DRT as contemplated under Part III of the Code for the purposes of subsection (2). Sub-section (2) deals with a situation where the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor of a corporate debtor is taken up, when CIRP or liquidation proceeding of such a corporate debtor is already pending before NCLT. The object of sub-section (2) is to group together (A) the CIRP or liquidation proceeding of a corporate debtor, and (B) the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor of the very same corporate debtor, so that a single forum may deal with both. This is to ensure that the CIRP of a corporate debtor and the insolvency resolution of the individual guarantors of the very same corporate debtor do not proceed on different tracks, before different fora, leading to conflict of interests, situations or decisions".

21. *The same principle is reiterated by the Principal Bench NCLAT in its Judgment in Monica Jajoo v. PHL Finvest Pvt. Ltd. (CA (AT) (Ins) No. 1344 of 2022). Relevant Para 23 is extracted hereunder: -*

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"23. As noted above, the transfer petition bearing No. TA(IBC)- 36 (PB)/ 2022 was filed before the Adjudicating Authority. It is also a fact that even though this application was filed before the Adjudicating Authority (Bench-IV), it did not take the transfer application into consideration before passing both the Impugned Orders, which is a requirement of law as per section 60(1) and (2) of the IBC. Sub sections (1) and (2) of section 60 lay down a requirement of law, which stipulates and mandates that an application relating to insolvency resolution or or liquidation of corporate guarantor of a corporate debtor shall be filed before 'such' NCLT, where a CIRP or liquidation proceedings of the 'same' corporate debtor is pending. This requirement of law has also been noted in the matter of State Bank of India, Stressed Asset Management Branch (supra) of this Tribunal".

22. Hence, in order to avoid any contradictory judgment and to facilitate an effective adjudication of the controversy arising from a common set of documents (Debenture Trust Deed in this case), the provisions of Section 60(2) would have to be made applicable and the proceedings will have to be drawn on a common platform, that is, before the NCLT where the proceeding as against the Principal Borrower is pending. Section 60(2) of the Code, thus, basically aims to keep all the proceedings before one platform and one forum where the dispute could be commonly adjudicated between the parties, that is, the creditors and the Corporate Debtor (Principal Borrower in this case and its guarantors). In that eventuality, the argument as extended by the learned counsel for the Appellant that there would be a distinction in the instant case since the earlier proceedings as against the Principal Borrower had not commenced on the date of filing of Section 7 application against the Corporate Debtor and hence the order of Learned NCLT, Chennai is without jurisdiction, is not acceptable to this Appellate Tribunal as the same is against basic objective of the Code. As the applications praying for initiation of CIRP both against the Principal Borrower and its Corporate Guarantor (Corporate Debtor herein) on account of default are

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emanating from the same Debenture Trust Deed and as the application against the Principal Borrower has been filed earlier before NCLT, Chennai and is pending consideration, the proceedings in respect of the Corporate Debtor (M/s. Tuscan Consultants and Developers Private Limited) will have to be instituted before the learned NCLT, Chennai, and not before the learned NCLT, Bangalore as argued by the learned counsel for the Appellant.

23. The learned counsel for the Appellant for attempts to interpret the word 'pending' used under Section 60(2) of the I & B Code, 2016, as pendency of the corporate insolvency resolution process which has been commenced by borrowing the provision contained under Section 5 (12) of the I & B Code, 2016. This has already been answered by the Principal Bench of NCLT, New Delhi, in the matter of IDBI Trusteeship Services Limited v. DSS Infrastructure Private Limited (CP(IB) No. 446/2023) in para 4 of its order which is extracted below:-

"4. In order to appreciate the expression, 'pending', we may refer to Section 5(11) of the IBC, 2016, i.e., the definition of 'initiation date'. In terms of the definition, the 'initiation date' means the date on which a Financial Creditor, Corporate Applicant or Operational Creditor, as the case may be, makes an application to the Adjudicating Authority for initiating Corporate Insolvency Resolution Process [or the Prepackaged Insolvency Resolution Process], as the case may be."

24. In the instant case, Application under Section 7 was filed against the Principal Borrower on 05.08.2022 the Application under Section 7 against the Corporate Debtor was filed on 19.09.2022. When the Application filed against the Corporate Debtor was taken up for consideration by the Learned NCLT, Chennai Bench on 17.04.2023, the Application against the Principal Borrower already stood registered, the date of such registration being 27.02.2023.

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Therefore, Learned NCLT, Chennai vide its order 17.04.2023, unhesitatingly took the view that since the case against the Principal Borrower (Ozone Projects) is pending before NCLT, Chennai, the case of the Corporate Guarantor, (M/s. Tuscan Consultants and Developers Private Limited) will also lie before NCLT, Chennai Bench in accordance with the provisions of Section 60(1) and 60(2) of the Code. The Learned Counsel for the Appellant seeks to controvert it by arguing that 'pendency' of CIRP has to be reckoned from date of commencement of CIRP and not from date of initiation of CIRP. He contends that on the date of initiation, the Application alone was pending, that there is a fundamental difference between merely initiating the CIRP proceedings by filing an application under Section 7, 9 or 10 and Learned Adjudicating Authority commencing the CIRP proceedings by admitting the said application under Section 7(5) of the Code and that pendency of the CIRP proceedings should be reckoned from the date of commencement alone. The contentions of the Learned Counsel for the Appellant runs counter to the objective of the code and the purpose of Section 60(2), as both applications were flowing from the same Debenture Deed, and were based on same facts arising from the deed, governing the inter-se relation of the parties to the debenture deed and both were under consideration of Learned NCLT, Chennai. Purpose of Section 60(2) is to avoid multiplicity of forum for deciding the similar nature of dispute and to facilitate avoidance of contradictory determination of the documents in relation to same transaction, which would not have been possible if the contention of the Appellant is accepted.

25. In the earlier part of the Judgment, we have already dealt with three expressions which required consideration in the instant Company Appeal, to determine, at what stage the implication of Section 60(2) of the I & B Code, 2016, will come into play, for the purposes of initiation of a CIRP proceeding in an event when there

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already exists a pending proceeding against a Corporate Debtor. However, to answer the questions raised by the Learned Counsel for the Appellant with respect of 'initiation' and 'commencement', we will have to have reference to Section 7(6) of the I & B Code, 2016, the provision with which we are concerned Section 7 is titled as "Initiation of the Corporate Insolvency Resolution Process by Financial Creditor"; as per Section 7(1), the Financial Creditor, is to file an application for initiating the CIRP process; under Section 7(5), Learned Adjudicating Authority passes order admitting the application, consequent to which under Section 7 (6) CIRP commences. Though 'initiation', and 'commencement' may mean the same thing, that is, 'the start', they mean different things in the context of the code and hence have been independently defined under Section 5(11) & 5(12) of the I & B Code, 2016, respectively. On a joint reading of Section 5(11) to be read with Section 7(1) of the I & B Code, 2016, "date of Initiation", means, the day when the Financial Creditor files an application before a Tribunal for initiating CIRP against the Corporate Debtor. At this stage, the proceedings get '**initiated**' and it remains alive till it is finally adjudicated in the manner as laid down in the code which is either by rejection of the application or by approval of the Resolution Plan or by order of liquidation and till it is finally disposed, it will have to be described as 'pending'. In order to elaborate upon the said issue, we will have to deal with, as to what literally word 'initiation' means. In accordance with the judgment rendered by the Hon'ble Apex Court in the matter reported in (2006) 13 SCC 252, State, CBI v. Sashi Balasubramanian, the Hon'ble Apex Court in its para 30 of the said judgment has dealt with, as to what does the word "initiation" in the judicial aspect actually mean. Relevant para 30 is extracted hereunder:-

"30. "In initio" means in the beginning. The dictionary meaning of "initiation" is cause to begin. Whereas some statutes provide for

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grant of sanction before a prosecution is initiated, some others postulate grant of sanction before a cognizance is taken by court. However, meaning of the word may vary from case to case. In its wider sense, the prosecution means a proceeding by way of indictment or information, and is not necessarily confined to prosecution for an offence."

26. The word "**initiation**" has also been defined in accordance with the Webster's Third New International Dictionary, where the word 'initiate' has inter alia been defined as "**to begin or set going**" that means, it makes a beginning to perform or facilitate to take a first action or a step for drawing a proceeding. In Short Oxford English Dictionary the word 'initiate' has been defined as "**to begin or to enter upon, to introduce, or set going, to originate process**". This expression has been dealt with in a Judgment reported in (2001) 7 SCC 549, *Pallav Sheth v. Custodian* where it has been provided that initiating of any proceedings only aims to introduce or to lay down the first step to start the proceedings. The same expression has been given in the Black's Dictionary which defines to initiate means "**to start or to originate or to introduce**" and the said expression has been dealt in para 10 of the Judgment as reported in (2000) 3 SCC 171 *Om Prakash Jaiswal v. D.K. Mittal* which has dealt with it describing it as to be "**in initio and initiation**" that means, to begin. Relevant para 10 of the Judgment of *Om Prakash Jaiswal* is extracted hereunder:-

"10. The expression "initiate any proceedings for contempt" is not defined in the Act. Words and Phrases (Permanent Edition) defines "initiate" to mean an introductory step or action, a first move; beginning; start, and "to initiate" as meaning to commence. Black's Law Dictionary (6th Edn.) defines "initiate" to mean commence; start; originate; introduce; inchoate. In Section 20, the word "initiate" qualifies "any proceedings for contempt". It is not the initiation of just any proceedings; the proceedings initiated have to be proceedings for contempt."



27. *The term commencement, as contemplated under Section 7 of the I & B Code, 2016, is quite distinct to the implication of 'initiation' and that is why under Section 7(6) of the I & B Code, 2016, the word "commencement" has been introduced and used for the first time where it refers to "the corporate insolvency resolution process shall **commence** from the date of admission of application under sub section 5". If the provisions contained under Section 7 of the I & B Code, 2016 is read in its entirety, it is inclusive of both the expressions 'initiation' and 'commencement'. Initiation here means to start the proceedings by filing the same before the Adjudicating Authority, but the commencement starts only when the Adjudicating Authority applies its mind and admits the application under Section 7(5) and decides to commence the CIRP process as per Section 7(6) and that is why the commencement has been independently considered under Section 5 (12) of the I & B Code, 2016. Relevant Sub Section (5) & (6) of Section*

7 is extracted hereunder: -

"5) Where the Adjudicating Authority is satisfied that-

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of subsection (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under

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sub-section(5)."

28. *The moot question is as to whether CIRP proceedings will start from the date of initiation or from date of commencement.*

'Commencement' has a special meaning under I & B Code; it finds mention in as many as 10 different sections of the code; the timeline of completion of CIRP starts from the date of commencement. The appointment of IRP, and the operation of moratorium start from date of commencement. Management of Corporate Debtor, definition of related party, eligibility of resolution applicant and many such process are influenced by date of commencement. Since CIRP is a time bound process, many of the activities of CIRP have to be linked to a date, which is the Date of commencement of CIRP as per the Code. However, for the purpose of section 60(2), to determine whether there is a pending CIRP proceeding, it is enough to establish that CIRP proceedings has already been initiated under Section 7 to be read with section 5(11) of the Code and it is pending adjudication. Therefore, the argument of Learned Counsel for the Appellant that pendency of a CIRP proceeding has to be reckoned from the date of commencement as defined in Section 5(12) to be read with Section 7(6) of the Code cannot be accepted.

29. *The word 'pendency' has been considered in various judicial platforms, which means that, it is nothing but a pending matter, which has not yet been decided, that it is pending and adjudication is remaining under consideration at the stage of 'undecided' and the proceedings of which have not been finally terminated, that it is the proceedings, which have been considered to be pending from the date of start till the date of its final determination. In fact, it would mean that an action that would not cease to be pending, until and unless it has been given a final decision and disposal.*

30. *The term 'pending' was considered from the prospective of a legal proceeding in a judgment rendered in AIR 1957 SC 503 (509) in the*

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matter *Asgarali Nazarali Singaporawalla v. The State Of Bombay*, which has dealt with and described the term 'pendency', as to be the commencement or a start of a proceedings until it is concluded. The relevant para is extracted below:-

"20. We do not accept this contention. It cannot be denied that on July 28, 1952 the date of the commencement of the impugned Act the case of the appellant was pending before the learned Presidency Magistrate. On that day the prosecution had closed its case and the appellant had not yet been called upon to enter upon his defence. The examination of the appellant under Section 342 of the Code of Criminal Procedure took place after that date. The appellant filed his written statement on the August 14, 1952 and the addresses by the prosecution as well as the defence continued right up to September 26, 1952. The word "pending" is thus defined in Stroud's Judicial Dictionary, 3rd Edn. Vol. III, p. 2141:

"Pending.-(1) A legal proceeding is 'pending' as soon as commenced and until it is concluded i.e. so long as the court having original cognizance of it can make an order on the matters in issue, or to be dealt with, therein."

Similar are the observations of Jessel, M.R. In *re Clagett's Estate, Fordham v. Clagett* [[L.R.] 20 Ch. D. 637, 653]:

"What is the meaning of the word 'pending'? In my opinion, it includes every insolvency in which any proceeding can by any possibility be taken. That I think is the meaning of the word 'pending'.... A cause is said to be pending in a court of justice when any proceeding can be taken in it. That is the test."

31. This will mean that Section 60(2) of the I & B Code, 2016, would apply where the proceedings has been started and not yet been concluded, meaning thereby that there are scope of passing further orders by Learned NCLT in the said proceedings. Similar view has been expressed in the judgment reported in AIR 1965 SC 1449 in the matter *Raja Soap Factory v. S.P. Shantharaj*, which was dealing with in the context of the provisions contained under Section 24 of the Code

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of Civil Procedure, which is that "**pending proceedings in fact is not a concluded proceeding**", and that the court having taken cognizance of it can make an order on the matter until and unless it is concluded in shape of an adjudication. In the light of what has been observed above by us, the definition of "initiation" and "commencement" ought not to be confused as 'commencement' has got different legislative intent and a purpose to be achieved and therefore, the word "pendency" as used under Section 60(2) of the I & B Code, 2016, will mean the period from the date of starting of the proceedings (date of initiation) by filing of the Application till it is concluded by a decision rendered by a court of law (Tribunal), in the manner prescribed by the Code, that is, rejection of Application, approval of Resolution Plan or order of liquidation as the case may be. If that be the situation, the pendency of Section 7 Application as against the Ozone Projects (Principal Borrower) before the learned NCLT, Chennai, will have to be taken as pendency of CIRP proceedings against the Principal Borrower till it is concluded by Learned NCLT, Chennai in the manner prescribed by the code and if during this period of pendency, any CIRP proceedings is contemplated to be initiated by filing an application as against M/s. Tuscan Consultants and Developers Private Limited i.e., the Corporate Guarantor to the Principal Borrower (Corporate Debtor herein) it has to be initiated before the learned NCLT, Chennai, as contemplated under Section 60(2) of I & B Code, 2016, where the proceedings after its initiation against Principal Borrower by filing of the application were yet to be concluded by its decision,. Accordingly, the CIRP proceedings before the learned NCLT, Chennai, against Principal Borrower, would be treated to be pending and hence the order of Learned NCLT, Chennai, holding that the drawing of the proceedings against M/s. Tuscan Consultants and Developers Private Limited, the Corporate Guarantor, before the learned NCLT, Chennai, is maintainable before NCLT,



Chennai in the light of the provision contained under Section 60(2) of the I & B Code, 2016, does not suffer from any error.

32. *There could be another distinguishing factor, which is required to be considered, which is that, when the proceedings as against Tuscan Consultants & Developers by the Respondent before the learned NCLT, Chennai were instituted, there was a defect pointed out by the Registry qua the jurisdiction. When the matter was later taken up on 11.05.2023, the learned Tribunal had remarked that, there was already an order dated 17.04.2023, where the defects as raised by the Registry in relation to the territorial jurisdiction were directed to be overruled and the matter was directed to be listed to be considered as fresh. It has been argued by the learned counsel for the Respondent that, the defect with respect to the issue of jurisdiction was raised by registry in form of a defect and the matter has already been dealt with by the Tribunal vide its order 17.04.2023, on a judicial side and the relevant order is extracted here under:-*

“The Petitioner is represented by Ld. Counsel Mr. Angad Varma through video conferencing mode.

Registry raised an objection for numbering and filing of the Petition before this Bench of the Tribunal on the ground that the Respondent/Corporate Debtor in the present case the corporate guarantor is having registered office situated in Bengaluru and therefore how this Petition could be maintainable before NCLT Chennai.

The Financial Creditor/Applicant states that the Corporate Debtor in the present case is corporate guarantor to M/s. Ozone Projects Private Ltd having registered office following the jurisdiction of NCLT Chennai Bench. Case against Ozone Projects Private Ltd. (Corporate Debtor) is pending adjudicating before NCLT Chennai In main CP/(IB)49/2023.



Therefore in terms of Section 60(1) and 60(2) since the case against the Corporate Debtor/ Ozone Projects is pending before NCLT Chennai the case of the corporate guarantor will also lye before NCLT Chennai Bench.

Section 60(2) is reproduced below:

"without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or [liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before such National Company Law Tribunal.

In view of the above, the objection of the Registry is overruled. Registry is directed to number the Section-7 Petition and list it for hearing on next available date."

33. *He has contended that the same has been accepted by the parties including the Appellant, without any demur, without raising any objection as such and subsequently when the proceeding was carried on 11.05.2023 wherein the learned Tribunal, had proceeded to hear the matter on merits, the question of jurisdiction was not contested by the Appellant before the learned NCLT and hence they cannot be permitted to agitate the same issue at this belated stage before this Appellate Tribunal, particularly, when they have not agitated the same before the learned NCLT by filing any objection to it when the question of jurisdiction was decided on 17.04.2023. It has been argued to the contrary by the learned counsel for the Appellant that even if the question of jurisdiction, decided by the order of 17.04.2023 was not challenged, it can still be agitated by the Appellant at any stage, even before NCLAT.*

34. *The counsel for the Respondent submits that, while passing the order on 17.04.2023 the Learned NCLT, Chennai, was dealing with an*

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issue raised by the Registry by way of a defect about the jurisdiction of the Tribunal to deal with the matter pertaining to the Appellant, whose registered office is situated in Bangalore, but the fact remains that it was a judicial verdict dated 17.04.2023, deciding on the issue of maintainability of the proceedings before the learned NCLT, Chennai. This order has not been put to challenge, by the Appellant, and hence he would be estopped to challenge the same at this ripe appellate stage, and more particularly when he himself despite being conscious of the fact, has not filed any pleading with regard to the question of jurisdiction as such before the learned NCLT and now he cannot be permitted to be reagitate the same by opening a new chapter altogether, according to his own whims and fancies.

35. This aspect has been argued to the contrary by the learned counsel for the Appellant, submitting that, even assuming for the time being that there was an order passed on 17.04.2023 by the learned NCLT on a judicial side holding the proceedings to be maintainable before the learned NCLT Chennai, and that he has not filed any counter/reply before the learned NCLT, specifically raising the question of jurisdiction, then too there cannot be any bar against him from agitating the question of jurisdiction before the Appellate Tribunal and for the aforesaid purpose he makes reference to the Judgment of the Hon'ble Apex Court, where it has been laid down that the question of jurisdiction, could be agitated at any stage or at any point of time and even at the stage of an appeal. This contention seems to be quite laudable, but it would be a question to be considered as to whether, it could have been considered when the Appellant himself has acceded to the question and had not raised any objection, against order dated 17.04.2023, but has rather voluntarily participated in the proceedings and have invited the order to be rendered on merits on admission of the application under Section 7 of the I & B Code, 2016. The Judgment as relied by the learned counsel for the Appellant, is that as reported

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in 2020 120 taxman.com 178 (Calcutta) in the matter of Atin Arora v. Oriental Bank of Commerce, where the single judge of the Calcutta High Court in Para 31 has observed that in the light of the provisions contained under Section 21 of the Code Civil Procedure, the question of jurisdiction could be agitated at any stage of time and Section 21 of Cr. P.C. which may not have any application in the proceedings under I & B Code, 2016. The relevant para is extracted hereunder: -

"31. Thus, the contention of the opposite party that the objection as to the territorial jurisdiction of the Tribunal should have been raised at the first instance and that such objection was waived by nonappearance of the opposite party does not impress the court. The place of suing in case of suits filed under the Civil Procedure Code, 1908 is based on the provisions of sections 15 to 20 thereof and the plaintiff has to file the suit in accordance with the said sections and can also choose the place of suing. Under such circumstances, section 21 of the Code provides that the question with regard to territorial jurisdiction or pecuniary jurisdiction being technical questions, should be raised at the first instance. In my opinion, when the jurisdiction of the National Company Law Tribunal has been prescribed under section 60(1) of the Code and the National Company Law Tribunal within whose jurisdiction the registered office of the company is situated is to have exclusive jurisdiction over the proceedings under the Code, section 21 of the Code of Civil Procedure will not have any application."

36. In furtherance thereto his argument, he has further made reference to a judgment which has laid down almost a similar principle, that, since the question of jurisdiction, both pecuniary or territorial, goes to the roots of the competence of the Tribunal deciding the matter, it could be raised at any stage of time, even in the absence of the pleading raised in opposition to the effect. He supports his contention stating that there would be no legal bar as such for him to raise the issue of territorial jurisdiction, even before this Appellate Tribunal. The principles as laid down by the said judgment of Atin Arora (Supra) may not be akin in nature under the facts and circumstances of the instant

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Company Appeal, where despite of being conscious of the question of jurisdiction being raised, and also despite being conscious of there being a judicial order passed by the Tribunal on 17.04.2023 deciding the question of jurisdiction, not challenging it, and still choosing not to file any objection raising a question of territorial jurisdiction particularly, when it becomes a subject matter of consideration based upon the determination of facts and law, the Appellant cannot place this instant Company Appeal on a common pedestal as that of the Judgment relied by the Appellant in the matters as rendered, Atin Arora (Supra). The Appellant has relied on yet other authority, as rendered, by the Hon'ble Apex Court as reported in (2007) 1 SCC 732 Arunkumar v. Union Bank of India, where the Appellant has made reference to para 84 of the said judgment, as extracted hereunder.

"84. From the above decisions, it is clear that existence of "jurisdictional fact" is sine qua non for the exercise of power. If the jurisdictional fact exists, the authority can proceed with the case and take an appropriate decision in accordance with law. Once the authority has jurisdiction in the matter on existence of "jurisdictional fact", it can decide the "fact in issue" or "adjudicatory fact". A wrong decision on "fact in issue" or on "adjudicatory fact" would not make the decision of the authority without jurisdiction or vulnerable provided essential or fundamental fact as to existence of jurisdiction is present."

37. *That was a case where the question of territorial jurisdiction was not even agitated by the opposite side to the proceedings at any point of time in the proceedings and it was being raised for the first time before the superior forum. It was under those facts and circumstances Hon'ble Apex Court opined that, since the jurisdiction goes to the root of the issue it could be permitted to be agitated at any point of time. But that may not be the same for case at hand, because here the Appellant had contested the issue, there is a judicial order determining the question of jurisdiction, which has not been challenged, and there is no pleading on merits of the jurisdiction. When the question of territorial*



jurisdiction falls to be a question of consideration under facts and law and yet the matter has been determined on its merit and that too upon contest, which was given by the Appellant, it has to be construed that he has waived of his right to file any objection to it, on any of the fact of the proceedings.

38. *We are of the view, so far as the instant Company Appeal is concerned, the question of competence to decide the controversy based upon the lack of territorial jurisdiction may not be attracted, as lack of territorial jurisdiction would mean lack of competence to decide, due to the subject being placed outside the territorial jurisdiction of the Court or the Tribunal. It is no one's case that judicially the Tribunal at Chennai didn't have jurisdiction to decide the subject; actually, it did have the jurisdiction to decide on the subject. The issue of restriction of territorial jurisdiction in this case is being agitated based on the implications of Section 60(1) of I & B Code and the exception carved out due to Section 60(2). Basically, the question in context of territorial jurisdiction which falls for consideration is because of exception provided by Section 60(2). That means both the Tribunals would have concurrent territorial jurisdiction but which one is to be involved for subsequent proceedings would be subject to the exception provided by Section 60(2), where the restriction of jurisdiction on account of the location of Registered office of the Corporate Debtor as provided under Section 60(1) of I & B Code, 2016, determining place of suing will stand overridden due to existence and pendency of an earlier CIRP proceeding. In other words it could be said that a bar of territorial jurisdiction provided under Section 60(1) is not absolute and is rather concurrent in nature, due to the provisions of Section 60(2). Hence, none of the authorities relied by the Appellant on the issue of territorial jurisdiction would apply, because this would be a case where both the Tribunals under law would be having concurrent territorial jurisdiction, which would be a question to be raised at the earliest possible*



opportunity, which was not done by the the Appellant. The issue of concurrent territorial jurisdiction has not been the bone of contentions in any of the authorities, cited by him.”

25. Also, in **ICICI Bank Ltd. vs. Era Infrastructure (India) Ltd. etc.** (Civil Appeal No. 6094 of 2019) decided on 26.02.2026, Hon’ble Supreme Court ruled that the Section 60(2) of IBC enables the same Adjudicating Authority being NCLT to deal with the case of Principal Borrower and Surety as their liabilities is co-extensive. Paras 47 to 49 and 77 to 79 of the judgment reads thus:-

*“47. At the very outset, it is contended that the issue stands settled in view of **BRS Ventures Investments Ltd.** (supra). The primary contention hinges on section 60(2), IBC which reads thus:*

60. Adjudicating authority for corporate persons –

(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before such National Company Law Tribunal.

48. Thus, it is contended that section 60(2), IBC enables the adjudicating authority, being the NCLT, before which the application of the principal debtor is pending, to adjudicate the application of the corporate or personal guarantor as well.

49. Learned senior counsel supporting the proposition of simultaneous proceedings would primarily argue that under the common law principles as well as under section 128 the Indian

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Contract Act, 1872, the liability of the surety or the guarantor is co-extensive with that of the principal debtor. Reliance is placed on **Bank of Bihar Ltd. v. Damodar Prasad & Anr., State Bank of India v. Indexport Registered and Ors., Industrial Investment Bank v. Bishwanath Jhunjunwala and State Bank of India v. V. Ramakrishnan.**

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77. The reasoning against simultaneous proceedings, at first blush, would seem simple: one debt, one proceeding. However, this reasoning was considered and negated by this Court in **BRS Ventures** (supra), which held as under:

28. Sub-section (2) of Section 60 contemplates separate or simultaneous insolvency proceedings against the corporate debtor and guarantor. Therefore, sub-section (3) of Section 60 provides that if CIRP in respect of the corporate guarantor is pending before an adjudicating authority and if the CIRP against the corporate debtor is pending before another adjudicating authority, CIRP proceedings against the corporate guarantor must be transferred to the adjudicating authority before whom CIRP in respect of the corporate debtor is pending. Thus, consistent with the basic principles of the Contract Act that the liability of the principal borrower and surety is coextensive, the IBC permits separate or simultaneous proceedings to be initiated under Section 7 by a financial creditor against the corporate debtor and the corporate guarantor.

78. Thus, the question, whether simultaneous proceedings against the corporate debtor and/or the guarantor(s) can be maintained or not, is no longer res integra. All the arguments that have been canvassed before us, including the interpretation of sub-section (8) of section 5 and sub-section (2) of section 60 of the IBC, as well as regulation 8 of the 2016 Regulations read with Schedule-I, Form C, have been considered by the coordinate bench in **BRS Ventures Investments Ltd.** (supra).



79. The appeals could be disposed of on this finding itself. However, there is something more that lies ahead. The aggrieved parties urge us to go beyond merely restating the law and applying it to the dispute at hand, asserting that this by itself would be inadequate. What they call upon us is to lay down further modalities and restrictions governing the process. We consider these submissions hereafter.”

26. Thus, we are left with no doubt that the captioned petitions are amenable to the jurisdiction of this Bench where CIRP qua the Principal Debtor viz. Bliss House Pvt. Ltd., commenced in terms of order dated 21.01.2026 passed in CP (IB)-585/ND/2025 is pending. One may say that in respect of the part of the debt mentioned in the petitions, the Corporate Debtors are also Principal Debtors, but the same would not be a ground to take a view that the Corporate Debtors before us are not Corporate Guarantors in respect of part of the debt qua which the CIRP in respect of Principal Debtor is pending before this Bench. **Ergo, the plea of territorial jurisdiction raised on behalf of the Corporate Debtors is rejected.**

27. Mr. Sunil Fernandes also raised a plea that the Corporate Debtors did not commit any default qua the amount of debt. To deal with the issue, we need to refer to the Loan Agreement. It is seen from Clause 2.1 of the Loan Agreement dated 29.03.2019 that in terms of the conditions stated in the Loan Documents, the Lender agreed to lend to the borrowers and the borrowers agreed to borrow the loan amount mentioned in Schedule I. The amount of loan was to be disbursed upon the request of the Borrowers. In terms of Clause 2.2 of the agreement, the Borrower had undertaken to forthwith

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provide/create and/or cause the Obligors to forthwith provide/create the security and execute the security documents. In terms of the clause, the Obligors viz the Corporate Debtors herein before us were liable to repay the amount of debt. The Clause 2.1 and 2.2 of the Loan Agreement reads thus:-

“2.1 Loan Amount

In consideration of the terms and conditions stated in the Loan Documents, the Lender agrees to lend to the Borrower(s) and the Borrower(s) agree to borrow, the Loan amount mentioned in Schedule I hereunder. Further, upon the fulfillment by the Borrower(s) of all conditions precedent as required / provided by the Lender and only upon receipt of the request from the Borrower(s), the Lender may disburse the Loan to the Borrower(s). The Loan may be disbursed in full or in such tranches as mentioned in the request for disbursement of the Loan amount by the Borrower(s) or as deemed fit by the Lender or as may be mutually agreed upon by and between the Borrower(s) and the Lender and in the case of Loan being disbursed in tranches, then each request for disbursement shall have to comply with the above requirements and the amount to be disbursed should be clearly mentioned.

The entire Loan shall be disbursed only upon the request of the Borrower(s), in such tranches as deemed fit by the Lender and to the satisfaction of the Lender after deductions (if any) shall be paid/dispensed to the Borrower(s) and/or the lender(s) of the Borrower(s), on and behalf of the Borrower(s).

Subject to the provision of the Loan Documents, the Tenure of the Loan (or part thereof) shall be as mentioned in Schedule-I of this Agreement.

The Obligor(s) shall be jointly and severally liable to pay the Borrower's Dues to the Lender.

2.2 Security

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*The Borrower(s) hereby undertake to forthwith provide/create, and/or shall cause the Obligor(s) to forthwith provide/create the Security and execute the Security Documents in favour of the Lender as set out below and/or in **Schedule I** hereunder read with the other corresponding schedule(s) hereto and/or any other Security to be created in the future, if the Lender so desires, to secure, to the satisfaction of the Lender, all the obligations of the Obligor(s) under the Loan Documents including the Borrower's Dues together with costs, charges, liquidated damages, expenses and all other moneys whatsoever, due and payable, or which may hereafter be payable by the Obligor(s) to the Lender under the Loan Documents. The Borrower(s) shall, and/or shall cause the Obligor(s) to, take/obtain a written no objection certificate ("**NOC**") from the Lender prior to, inter alia, any application(s), agreement(s), document(s) and/or contract(s) for/of/relating to, inter alia, sale, conveyance, transfer, lease, possession, sub-lease, rent, assignment, development, charge, third-party rights/interests, allotment and/or encumbrance of the Security (and/or any portion/unit thereof).*

Unless otherwise mentioned in this Agreement and/or unless the Lender otherwise agrees in writing, the Borrower(s) further undertake that it/they shall, and shall cause the Obligor(s) to, forthwith execute the Security Documents and create the first-ranking mortgage/charge/pledge/hypothecation (in a mode/manner acceptable to the Lender) over the Security exclusively in favour of the Lender before or at the time of entering into this Agreement. Any failure/delay in execution of the Security Documents and creation of mortgage/charge/pledge/hypothecation over the Security as aforesaid shall be considered as an Event of Default under the Loan Documents."

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28. Clause 2.2.3(iii) of the Loan Agreement also provides that at all times till all the obligations of the Obligors under the Loan Agreement could be complied with to the satisfaction of the Lender including payment/repayment of Borrower's due to the Lender by the Obligors, the pledged properties were to be kept free from all encumbrances. The Clause 2.2.3(iii) of the Loan Agreement reads thus:-

“(iii) The Borrower(s) confirm and undertake that the Pledged/Charged Shares, as more particularly described in the Schedule IV hereunder and which are to be/are pledged/charged in favour of the Lender, are the absolute property of the Pledgor(s) and that the same are and shall be free from all encumbrances and claims (except for any pledge/charge/claim of the Lender) at all times till all the obligations of the Obligor(s) under the Loan Documents have been complied with to the satisfaction of the Lender including payment/repayment of Borrower's Dues to the Lender by the Obligor(s) and all requisite consents, regulatory or otherwise, and procedural formalities for pledging the Pledged/Charged Shares are obtained and complied with.”

29. It is seen from clause 2.2.4 of the Loan Agreement that the Hypothecators / Obligors were liable to pay from any source the amounts payable in accordance with the loan documents to the Lender. The clause reads thus:-

2.2.4 Hypothecation

The Borrower(s) shall cause the Hypothecator(s) and the Hypothecator(s) shall agree, to the satisfaction of the Lender, to hypothecate, encumber, charge, pledge and/or assign (by

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way of Security) the Hypothecated Asset(s) exclusively in favour of the Lender. The Borrower(s) shall cause the Hypothecator(s) to promptly submit with the Lender (if so requested by the Lender) all the original documents of the Hypothecated Asset(s) duly endorsing the lien/hypothecation in favour of the Lender. The Obligor(s) shall forthwith deposit or shall cause to be deposited the Receivables directly in an escrow account(s) (and to no other account) as may be stipulated/agreed by the Lender and shall forthwith execute escrow agreement(s) in a form satisfactory to the Lender with respect to deposit of the Receivables into the escrow account(s) and transfer of amounts into the Lender's specified bank account(s) on the Due Date(s). The Receivables shall be utilized/transferred in a manner as approved/instructed by the Lender in writing from time to time. **It is hereby clarified that in case of shortfall in the escrow account(s), payment default(s) by the Obligor(s) and/or occurrence of an Event of Default, the Obligor(s) is/shall be under an obligation to pay from any source so as to pay the amount(s) payable in accordance with the Loan Documents to the Lender.** The Obligor(s) undertake to forthwith issue irrevocable instructions (in a format acceptable to the Lender) to all the concerned persons for deposit of the Receivables only in the escrow account(s) and obtain confirmations in this regard (and forthwith provide a copy thereof to the Lender) from all such person(s). The Obligor(s) shall not give any instruction(s) to the escrow agent(s) and the escrow agent(s) shall not in any circumstance act on any instruction(s) of the Obligor(s). The Borrower(s) undertake to, and the Borrower(s) shall cause the other Obligor(s) to, irrevocably appoint the Lender as its attorney by execution of a Power of Attorney for collection of Receivables (in the form

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and substance satisfactory to the Lender) in favour of the Lender for, inter alia, collection of the Receivables from all the concerned persons. The Borrower(s) further agree that such power(s) would be power(s) coupled with interest and therefore irrevocable.”

30. The clause 3 of the Agreement provided for repayment of the loan. The clause 4 of the Loan Agreement provided for prepayment / foreclosure and cancellation of loan. The clause 12 of the Loan Agreement provided for Events of Default. The clauses 3 and 4 and relevant excerpt of clause 12 reads thus:-

3. REPAYMENT

3.1 Repayment of Loan

3.1.1 *The Borrower(s) shall repay the entire Loan to the Lender in such manner as agreed by the Lender and as per the **payment/ repayment schedule** ("Payment/ Repayment Schedule") provided in **Schedule I** hereunder or as per any revised Payment/Repayment Schedule specified by the Lender from time to time.*

3.1.2 *The Borrower(s) may repay/pay the installments and other monies in respect of the Loan through any one of the following modes post-dated cheques ("PDC method") / the Electronic Clearing System (Debit Clearing) as notified by the ("RBI ECS method")/ by directly paying amounts when due to the Lender ("Direct Payment method") / by any other method, and as has been agreed upon between the Borrower(s) and the Lender. The Lender may, in its sole discretion, require the Borrower(s) to adopt or switch to any alternative mode of payment and the Borrower(s) shall comply with such request, without any demur or delay. Notwithstanding anything to the contrary, all payment/amounts shall be deemed to have been received by the Lender under the Loan Documents only when such*

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payments/amounts are actually credited in the Lender's bank account. If the Borrower(s) cancel or revoke (or attempt to cancel or revoke) such mandates without the prior consent of the Lender, such acts of the Borrower(s) shall be entitled to initiate appropriate criminal proceedings against the Borrower(s) without prejudice to the Lender's other rights under the provisions of the Negotiable Instruments Act, 1881. The Borrower(s) shall pay cheque dishonor charges and miscellaneous payment charges to the Lender as specified by the Lender for the first and subsequent representations. Submission of post-dated cheques by the Borrower(s) to the Lender shall be deemed to be an unconditional and irrevocable authority given by the Borrower(s) to the Lender to present them for payment on or after the dates indicated on such cheques. The Borrower(s) shall ensure that each of such cheques is honoured on first presentation.”

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4.1 Illegality

4.1.1 If, at any time, it is or will become unlawful under any applicable laws, rules, regulations for the Lender to perform any of its obligations as contemplated by this Agreement:

- i. the Lender shall notify the Borrower(s) upon becoming aware of that event whereupon the Loan will be immediately cancelled; and
- ii. the Borrower(s) shall repay the Loan made available to the Borrower(s) on the last day of the interest period for the Loan occurring after the Lender has notified the Borrower(s) or, earlier, if a date is specified by the Lender in the notice delivered to the Borrower(s).

4.2 Notwithstanding anything contained herein, the Lender may, at its sole and absolute discretion, cancel and/or withhold the disbursement of the Loan in part or full at any stage under this Agreement.

4.3 Unless otherwise agreed or specified by the Lender in writing, no prepayment and/or foreclosure of the Loan (or any part thereof) shall be made by the Borrower(s) within the period, if any, mentioned in **Schedule I**. The Borrower(s) further agree that the Lender may specify, from time to time, the minimum amount of prepayment and/or foreclosure to be made by the Borrower(s).

4.4 In the event of any prepayment/ foreclosure/ acceleration of the Loan (or any part thereof) is made in accordance with the provisions of this Agreement, the Payment/Repayment Schedule for the Borrower's Dues shall be amended/ altered by the Lender for giving effect to such prepayment/foreclosure/acceleration, and such amended/altered Payment/Repayment Schedule shall be binding upon the Borrower(s). That in such an eventuality the Borrower(s) undertake and agree to execute such document(s) as the Lender may require. The interest and any other charges, etc. would be leviable till the end of the month in which the prepayment/foreclosure has been made. In the event of prepayment, the amortization schedule shall be effective from first day of the subsequent month. The Lender at its sole discretion may require swap of the post-dated cheques or any other repayment / payment mode for re-scheduling of installments from time to time.

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12. EVENTS OF DEFAULT

12.1 Each of the events or circumstances set out herein is an Event of Default.

12.1.1 Non-payment

The Borrower(s) does/do not pay by the Due Date(s) the Borrower's Dues (or part thereof) and/or any amount payable pursuant to a Loan Document.

Any representation or statement made or repeated by the Obligor(s) or any Affiliate / associate in the Loan application, Loan Documents or any other document delivered by or on behalf of the Obligor(s) or any Affiliate / associate under or in connection with any Loan Documents is incorrect or misleading in any material respect when made or repeated. Further, if there is any suppression of facts by the Obligor(s) in the Loan application, Loan Documents or any other document delivered by or on behalf of the Obligor(s) under or in connection with any Loan Documents.

12.1.5 Unlawfulness

It is or becomes unlawful for the Obligor(s) to perform any of its obligations under the Loan Documents.

12.1.6 Repudiation

The Obligor(s) repudiates a Loan Document or in the opinion of the Lender, the Obligor(s) has/have an intention to repudiate any of the Loan Documents.

12.1.7 Government Intervention

By or under the authority/order of any government/court or otherwise:

12.1.7.1 the management of the Obligor(s) is wholly or partially displaced or the authority of the Obligor(s) in the conduct of its business is wholly or partially curtailed; or

12.1.7.2 all or a majority of the issued shares of the Obligor(s) or the whole or any part of its/their revenues or assets is seized, nationalized, expropriated or compulsorily acquired; or

12.1.7.3 If any attachment, distress, execution or other process against the Obligor(s), or any of its properties is enforced or levied upon;

12.1.8 Material adverse change

Any event or circumstance occurs which the Lender believes is likely to have a Material Adverse Effect or if any circumstance or event occurs which in the opinion of Lender, would or is likely to prejudicially or adversely affect in any manner, the ability/ capacity of the Obligor(s) to perform or comply with its/their obligations under the Loan Documents and/or to pay/repay the Borrower's Dues or any part thereof;

12.1.9 Others

(a) If there is any deterioration or impairment of the Security, if any, or any part thereof or any decline or depreciation in the value or market price thereof (whether actual or reasonably anticipated), which causes the Security created in favour of Lender, in the judgment of Lender to become unsatisfactory as to character or value and the Borrower(s) fail to provide additional Security;



Bliss House Private Limited

For Lender's Use Only

31. The clause 12.1.8 of the default clause provided that occurrence of any event or circumstances which the Lender believes was likely to have a Material Adverse Effect or the occurrence of event which in the opinion of Lender, could

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or was likely to prejudicially or adversely effect in any manner the ability / capacity of the Obligors to perform or comply with its / their obligations under the loan documents and / or to pay / repay the Borrower's Dues or any part thereof could be perceived as default.

32. As the circumstances mentioned in clause 12 of the Loan Agreement (ibid) emerged viz. Material Adverse Effect on Obligors to perform and comply with the obligation under the loan documents could take place, the Lender served Recall Notice Dated 09.03.2020 upon Principal Debtor and Guarantors / Hypothecators. The notice reads thus:-

To

Date: March 09, 2020

1. M/s. Imagine Habitat Private Limited
15th Floor, Tower 2A, One Indiabulls Centre,
Senapati Bapat Marg, Lower Parel, Mumbai-400013
Corporate Identity Number: U70102MH2013PTC244525

2. M/s RAB Enterprises (India) Private Limited
15th Floor, Tower 2A, One Indiabulls Centre,
Senapati Bapat Marg, Lower Parel, Mumbai - 400013
Corporate Identity Number: U70101MH2005PTC153499

3. Mrs. Bindu Kapoor
427-428, 27th Floor, Samudra Mahal,
Dr. A. B. Road, Worli, Mumbai – 400018
Permanent Account Number: ALEPK8691A

4. Mr Rana Kapoor
427-428, 27th Floor, Samudra Mahal,
Dr. A. B. Road, Worli, Mumbai – 400018
Permanent Account Number: AHIPK0411A

5. M/s. Imagine Estate Private Limited
15th Floor, Tower 2A, One Indiabulls Centre,
Senapati Bapat Marg, Lower Parel, Mumbai – 400013
Corporate Identity Number: U45200MH2007PTC174021

6. M/s. Imagine Property Private Limited
15th Floor, Tower 2A, One Indiabulls Centre,
Senapati Bapat Marg, Lower Parel, Mumbai – 400013
Corporate Identity Number: U45201MH2007PTC173493

7. M/s. Imagine Home Private Limited
15th Floor, Tower 2A, One Indiabulls Centre,
Senapati Bapat Marg, Lower Parel, Mumbai – 400013
Corporate Identity Number: U70100MH2013PTC243868

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8. M/s. Imagine Residence Private Limited
15th Floor, Tower 2A, One Indiabulls Centre,
Senapati Bapat Marg, Lower Parel, Mumbai – 400013
Corporate Identity Number: U70109MH2013PTC244326

9. M/s. Bliss House Private Limited
20, Diplomatic Enclave, Sardar Patel Marg, New Delhi - 110003
Corporate Identity Number: U70100DL2016PTC304728

10. M/s. Bliss Agri and Eco Tourism Private Limited
15th Floor, Tower 2A, One Indiabulls Centre,
Senapati Bapat Marg, Lower Parel, Mumbai – 400013
Corporate Identity Number: U01100MH2009PTC322829



11. M/s. Bliss Apartment (Mumbai) Private Limited
15th Floor, Tower 2A, One Indiabulls Centre,
Senapati Bapat Marg, Lower Parel, Mumbai – 400013
Corporate Identity Number: U70109MH2011PTC217428

Dear Sir/Madam,

Subject: Notice under the Loan Documents and/or the applicable laws for, *inter alia*, (a) Loan recall and payment of all amounts under the Loan Documents and/or (b) sale/transfer/assignment/encumbrance of the Security/Securities provided under the Loan Documents and/or (c) invocation of guarantee(s) executed by the Guarantor(s) in favour of the Lender under the Loan Documents.

This has reference to the loan agreement(s) executed by (a) the Borrower(s) (as mentioned in Schedule I hereunder) (b) the Co-Borrower(s) (as mentioned in Schedule I hereunder) and (c) Indiabulls Housing Finance Limited (hereinafter referred to as the “Lender”) for the Loan(s) more particularly mentioned in Schedule I hereunder and/or any amendment(s)/addendum(s) thereto (“Loan Agreement(s)”), the other Loan Documents and/or various letter(s), if any, exchanged between the Obligor(s) and the Lender.

Please note that Event of Default has/have already occurred under the Loan Documents as a result of, *inter alia*, Material Adverse Effect on account of occurrence of event which is likely to or prejudicially or adversely affect in any manner, the ability/capacity of the Obligor(s) to perform or comply with its obligations under the Loan Documents.

Kindly note that, as on March 09, 2020, the total outstanding Loan(s) amount along with the interest thereon is Rs. 140,71,56,250/- (Rupees One Hundred Forty Crores Seventy One Lakh Fifty Six Thousand Two Hundred and Fifty only) in the aggregate, which is payable to the Lender under the Loan Documents. In addition to the aforesaid amount, TDS certificates of Rs. 65,37,529/- (Rupees Sixty Five Lakh Thirty Seven Thousand Five Hundred Twenty Nine only) is also to be submitted to the Lender under Loan Documents.

In view of the aforesaid and pursuant to the provisions of the Loan Documents, without prejudice to our other rights and remedies, we hereby recall the outstanding Loan(s) and call upon you to forthwith pay us all the amounts payable to the Lender under the Loan Documents within five days from the date of receipt of this notice.

In case of failure on your part to comply with the aforesaid, without prejudice to our other rights/remedies and without any further notice to any of you,

- (a) please treat this notice (issued under the Loan Documents and/or the applicable laws) as a notice of/for sale, disposing off, transfer, grant, conveyance, assignment and/or encumbrance of any/all of the Security/Securities provided in favour of the Lender under the Loan Documents; and/or

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(b) please treat this notice (issued under the Loan Documents and/or the applicable laws) as a notice for invocation of the guarantee(s) executed by the Guarantor(s) in favour of the Lender, and pursuant to which the Guarantor(s) shall be liable to forthwith pay to the Lender all amounts payable to the Lender under the Loan Documents (including the amounts specified above); and/or

(c) the Lender shall be entitled to, *inter alia*, exercise other rights and/or enforce remedies (at your costs and risk) available under the Loan Documents and/or applicable laws to, *inter alia*, recover all amounts payable by you to the Lender under the Loan Documents.

Notwithstanding anything to the contrary, this notice shall prevail over and/or shall not be affected by any other correspondence, payments, actions, etc., in present or future, by or between you and the Lender, unless this notice is specifically withdrawn/annulled by the Lender in writing.

Any capitalized terms used and not defined herein shall have the same meaning as ascribed to such terms under the Loan Documents. We expect prompt action on your part.

33. The Corporate Debtors did not deny the Deed of Hypothecation, but tried to canvass that the same could not have been treated as Corporate Guarantee. We have already discussed and analysed hereinabove that the Deed was nothing but was a surety / guarantee / obligation to repay the amount of debt and the same is unequivocally an undertaking amounting to Guarantee. As could be ruled in **ICICI Bank Limited vs. ERA Infrastructure (India) Limited** etc. (Civil Appeal No. 6094 of 2019) decided on 26.02.2026, the liability of Corporate Guarantors and Principal Debtor are coextensive, thus simultaneous proceedings qua them are permissible. At the cost of repetition paras 73 to 79 of the judgment are reproduced hereinbelow: -

*“73. In cases where the application was rejected, reliance was chiefly placed on **Vishnu Kumar Agarwal** (supra). The relevant portion from such decision reads thus:*

***32.** There is no bar in the 'I&B Code' for filing simultaneously two applications under Section 7 against the 'Principal Borrower' as well as the 'Corporate Guarantor(s)' or against both the 'Guarantors'. However, once for same set of claim application under Section 7 filed by the 'Financial Creditor' is admitted against one of the 'Corporate Debtor' ('Principal Borrower' or*

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'Corporate Guarantor(s)', second application by the same 'Financial Creditor' for same set of claim and default cannot be admitted against the other 'Corporate Debtor' (the 'Corporate Guarantor(s)' or the 'Principal Borrower'). Further, though there is a provision to file joint application under Section 7 by the 'Financial Creditors', no application can be filed by the 'Financial Creditor' against two or more 'Corporate Debtors' on the ground of joint liability ('Principal Borrower' and one 'Corporate Guarantor', or 'Principal Borrower' or two 'Corporate Guarantors' or one 'Corporate Guarantor' and other 'Corporate Guarantor'), till it is shown that the 'Corporate Debtors' combinedly are joint venture company.

74. It was, thus, held that once an application stood admitted, either against the principal borrower or the guarantor, no further application could be maintained against the guarantor or co-guarantor or principal borrower. Following this, the impugned orders too, were passed by the respective tribunals, rejecting the initiation of CIRP.

75. An appeal was carried to this Court from **Vishnu Kumar Agarwal** (supra); however, the parties having reached a settlement, the appeal⁴⁷ stood disposed of without expression of any opinion on the merits thereof.

76. Conversely, the impugned order(s) allowing CIRP to be initiated simultaneously placed reliance on a judgment of the NCLAT in **Athena Energy Ventures** (supra). NCLAT in **Athena Energy Ventures** (supra) preferred not to follow **Vishnu Kumar Agarwal** (supra) for the reason as under:

19. It is clear that in the matter of guarantee, CIRP can proceed against Principal Borrower as well as Guarantor. The law as laid down by the Hon'ble High Courts for the respective jurisdictions, and law as laid down by the Hon'ble Supreme Court for the whole country is binding. In the matter of Piramal, the Bench of this Appellate Tribunal "interpreted" the law. Ordinarily, we would respect and adopt the interpretation but for the reasons

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discussed above, we are unable to interpret the law in the manner it was interpreted in the matter of *Piramal*. For such reasons, we are unable to uphold the Judgement as passed by the Adjudicating Authority.

77. The reasoning against simultaneous proceedings, at first blush, would seem simple: one debt, one proceeding. However, this reasoning was considered and negated by this Court in **BRS Ventures** (*supra*), which held as under:

28. Sub-section (2) of Section 60 contemplates separate or simultaneous insolvency proceedings against the corporate debtor and guarantor. Therefore, sub-section (3) of Section 60 provides that if CIRP in respect of the corporate guarantor is pending before an adjudicating authority and if the CIRP against the corporate debtor is pending before another adjudicating authority, CIRP proceedings against the corporate guarantor must be transferred to the adjudicating authority before whom CIRP in respect of the corporate debtor is pending. Thus, consistent with the basic principles of the Contract Act that the liability of the principal borrower and surety is coextensive, the IBC permits separate or simultaneous proceedings to be initiated under Section 7 by a financial creditor against the corporate debtor and the corporate guarantor.

78. Thus, the question, whether simultaneous proceedings against the corporate debtor and/or the guarantor(s) can be maintained or not, is no longer *res integra*. All the arguments that have been canvassed before us, including the interpretation of sub-section (8) of section 5 and sub-section (2) of section 60 of the IBC, as well as regulation 8 of the 2016 Regulations read with Schedule-I, Form C, have been considered by the coordinate bench in **BRS Ventures Investments Ltd. (supra)**.

79. The appeals could be disposed of on this finding itself. However, there is something more that lies ahead. The aggrieved parties

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urge us to go beyond merely restating the law and applying it to the dispute at hand, asserting that this by itself would be inadequate. What they call upon us is to lay down further modalities and restrictions governing the process. We consider these submissions hereafter.”

34. Also, in **Laxmi Pat Surana vs. Union Bank of India and Anr.** (2021) 8 Supreme Court Cases 481, the Hon’ble Supreme Court ruled that once the Principal Debtor commit default, action under Section 7 of IBC, 2016, can legitimately being invoked against a Corporate Guarantor being a Corporate Guarantor. Paras 31 and 32 of the judgment reads thus:-

“31. In law, the status of the guarantor, who is a corporate person, metamorphoses into corporate debtor, the moment principal borrower (regardless of not being a corporate person) commits default in payment of debt which had become due and payable. Thus, action under Section 7 IBC could be legitimately invoked even against a (corporate) guarantor being a corporate debtor. The definition of "corporate guarantor" in Section 5(5-A) IBC needs to be so understood.

32. A priori, we find no substance in the argument advanced before us that since the loan was offered to a proprietary firm (not a corporate person), action under Section 7 IBC cannot be initiated against the corporate person even though it had offered guarantee in respect of that transaction. Whereas, upon default committed by the principal borrower, the liability of the company (corporate person), being the guarantor, instantly triggers the right of the financial creditor to proceed against the corporate person (being a corporate debtor). Hence, the first question stands answered against the appellant.

35. In the present case, the Principal Debtor has already committed default and in terms of the order dated 21.01.2026 passed in CP (IB)-585/ND/2025,

(IB)-30/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Habitat Pvt. Ltd.
(IB)-31/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Residence Pvt. Ltd.
(IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.
(IB)-36/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Estate Pvt. Ltd.



this Tribunal has ordered commencement of CIRP qua it. Paras 23 to 27 of the order passed by this Tribunal reads thus:-

23. *Apparently, the financial facilities availed by the CD before us viz. Bliss House Private Limited and Bliss Abode Private Limited qua which CP (IB)-474/ND/2025 was filed could be availed by following the same process. Thus, the issue involved in the present petition is exactly identical to the one involved in CP (IB)- 474/ND/2025. The said petition could be admitted in terms of the order dated 15.12.2025, relevant excerpt of the order reads thus:-*

"14. As far as the plea regarding the financial facility is concerned, even the CD has not disputed the same. The only plea raised by CD is that for first sixty months it was liable to pay the interest only and it was only after expiry of such period, the liability to repay the principal amount could arise. However, it is not the case of the CD that even after expiry of sixty months, it offered any schedule to repay the amount of debt. Apparently, the CD failed to repay the outstanding amount of debt in terms of the Recall Notice, on 14.03.2020 as also in terms of the Demand Notice, on 18.09.2020. Besides, the default continued during the pendency of Arbitral Proceedings from 29.06.2020 till 28.02.2023. It is not so that the liability of the CD to pay the amount of debt occurred only after the Award dated 28.02.2023. The CD had admittedly availed the financial facility from the FC and had not honoured the Recall Notice. The Recall Notice was issued on 09.03.2020 by the Petitioner, recalling the entire loan facility. The CD failed to make the payment in terms of the Recall Notice and the outstanding amount remained over due for a period of more than 90 days. Thus, the account of the CD could be declared as NPA on 09.06.2020. In the Recall Notice dated 09.03.2020 (Annexure P-11), the FC could specifically allege that the default had already occurred. The schedule to the Recall Notice contains the details of the outstanding amount of debt. It is the case of the CD itself that for a period of sixty months it was liable to pay only interest and not the principal amount. Thus, apparently it did not repay the principal amount and committed default.

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(IB)-31/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Residence Pvt. Ltd.
(IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.
(IB)-36/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Estate Pvt. Ltd.



15. The liability to pay the amount of debt and default committed by the CD is not founded on the Arbitral Award along, but is with reference to Loan Agreement and liability to repay the amount of debt, defaulted to be paid. The schedule 1 to Recall Notice reads thus:-

SCHEDULE I
Loan Agreement

Loan Agreement(s) Date	Name of Lender	Name of the Borrower(s)	Name of the Co-Borrower(s)	Loan(s)	Total outstanding amount as on March 9, 2020
05 th October, 2017	Indiabulls Housing Finance Limited	Name: M/s. Bliss Abode Private Limited Constitution: Company Address: 40, Amrita Shergill Marg New Delhi - 110003 Corporate Identity Number: U70109DL2017PTC313912 PAN: AAHCB1087A	Name: Mr Rana Kapoor Constitution: Individual Age: 60 Years Father's Name: Late Mr. Raj Kishore Kapoor Address: 427-428, 27 th Floor, Samudra Mahal, Dr. A. B. Road, Worli, Mumbai - 400018 PAN: AHIPK0411A	Upto Rs. 75,00,00,000/- (Rupees Seventy Five Crores only).	Upto Rs. 77,17,96,875 /-(Rupees Seventy Seven Crore Seventy Lakh Ninety Six Thousand Eight Hundred Seventy Five only).
05 th October, 2017	Indiabulls Housing Finance Limited	Name: M/s. Bliss Abode Private Limited Constitution: Company Address: 40, Amrita Shergill Marg New Delhi - 110003 Corporate Identity Number: U70109DL2017PTC313912 PAN: AAHCB1087A	Name: Mr Rana Kapoor Constitution: Individual Age: 60 Years Father's Name: Late Mr. Raj Kishore Kapoor Address: 427-428, 27 th Floor, Samudra Mahal, Dr. A. B. Road, Worli, Mumbai - 400018 PAN: AHIPK0411A	Upto Rs. 67,00,00,000/- (Rupees Sixty Seven Crores only).	Upto Rs. 68,94,71,875 /-(Rupees Sixty Eight Crore Ninety Four Lakh Seventy One Thousand Eight Hundred Seventy Five only).
05 th October, 2017	Indiabulls Housing Finance Limited	Name: M/s. Bliss Abode Private Limited Constitution: Company Address: 40, Amrita Shergill Marg New Delhi - 110003 Corporate Identity Number: U70109DL2017PTC313912 PAN: AAHCB1087A	Name: Mr Rana Kapoor Constitution: Individual Age: 60 Years Father's Name: Late Mr. Raj Kishore Kapoor Address: 427-428, 27 th Floor, Samudra Mahal, Dr. A. B. Road, Worli, Mumbai - 400018 PAN: AHIPK0411A	Upto Rs. 60,00,00,000/- (Rupees Sixty Crores only).	Upto Rs. 61,74,37,500 /-(Rupees Sixty One Crore Seventy Four Lakh Thirty Seven Thousand Five Hundred Only).
05 th October, 2017	Indiabulls Housing Finance Limited	Name: M/s. Bliss Abode Private Limited Constitution: Company Address: 40, Amrita Shergill Marg New Delhi - 110003 Corporate Identity Number: U70109DL2017PTC313912 PAN: AAHCB1087A	Name: Mr Rana Kapoor Constitution: Individual Age: 60 Years Father's Name: Late Mr. Raj Kishore Kapoor Address: / PAN: AHIPK0411A	Upto Rs. 83,00,00,000/- (Rupees Eighty Three Crores only).	Upto Rs. 85,41,21,875 /-(Rupees Eighty Five Crores Forty One Lakh Twenty one Thousand Eight Hundred Seventy Five only).
13 th July, 2017	Indiabulls Housing Finance Limited	Name: M/s. Bliss Abode Private Limited Constitution: Company Address: 40, Amrita Shergill	(i) Name: Mr Rana Kapoor Constitution: Individual Age: 60 Years Father's Name: Late Mr.	Upto Rs. 90,00,00,000/- (Rupees Ninety Crores only).	Upto Rs. 95,14,68,750 /-(Rupees Ninety Five

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 (IB)-31/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Residence Pvt. Ltd.
 (IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.
 (IB)-36/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Estate Pvt. Ltd.



		Marg, New Delhi - 110003 Corporate Identity Number: U70109DL2017PTC313912 PAN: AAHCB1087A	Raj Kishore Kapoor Address: 427-428, 27 th Floor, Samudra Mahal, Dr. A. B. Road, Worli, Mumbai - 400018 PAN: ARIIPK0411A (ii) Name: RAD Enterprises (India) Private Limited Constitution: Company Registered Office Address: 15th Floor, Tower 2A, One Indiabulls Centre, Senapati Bapat Marg, Lower Parel, Mumbai-400013 CIN: U70101MH2005PTC153499 PAN: AACCD2832Q		Crores Fourteen Lakh Sixty Eight Thousand Seven Hundred Fifty only).
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16. As far as the Arbitral Award dated 28.02.2023 is concerned, in view of the judgment of the Hon'ble Supreme Court in **Dena Bank vs. C. Shivakumar Reddy and Anr.** (Civil Appeal No. 1659 of 2020 the same can be relied upon to deal with the issue of limitation. In the said judgment, the Hon'ble Supreme Court ruled that a decree and/or final adjudication would give rise to a fresh period of limitation. Paras 25, 130 and 131 reads thus:-

"25. Another question which arises for the consideration of this Court is, whether a final judgment and decree of the DRT in favour of the Financial Creditor, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action to the Financial Creditor to initiate proceedings under Section 7 of the IBC within three years from the date of the final judgment and decree, and/or within three years from the date of issuance of the Certificate of Recovery.

XXX

130. In effect, this Court speaking through Nariman J., approved the proposition that an application under Section 7 or 9 of the IBC may be time barred, even though some other recovery proceedings might have been instituted earlier, well within the period of limitation, in respect of the same debt. However, it would have been a different matter, if the applicant had approached the Adjudicating Authority after obtaining a final order and/or decree in the recovery proceedings, if the decree remained unsatisfied. This Court held that a decree and/or

- (IB)-30/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Habitat Pvt. Ltd.
(IB)-31/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Residence Pvt. Ltd.
(IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.
(IB)-36/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Estate Pvt. Ltd.



final adjudication would give rise to a fresh period of limitation for initiation of the Corporate Insolvency Resolution Process.

131. It is true that the finding of Patna High Court in **Ferro Alloys Corporation Limited v. Rajhans Steel Limited** (supra) was rendered in the context of Section 434(1)(b) of the Companies Act 1956, which provided that a company would be deemed to be unable to pay its debts if execution or other process issued on a decree or order of any Court or Tribunal in favour of a creditor of the company was returned unsatisfied in whole or in part."

17. Apparently, the present petition has been filed within three years of the Arbitral Award. The said judgment of the Hon'ble Supreme Court **Dena Bank vs. C. Shivakumar Reddy and Anr.** (Civil Appeal No. 1659 of 2020) also provides that in terms of the provisions of Section 238 of IBC, 2016, the present proceedings would continue notwithstanding anything in consistent thereto. Para 84 of the judgment reads thus:-

"84. IBC has overriding effect over other laws. Section 238 of the IBC provides that the provisions of the IBC shall have effect, notwithstanding anything inconsistent therewith contained in any other law, for the time being in force, or any other instrument, having effect by virtue of such law."

18. Apparently, even after the Arbitral Award, the CD has not made the payment of amount of debt. Filing of appeal by it to challenge the Award is in a way admission of default. In terms of the provisions of Section 7(3) of IBC, 2016, the FC should along with the application furnish record of the default recorded with IU (Information Utility) and should provide the name of RP. The application satisfies both the requirements. The name of the proposed IP has been given in Part-III of the application. The Part-III reads thus:-

PARTICULARS OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL			
1.	NAME, POSTAL ADDRESS, EMAIL ADDRESS, REGISTRATION NUMBER	Sapan Mohan Garg Registered Address with IBBI: D-54, 1st Floor, Defence Colony, New Delhi - 110024 Correspondence Address:	

(IB)-30/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Habitat Pvt. Ltd.
(IB)-31/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Residence Pvt. Ltd.
(IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.
(IB)-36/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Estate Pvt. Ltd.



C- 621, 6th Floor, Tower C, IITM, Plot No. A-40, Sector 62, Noida, UP-201301 Email sapan10@yahoo.com Registration Number: IBBI/TPA-002/TP- N00315/2017-18/10903

19. *The Form 2 furnished by the IP has been placed on record as enclosure to the application. In the said Form, the IP has declared that no disciplinary proceedings are pending against him. Thus, the requirements of Section 7 (3) and (5) (a) of IBC, 2016 are satisfied. In the wake, **we are left with no option but to admit the present petition and initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. Ordered accordingly."***

24. *Additionally, during the course of hearing the Ld. Counsel for the CD could also espouse that the default could be constituted in terms of clause 12.1 and 12.2 of the Loan Agreement. As can be seen from clause 12.1.8 of the Agreement, any event or circumstances which the lender could believe as an event of material adverse or prejudicial effect in any manner on the ability of the obligor(s) to perform or comply with its / their obligation under the Loan Agreement could constitute event of default. The Clause 12.2 indicates that the failure of repayment of amount of debt on the same being recalled could also constitute default. The Clause 12.1 and 12.2 of the Agreement reads thus:-*

12.1 Each of the events or circumstances set out herein is an Event of Default.

12.1.1 Non-payment

The Borrower(s) does/do not pay by the Due Date(s) the Borrower's Dues (or part thereof) and/or any amount payable pursuant to a Loan Document.

12.1.2 Unlawful Purpose

The Borrower(s) apply (ies) and/or utilize(s) the Loan a) for such purposes which are not permitted under the Loan Documents and/or (b) for any purpose which is considered and/or deemed to be unlawful, illegal or contravene the provisions of any applicable laws, rules and regulations.

- (IB)-30/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Habitat Pvt. Ltd.
(IB)-31/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Residence Pvt. Ltd.
(IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.
(IB)-36/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Estate Pvt. Ltd.



12.1.3 Other obligations

The Obligor(s) commit or threaten to commit a breach/default of any provision(s) of the Loan Documents not due to any fault of the Lender (other than those referred to in Clause 12.1.1 relating to *Non-payment*) unless, if capable of remedy, such breach/default is remedied within seven (7) days of such breach/default by the Obligor(s).

12.1.4 Misrepresentation

Any representation or statement made or repeated by the Obligor(s) or any Affiliate / associate in the Loan application, Loan Documents or any other document delivered by or on behalf of the Obligor(s) or any Affiliate / associate under or in connection with any Loan Documents is incorrect or misleading in any material respect when made or repeated. Further, if there is any suppression of facts by the Obligor(s) in the Loan application, Loan Documents or any other document delivered by or on behalf of the Obligor(s) under or in connection with any Loan Documents.

12.1.5 Unlawfulness

It is or becomes unlawful for the Obligor(s) to perform any of its obligations under the Loan Documents.

12.1.6 Repudiation

The Obligor(s) repudiates a Loan Document or in the opinion of the Lender, the Obligor(s) has/have an intention to repudiate any of the Loan Documents.

12.1.7 Government Intervention

By or under the authority/order of any government/court or otherwise:

- 12.1.7.1 the management of the Obligor(s) is wholly or partially displaced or the authority of the Obligor(s) in the conduct of its business is wholly or partially curtailed; or
- 12.1.7.2 all or a majority of the issued shares of the Obligor(s) or the whole or any part of its/their revenues or assets is seized, nationalized, expropriated or compulsorily acquired; or
- 12.1.7.3 If any attachment, distress, execution or other process against the Obligor(s), or any of its properties is enforced or levied upon;

12.1.8 Material adverse change

Any event or circumstance occurs which the Lender believes is likely to have a Material Adverse Effect or if any circumstance or event occurs which in the opinion of Lender, would or is likely to prejudicially or adversely affect in any manner, the ability/ capacity of the Obligor(s) to perform or comply with its/their obligations under the Loan Documents and/or to pay/repay the Borrower's Dues or any part thereof;

12.1.9 Others

- (a) If there is any deterioration or impairment of the Security, if any, or any part thereof or any decline or depreciation in the value or market price thereof (whether actual or reasonably anticipated), which causes the Security created in favour of Lender, in the judgment of Lender to become unsatisfactory as to character or value and the Borrower(s) fail to provide additional Security;
- (b) If there is a failure in business, commission of an act of bankruptcy, general assignment for the benefit of creditors, if any Obligor(s) suspend(s) or default(s) in making payment to any creditors/other lenders or threatens to do so, any petition in bankruptcy of by, or against the Obligor(s) is filed or any petition for winding up of the Obligor(s) is filed and not withdrawn within 30 days of being admitted;
- (c) If the Obligor(s) is/are unable to pay its/their debts (whether within the meaning of the applicable laws or otherwise) or if a liquidator, or receiver is appointed in respect of any property or estate of the Obligor(s) or the Obligor(s) carries out/approves/makes an application for amalgamation, merger, arrangement, demerger and/or reconstruction of any of the Obligor(s), except with prior written approval of Lender;
- (d) If a receiver is appointed in respect of the whole or any part of the property /assets of the Obligor(s);
- (e) If the Obligor(s) ceases or threatens to cease or carry on its/their business;
- (f) If it is certified by a firm of accountants appointed by Lender (which Lender is entitled and hereby authorised to so appoint at any time) that the liabilities of the Obligor(s) exceed the Obligor(s)' assets or that the Obligor(s) is/are carrying on business at a loss of more than 50% on a year to year basis or the networth of the Obligor(s)' reduces to or below 50% on a year to year basis;
- (g) If the Obligor(s), without prior written consent of Lender, sell, transfer, assign, convey, grant, deal with and/or dispose off the Security (or any part thereof) and/or attempt or purport to create any charge, mortgage, pledge, hypothecation, lien and/or other encumbrance (including third party right, interest and/or claim) over the Security or any part thereof, except for securing any other obligations (if any) of the Obligor(s) to the Lender;
- (h) If any circumstance or event occurs which is prejudicial to or impairs or imperils or is likely to prejudice, impair, imperil the Security (or any part thereof), or any other security given by the Obligor(s) or any part thereof;
- (i) If any substantial change in the constitution or management or majority of Directors/ partners or any significant change in the Obligor(s) shareholding pattern/ profit sharing occurs without previous written consent of Lender or the management ceases to enjoy the confidence of Lender; or

(IB)-30/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Habitat Pvt. Ltd.

(IB)-31/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Residence Pvt. Ltd.

(IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.

(IB)-36/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Estate Pvt. Ltd.



- (j) If any of the foregoing events occur in relation to any third party which now or hereafter has guaranteed or provided Security for or given any indemnity in respect of any money obligation or liability hereby secured or such third party if individual shall commit an act of bankruptcy or die or become incompetent to contract.

12.2 Consequence of an Event of Default

On and at any time after the occurrence of an Event of Default, Lender may, with or without any notice to any of the Obligor(s):

- (i) cancel/recall the Loan whereupon the Loan and/or the Borrower's Dues shall become immediately repayable/payable by the Obligor(s); and/or
- (ii) initiate/exercise any or all of its rights, actions, remedies and powers under the Loan Documents and/or applicable laws (including issuance of show-cause notice(s) to the Obligor(s) and for making submissions before the relevant committee of the Lender); and/or
- (iii) enforce, allot, sell, invoke, deliver, deal with, take possession, convey, transfer, assign, lease, sub-lease, encumber and/or dispose off in any manner (on terms and conditions including the sale/transfer price of the Security or any part/unit thereof as deemed fit by the Lender) any or all or part of the Security (with or without the intervention of the court/arbitrator) including Mortgaged Properties or any portion or unit thereof, Hypothecated Asset(s) or any portion or unit thereof and/or the Pledged/ Charged Shares, guarantees and demand promissory notes, and/or do such other things in relation to and/or with respect to the Security (any part thereof) which may be permitted under law.

25. *It was the matter of satisfaction of the creditor to form an opinion regarding occurrence of the circumstances mentioned in Clause 12.1 of the Loan Agreement for the purpose of issuance of Recall Notice. As has been analysed in aforementioned order dated 15.12.2025, the Arbitral Award had the ramification of extension of the period of the limitation. The issue raised by the Respondents by way of their reply is covered by the judgment of the Hon'ble Supreme Court in **Dena Bank vs. C. Shivakumar Reddy and Anr. (Civil Appeal No. 1659 of 2020)**. We are bound by the view taken by the Hon'ble Supreme Court in the said judgment referred to in para 17 of aforementioned order dated 15.12.2025.*

26. *In the totality of the facts and circumstances, we are of the view that the **present petition deserved to be admitted. Ordered Accordingly.** Sapan Mohan Garg, IP whose name is proposed by the Applicant is appointed as IRP and e-mail sapan10@yahoo.com.*

27. *In light of the above facts and circumstances, it is, hereby ordered thus:-*



- i. *As a consequence of the Application C.P. (IB) 585/ND/ 2025 being admitted in terms of Section 7 of the Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/ (CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.*
- ii. *In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.*
- iii. *During the CIRP period, the management of the Respondent/CD shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the Respondent/CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.*
- iv. *The IRP is expected to take full charge of the Respondent/CD's assets and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.*
- v. *The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Respondent/Corporate Debtor.*



- vi. *The Applicant is directed to deposit Rs.2,00,000/- (Two Lakh only) with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Applicant.*
- vii. *In terms of Section 7(7) of the Code, the Registry/Court Officer is hereby directed to communicate a copy of the order to the Applicant/FC, the Respondent/CD, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Respondent/CD and specific mention regarding admission of this petition must be notified.*
- viii. *The Registry/Court Officer is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.”*

36. As far as the plea of pendency of appeal against Arbitral Award is concerned, as can be seen from Section 238 of IBC, the provisions of the Code have effect notwithstanding anything inconsistent therewith. The Section reads thus:-

“Section 238: Provisions of this Code to override other laws.

238. *The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”*

37. Besides, the Arbitral Award just crystalised the default which had already taken place in terms of clause 12 of the Loan Agreement. Thus, the challenge to award under Section 34 of Arbitration and Conciliation Act, 1996

would have no ramification on the proceedings under Section 7 of the Code, (IB)-30/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Habitat Pvt. Ltd. (IB)-31/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Residence Pvt. Ltd. (IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd. (IB)-36/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Estate Pvt. Ltd.



which is beneficial process and simply result into change of management of a company first by replacement of existing management with IRP / RP and then with new management in case of approval of plan. Even after commencement of CIRP, the RP can always pursue the proceedings under Section 34 (ibid). In any case, the limitation for filing petition under Section 7 of IBC, 2016 would start running from Arbitral Award dated 28.03.2023. In **Dena Bank vs. C. Shivakumar Reddy and Anr. (Civil Appeal No. 1659 of 2020)**, Hon'ble Supreme Court ruled that a decree and/or final adjudication would give rise to a fresh period of limitation. Paras 25, 130 and 131 reads thus:-

"25. Another question which arises for the consideration of this Court is, whether a final judgment and decree of the DRT in favour of the Financial Creditor, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action to the Financial Creditor to initiate proceedings under Section 7 of the IBC within three years from the date of the final judgment and decree, and/or within three years from the date of issuance of the Certificate of Recovery.

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130. In effect, this Court speaking through Nariman J., approved the proposition that an application under Section 7 or 9 of the IBC may be time barred, even though some other recovery proceedings might have been instituted earlier, well within the period of limitation, in respect of the same debt. However, it would have been a different matter, if the applicant had approached the Adjudicating Authority after obtaining a final order and/or decree in the recovery proceedings, if the decree remained unsatisfied. This Court held that a decree and/or final adjudication would give rise to a fresh period of limitation for initiation of the Corporate Insolvency Resolution Process.

(IB)-30/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Habitat Pvt. Ltd.

(IB)-31/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Residence Pvt. Ltd.

(IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.

(IB)-36/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Estate Pvt. Ltd.



131. It is true that the finding of Patna High Court in **Ferro Alloys Corporation Limited v. Rajhans Steel Limited** (supra) was rendered in the context of Section 434(1)(b) of the Companies Act 1956, which provided that a company would be deemed to be unable to pay its debts if execution or other process issued on a decree or order of any Court or Tribunal in favour of a creditor of the company was returned unsatisfied in whole or in part."

38. The said judgment of the Hon'ble Supreme Court **Dena Bank vs. C. Shivakumar Reddy and Anr. (Civil Appeal No. 1659 of 2020)** also provides that in terms of the provisions of Section 238 of IBC, 2016, the present proceedings would continue notwithstanding anything in consistent thereto.

Para 84 of the judgment reads thus:-

"84. IBC has overriding effect over other laws. Section 238 of the IBC provides that the provisions of the IBC shall have effect, notwithstanding anything inconsistent therewith contained in any other law, for the time being in force, or any other instrument, having effect by virtue of such law."

39. Thus, the plea of limitation and Bar of present proceedings in view of the proceedings pending under Section 34 of IBC, 2016 cannot be countenanced.

40. In **Kotak Mahindra Bank Limited vs. A. Balakrishnan And Another** (2022) 9 Supreme Court Cases 186, the Hon'ble Supreme Court ruled that issuance of a recovery certificate by DRT give rise to a fresh cause of action to a financial creditor to initiate proceedings under Section 7 of IBC within 3 years from the date of final judgment and decree of within 3 years from the date of issuance of recovery certificate issued by DRT. Paras 70 and 71 of the judgment reads thus:-

(IB)-30/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Habitat Pvt. Ltd.

(IB)-31/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Residence Pvt. Ltd.

(IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.

(IB)-36/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Estate Pvt. Ltd.



“70. A perusal of the judgment of this Court in Dena Bank would reveal that this Court considered all the relevant provisions of the IBC and the earlier judgments of this Court. As already discussed hereinabove, we do not find any inconsistency in the judgment of this Court in Dena Bank with the earlier judgments of this Court on which reliance is placed by Shri Viswanathan. We find that the contention that the judgment of this Court in Dena Bank being per incuriam to the statutory provisions and earlier judgments of this Court, is wholly unsustainable.

71. We have already hereinabove, done the exercise of considering the relevant provisions of the IBC afresh and come to a conclusion that a liability in respect of a claim arising out of a recovery certificate would be a "financial debt" within the meaning of clause (8) of Section 5 IBC and a holder of the recovery certificate would be a "financial creditor" within the meaning of clause (7) of Section 5 IBC. We have also held that a person would be entitled to initiate CIRP within a period of three years from the date on which the recovery certificate is issued. We are of the considered view that the view taken by the two-Judge Bench of this Court in Dena Bank is correct in law and we affirm the same.”

41. In the wake of the aforementioned, we are convinced that the present **petitions deserved to be admitted. Ordered Accordingly.**

42. In the wake, moratorium as provided under Section 14 of IBC, 2016 is declared qua the CD. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

“(a) The institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any

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(IB)-32/(ND)/2026 in J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Imagine Home Pvt. Ltd.
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judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

- (b) Transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Respondent.”

43. Ms. Mamta Binani, having Registration No. IBBI/IPA-002/IP-N00086/2017-18/10227 (E-mail id: mamtabinani@gmail.com), whose name is proposed for being appointed as IRP in C.P.(IB) – 32/ND/2026 by way of an IA filed by the Applicant/FC is appointed as IRP, qua the Corporate Debtors in all the applications/petitions subject to the condition that no disciplinary proceeding is pending against her and disclosures as required under IBBI Regulations, 2016 are made by her within a period of one week from the date of uploading of order on DMS. It is further ordered that:

“Shall take charge of the CIRP of the Corporate Debtors with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.”

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44. The IRP would initially conduct separate CIRP in respect of all the four Corporate Debtors. However, subsequently, after constitution of CoCs, the CoCs would be entitle to take a decision regarding group CIRP qua all the four Corporate Debtors.

45. The Petitioner is directed to deposit Rs. 5,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

46. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

47. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

Sd/-
(REENA SINHA PURI)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)