

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH COURT III**

**C.P. No. (IB) 254/MB/C-III/2023**



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

***In the matter of***

**Catalyst Trusteeship Limited**

Having registered office at:

GDA House, Plot No. 85, Bhusari Colony (Right),  
Paud Road, Pune – 411038

And Branch office at:

Windsor, 6<sup>th</sup> Floor, Office No. 604, CST Road,  
Kalina, Santacruz East, Mumbai - 400098

***...Financial Creditor/Petitioner***

Vs

**Marvel Omega Builders Private Limited**

Having office at:

301-302, Jewel Tower, Lane No. 5, Koregaon  
Pak, Pune – 411001

***...Corporate Debtor/Respondent***

**Order pronounced on: 06.09.2024**

**Coram:**

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

**Appearances:**

For the Financial Creditor: Adv. Shyam Kapadia a/w. Adv. Yash  
Dhruva, Adv. Ruchita Jain i/b. MDP &  
Partners



For the Corporate Debtor: Adv. Amir Arsiwala

**Per: Ms. Lakshmi Gurung, Member (Judicial)**

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1. This Petition has been filed by Catalyst Trusteeship Limited (**"Petitioner/ Financial Creditor"**) to initiate Corporate Insolvency Resolution Process (**"CIRP"**) against Marvel Omega Builders Private Limited (**"Respondent/Corporate Debtor"**) under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (**"the Code"**) for the alleged default on part of the Corporate Debtor in repayment of debt of **Rs. 347,72,39,333/-**.

**Facts and submissions of Petitioner, in brief:**

2. A Facility Agreement dated 01.12.2017 (**Facility Agreement 1**) was entered into between Altico Capital India Private Limited (**Original Lender/Altico Capital**) on one part and Marvel Landmarks Private Limited (**MLPL/Borrower**), Marvel Omega Builders Private Limited (**Corporate Debtor**), Marvel Zeta Developers Private Limited (**MZDPL**), Marvel Luxury Realtors Private Limited (**MLRPL**), Marvel Realtors and Developers Limited (**MRDL**), Mr. Vishwajeet Jhavar (**Promoter**) and M/s Marvel Realtors on the other part. Under the said Facility Agreement 1, Altico Capital agreed to grant a facility of up to Rs. 225,00,00,000 to MLPL/Borrower. The Corporate Debtor, MZDPL, MLRPL, MRDL collectively had given guarantee in favour of Altico Capital.
3. Another Facility Agreement dated 01.12.2017 (**Facility Agreement 2**) was entered into between Altico Capital India Private Limited (**Original Lender/Altico Capital**) on one part and Marvel Realtors and Developers Limited (**MRDL/Borrower**), Marvel Omega Builders Private Limited (**Corporate Debtor**), Marvel Zeta Developers Private Limited (**MZDPL**), Marvel Sigma Homes Private Limited (**MSHPL**), Marvel Luxury Realtors Private Limited (**MLRPL**), Marvel Landmarks Private Limited (**MLPL**), Mr. Vishwajeet Jhavar (**Promoter**) and M/s Marvel Realtors on other part.



Under the said Facility Agreement 2, Altico Capital agreed to grant a facility of up to Rs. 150,00,00,000 to MRDL/Borrower. The Corporate Debtor, MZDPL, MSHPL, MLRPL, MLPL collectively had given guarantee in favour of Altico Capital.

4. Accordingly, under the Facility Agreement 1, Altico Capital disbursed Rs. 200,50,00,000 to MLPL and under Facility Agreement 2, Altico Capital disbursed Rs. 144,00,00,000 to MRDL. As already stated above, the Corporate Debtor had executed guarantee as security towards the amount disbursed under the Facility Agreements.
5. As security towards the said financial assistance, the following documents were executed:
  - i) Corporate Debtor dated 01.12.2017 with respect to the two Facility Agreements in favour of Vistra.
  - ii) Common Personal Guarantee dated 01.12.2017 issued by the Promoter.
  - iii) Common Share Pledge Agreement dated 01.12.2017.
  - iv) Deed of Hypothecation dated 01.12.2017 issued by the Corporate Debtor in favour of Financial Creditor.
  - v) Indenture of Mortgage dated 01.12.2017 executed by MZDPL under which various projects, properties and/or development rights owned/developed by MZDPL, MSHPL, MLRPL, and M/s Marvel Realtors are mortgaged in favour of the Financial Creditor.
  - vi) Demand Promissory Notes dated 01.12.2017 issued by MLPL and MRDL with respect to Facility Agreement 1 and Facility Agreement 2 respectively.
6. Along with the Facility Agreements, MLPL and MRDL also entered into Security Trustee Agreements dated 12.01.2017 with Altico Capital and Vistra ITCL (India) Limited (**Vistra**), appointing Vistra as the Security Trustee in respect of Facility Agreements.



7. As per clause 7.1 of the Facility Agreements, the Borrowers were required to repay the respective facilities availed by them under the facility agreements in 12 equal successive quarterly instalments. The first repayment date under both facility agreements was 31.12.2019. However, the Borrowers started defaulting in making payment from 31.12.2020 onwards. As per clause 18.1 of the Facility Agreements, non-payment of the Principal or Interest as contemplated under the Facility Agreements constituted an “event of default”.
8. Thereafter, on 04.03.2021, Altico Limited’s participation in the Facilities along with all underlying security interest and rights created by other obligors (including the Corporate Debtor) in connection with the facility agreements, together with all of Altico Limited’s rights and benefits were assigned in favour of Catalyst Trusteeship Limited (Financial Creditor/Petitioner herein) on an “*as is where is, as is what is and without recourse basis*”.
9. Pursuant to the assignment, the Financial Creditor issued a notice of payment default on 23.07.2021 to MLPL and Corporate Debtor for default committed under facility agreement 1 and called upon MLPL and Corporate Debtor to make payment of Rs. 60,58,07,013 being the amount outstanding under the Facility Agreement 1 along with interest at 4% per annum over and above the interest rate provided under the Facility Agreement 1.
10. Another notice of payment default was also issued on 23.07.2021 by the Financial Creditor to MRDL and Corporate Debtor for default committed under facility agreement 2 and called upon MRDL and Corporate Debtor to make payment of Rs. 35,58,56,658 being the amount outstanding under the Facility Agreement 2 along with interest at 4% per annum over and above the interest rate provided under the Facility Agreement 1.



11. Pursuant to the notices, MLPL made payment of Rs. 9,43,84,573 under facility agreement 1 between December 2021 and January 2022 whereas MRDL made no payments in discharge of amounts outstanding under facility agreement 2.
12. Thereafter, the Financial Creditor issued another notice of payment default on 16.02.2022 to both the borrowers as well as the Corporate Debtor calling upon them to make payment of their respective outstanding amounts of Rs. 136,36,37,585 and Rs. 95,99,13,001 under financial agreements 1 and 2 respectively. In pursuit of the same, MLPL paid Rs. 8,88,98,621 in discharge of outstanding dues under facility agreement 1, however, MRDL once again made no payment under facility agreement 2.
13. Later, Vistra ITCL (India) Limited (**Vistra**), in its capacity as Security Trustee, issued two notices dated 03.06.2022 for event of default under clause 18 of the Facility Agreements and thereby called upon the Corporate Debtor to make payment of Rs. 201,04,60,419 being amount outstanding in respect of facility agreement 1 as on 02.06.2022 and Rs. 148,96,63,318 being the amount outstanding in respect of facility agreement 2 as on 02.06.2022, within 1 (one) business day from the receipt of the said notices.
14. Subsequently, Vistra had also issued an intimation of default and demand certificates dated 13.09.2022 as prescribed under the Corporate Guarantees whereby the Corporate Debtor was called upon to make payment of Rs. 185,80,46,106 being amount outstanding in respect of facility agreement 1 as on 31.08.2022 and Rs. 156,25,74,658 being the amount outstanding in respect of facility agreement 2 as on 31.08.2022.
15. However, the Corporate Debtor has failed to make the payments under the facility agreements. Hence, the present petition is filed by the Financial Creditor.



**Submissions of the Corporate Debtor**

16. The Corporate Debtor had filed its Reply dated 25.08.2023 challenging the maintainability of the present petition on following grounds:

Petition is barred under section 10A of I&B Code:

- i) The Corporate Debtor submits the first default in repayment had occurred on 31.12.2020 which fact has been mentioned in the Petition itself. Thus, the date of default would be 31.12.2020. The record of default from the Information Utility annexed to this Petition also states date of default to be 31.12.2020. As per section 10A of the I&B Code, a petition under I&B Code cannot be filed for any default that had occurred in the period between 25.03.2020 till 24.03.2021.

Release of security created under Indenture of Mortgage:

- ii) It is submitted that a Release Deed was executed on 21.07.2022 by the Security Trustee where under it was agreed that all the rights, title and interest on the assets specified in Schedule I therein which were mortgaged under the Indenture of Mortgage would be released by the Security Trustee against the payment of Rs. 35 crores. The Release Deed record the receipt of the said settlement amount and the subsequent issuance of the No Objection Certificate (“NOC”) by the Security Trustee.

Settlement with the Principal Lender/Altico Capital:

- iii) During the years 2019-2021 when Altico Capital was facing bankruptcy issues, M/s Ares SSG Capital, a Hong-Kong based Stressed Asset Specialist, had come to its rescue by deciding to take over Altico. During the process, the Corporate Debtor was approached by Ares SSG Capital to settle the entire loan of Rs. 375 crores sanctioned under the two Facilities Agreements against the settlement amount of Rs. 152 crores. The payment of the

Settlement Amount of Rs. 152 crores was divided amongst the 5(five) Projects which were mortgaged against the said sanctioned amount. Thus, the corresponding amounts were to be raised and payable from these 5 projects, the details of which are mentioned hereinunder:

Sr. No.	Projects	Amount Payable towards the total settlement of Rs. 152 crores	Remark on payment
1	Piazza	Rs. 71 crores	Paid- Rs. 44 crores; Pending- Rs. 27 crores
2	Diva III	Rs. 35 crores	Paid in full
3	Basilo	Rs. 25 crores	Pending
4	Orial	Rs. 12 crores	Pending
5	Escaso	Rs. 9 crores	Paid in full
Total Amount Paid			Rs. 88,10,00,001/-


iv) Thus, out of the said oral settlement of Rs. 152 crores agreed upon between the Corporate Debtor and Ares SSG Capital, an amount of Rs. 88,10,00,001/- has been paid in parts between 13.12.2021 till 19.06.2023.

### **Rejoinder by the Financial Creditor**

17. In response to the reply of the Corporate Debtor, the Financial Creditor filed Rejoinder dated 05.10.2023 and submitted the following:

Petition is not barred under section 10A of I&B Code:

- i) It is settled law that section 10A of I&B Code will not bar the filing of a Petition when the said defaults committed by the Corporate Debtor take place outside the 10A period. In the present case, several defaults have been committed by the Corporate Debtor outside the 10A period. The Corporate Debtor cannot be absolved of its liability by simply stating that the first date of default occurred during the 10A period and therefore, the Petition is barred under section 10A of I&B Code.
- ii) Moreover, several notices were issued time and again at various dates calling upon the Corporate Debtor to make the payment.




However, the Corporate Debtor failed to pay the outstanding dues under the Facility Agreements.

No Settlement entered into between the Parties:

- iii) There is no settlement executed between the Corporate Debtor and the Financial Creditors/Lenders. In October 2021, the Corporate Debtor had provided the Financial Creditors/Lenders with a term sheet from an investor Abhiyan Merchants Pvt. Ltd. which was non-binding and not signed by the Lender. Also, the said term sheet contemplated the compliance of certain conditions and diligences to be complied with by Abhiyan Merchants within 120 days which was never done. Hence, the Corporate Debtor cannot rely upon such documents which has no binding effect. It is further submitted that the payments made by the Corporate Debtor if any, were made from the project collections for which specific NOCs were issued by the Lenders. These amounts were never utilized for any settlement purpose.

**FINDINGS**

18. Heard Ld. Counsel for the parties and perused the record.
19. From the record, it is ascertained that M/s Altico Capital India Private Limited (**Altico Capital/Original Lender**) had entered into two facility agreements, both dated 01.12.2017, with Marvel Landmarks Private Limited (**MLPL/Borrower 1**) and Marvel Realtors and Developers Limited (**MRDL/Borrower 2**) respectively and an amount of Rs. 375 crores was disbursed to the borrowers pursuant to the aforementioned facility agreements. Admittedly, the Corporate Debtor had executed a corporate guarantee deed dated 01.12.2017 in favour of Altico Capital.
20. Admittedly, an Assignment Deed dated 04.03.2021 was executed between Altico Capital/Original Lender and the Petitioner whereby all the rights of Altico Capital under the two facility agreements stood



transferred and assigned to the Petitioner. There is no denial and objection on part of the Corporate Debtor in respect of the assignment of loan amount to the Petitioner.

21. It is also admitted by the Corporate Debtor that the first default occurred on 31.12.2020 and thereafter, the default continued. Consequently, the Petitioner had sent various Notices of Payment Default to the Borrowers and the Corporate Debtor on 23.07.2021, 16.02.2022 and 13.04.2022, demanding the payment of the outstanding due. Additionally, Vistra, the Security Trustee also sent a notice dated 03.06.2022 calling upon the Corporate Debtor to make payment.
22. Finally, the Petitioner, through its security trustee, issued notice on 13.09.2022 thereby invoking the corporate guarantee provided by the Corporate Debtor under clause 18.23 (vii) of the Facility Agreements, and demanded for payment of outstanding dues under both the facility agreements within 1(one) business day. However, the Corporate Debtor failed to make the payment.
23. Consequently, the Petitioner filed the present petition under section 7 of the I&B Code, 2016. The Corporate Debtor has raised few contentions against the merits of the present Petition:
  - i) The Petition is barred under section 10A of I&B Code since the first default had occurred on 31.12.2020.
  - ii) There was an oral settlement agreement entered into between the Corporate Debtor and Original Lenders under which a settlement of Rs. 152 crores against the total debt was agreed upon and out of Rs. 152 crores, the Corporate Debtor has made part payment of approximately Rs. 88 crores.
24. We are mindful that the first default had occurred on 31.12.2020 which lies in the period covered under section 10A of I&B Code. However, the said default is in respect of the borrowers i.e. MLPL under facility



agreement 1 and MRDL under facility agreement 2, whereas the present Petition is filed against the Corporate Debtor who had executed corporate guarantee securing payment of the amount borrowed under the two facility agreements. Thus, the liability of the Corporate Debtor who is a Corporate Guarantor and not Borrower in this case, shall occur only when the guarantee is invoked by an invocation notice. We refer to the judgment of Hon'ble NCLAT in **IDBI Trusteeship Services Limited vs. Direct Media Distribution Ventures Private Limited [2023 SCC OnLine NCLAT 619]** wherein it is held as follows:

*“18. After having heard and perusing the record, **we are satisfied that liability of corporate guarantor to make the outstanding payment arose only when Corporate Guarantee was invoked vide Notice dated 12<sup>th</sup> June, 2020 as per the notice invoking the corporate guarantee.** 16<sup>th</sup> June, 2020 was date on which default was committed which is a date admittedly covered by Section 10A prohibition. The Adjudicating Authority did not commit any error in rejecting section 7 application as barred by section 10A.”*

**(Emphasis Provided)**

25. It is settled law that liability of a corporate guarantor arises only when the corporate guarantee is invoked. In the present case, the guarantee executed by the Corporate Debtor was invoked by the Petitioner through its Security Trust, on 13.09.2022, calling upon the Corporate Debtor to pay Rs. 185,80,46,106/- under the Guarantees within 1(one) Business Day from the date of the notice. Thus, default on the part of the Corporate Debtor had occurred on 14.09.2022, and therefore, the default date is 14.09.2022. In view of the same, the argument of the Corporate Debtor concerning the bar under 10A period is rejected.
26. The second contention of the Corporate Debtor is that some oral settlement was entered into between the Corporate Debtor and the Original Lenders. We note that there has been no substantial proof



placed before to corroborate this averment of the Corporate Debtor. In absence of any evidence placed on record, we see no merit in such submissions. Nonetheless, even if we consider the same, it is seen that the Corporate Debtor has itself stated in its reply that an amount of Rs. 88 crores has been paid to the Lenders whereas the debt due and payable by the Corporate Debtor is a whopping Rs. 347 crores as per the Petition. Moreover, even if we go by the purported settlement between the Corporate Debtor and Original Lenders, the total settlement amount is alleged to be Rs. 152 crores whereas only Rs. 88 crores have been admittedly paid by the Corporate Debtor which indicates that the Corporate Debtor is still in default under all circumstances.

27. The Corporate Debtor has not disputed the guarantee given as security to payment of the debt owed by borrowers under the Facility Agreements. The main objection of the Corporate Debtor was that default had occurred on 31.12.2020 and therefore the Petition is barred under section 10A of I&B Code. This issue has been decided in Paras 24 and 25 above. Evidently, the Corporate Debtor has neither replied to the invocation notice nor have paid any amount towards discharge of the outstanding liability as per the invocation notice and thus, debt and default has been established.
28. It is a well-settled position that the Adjudicating Authority has to determine whether there is debt and default and if it is satisfied that a default has occurred, then the application under section 7 of the Code must be admitted unless it lacks other necessities as mandated thereunder. We are supported by the decision of Hon'ble Supreme Court in **Innoventive Industries Limited vs. ICICI Bank and Anr [(2018) 1 SCC 407]** wherein it was held as follows:

***“28. ... The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days receipt of a notice from the adjudicating authority.***



*30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”*

*(Emphasis Provided)*

29. Upon perusal, this Tribunal is of considered opinion that the application made by the Financial Creditor is complete in all respects as mandated under the Code and the default amount is also in excess of the minimum amount stipulated in section 4(1) of the Code. The Petition is filed within the limitation period, and therefore we are satisfied that the present petition is maintainable.
30. In view of the facts and circumstances of the case and discussions hereinabove, the Company Petition bearing no. 254 of 2023 is **admitted** and ordered as follows:

#### **ORDER**

- i) The above Company Petition No. (IB) 254 (MB)/2023 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Marvel Omega Builders Private Limited**.
- ii) The Petitioner has proposed the name of **Mr. Birendra Kumar Agrawal**, Registration No. **IBBI/IPA-001/IP-P00564/2017-18/11040**, to be appointed as an Interim Resolution Professional (IRP) of the Corporate Debtor. The proposed IRP has filed his Written Communication dated 27.12.2022 in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Written Communication is accompanied by AFA dated 18.11.2022. We have verified the validity



of the AFA of the proposed IRP and note that the validity extends upto 20.10.2024. Accordingly, **we appoint Mr. Birendra Kumar Agrawal (bk@bhamaconsulting.com)** as the **Interim Resolution Professional (IRP)** to carry out the functions as per the Insolvency & Bankruptcy Code, 2016.

- iii) The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional (IRP) appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by the Committee of Creditors.
- iv) There shall be a moratorium under section 14 of the Code prohibiting the following:
  - a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
  - b) transferring, encumbering, alienating or disposing of by the corporate debtor 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 corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
  - d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.



- v) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of pronouncement of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of section 31 or passes an order for Liquidation of Corporate Debtor under section 33, as the case may be.
- viii) The public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- ix) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of section 17 of the Code. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- x) The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- xi) The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.



xii) The Registry is also directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for their record.

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

31. The Company Petition No. 254 of 2023 is accordingly **allowed**.

Sd/-

**Charanjeet Singh Gulati**  
**Member (Technical)**

Uma, LRA

Sd/-

**Lakshmi Gurung**  
**Member (Judicial)**