

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

COMPANY PETITION IB (IBC) NO. 438/PB/2022

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

IN THE MATTER OF:

**M/S PAISALO DIGITAL LIMITED
(FORMERLY KNOWN AS S. E. INVESTMENTS LTD.)**

Registered Office at: CSC, Pocket 52,
CR Park, Near Police Station
New Delhi- 110019

...Applicant/Financial Creditor

Versus

M/S AMIPRABHU DEVELOPERS PVT. LTD.

Registered Office at: Flat No. 2, Ground Floor,
Blk- D, Pkt 5, Sector 15,
Rohini, Delhi North,
Delhi DL- 110089 IN

...Respondent/Corporate Debtor

Order Delivered on: 21.01.2025

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant: Mr. Harshal Kumar, Adv.

For the Respondent: Mr. Abhisehk Anand, Mr. Karan Kohli, Ms. Ridhima Mehrotra, Advs..

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This is a Company Application filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity “the Code”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by M/s Paisalo Digital Limited (Formerly known as S. E. Investments Ltd.) (hereinafter referred to as ‘Financial Creditor’), through its Authorized Representative Mr. Amit Kumar vide Board Resolution dated 31.01.2022, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s Amiprabhu Developers Private Limited (“Corporate Debtor”). The Financial Creditor was incorporated on 05.03.1992, having CIN: U65921DL1992PLC120483.
2. The Corporate Debtor was incorporated on 22.03.2005, having CIN: U45201DL2005PTC134318 under the Companies Act, 1956. Its registered office is at Flat No. 2, Ground Floor, Blk- D, Pkt 5, Sector 15, Rohini, Delhi, North Delhi DL 110089 IN. Therefore, this Bench has jurisdiction to deal with this petition. The Authorized Share Capital of the Corporate Debtor is Rs. 1,25,00,000/- (Rupees One Crore Twenty Lakh Only). The Paid-Up Capital of the Corporate Debtor is Rs. 81,00,000/- (Rupees Eighty-One Lacs Only)
3. The present application was filed on 18.02.2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 38,40,30,454/- (Rupees Thirty-Eight Crore Forty Lakh Thirty Thousand Four Hundred and Fifty-Four) as on alleged date of default i.e. 24.01.2022.
4. In the present case, the Respondent is a Corporate Guarantor to the Principal Borrower i.e. M/s Prabhu Shanti Real Estate Private Limited, and the instant case has been filed against the Corporate Guarantor for giving guarantee in respect of the Principal Borrower. A petition bearing C.P. (IB) 477(PB)/2017 was filed by AU Small Finance Bank Limited against M/s Prabhu Shanti Real Estate Private Limited (the Principal Borrower) for initiation of CIRP and vide order dated 13.06.2018 the Hon’ble Principal Bench, NCLT had initiated CIRP against the Principal Borrower i.e. M/s Prabhu Shanti Real Estate Private Limited. Further, the Resolution Plan of the

Principal Borrower was approved by the Hon'ble Principal Bench, NCLT vide order dated 24.10.2024.

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

5. The details of transactions leading to the filing of this petition as averred by the Financial Creditor is as follows:
 - a) In the present application, the Applicant is a Non-Banking Financial Company incorporated under the Companies Act, 1956, and has been advancing loan(s) to the Borrower(s) at their request. The Corporate Debtor has been into real estate business in New Delhi. In February, 2015, M/s Prabhu Shanti Real Estate Pvt. Ltd. (Borrower Company) through its Directors approached the Financial Creditor for obtaining three Loans totalling to Rs. 12,00,00,000/- (Rupees Twelve Crores Only).
 - b) After negotiation and having understood the implications of terms and conditions of the loans, had availed three Loans totalling to Rs. 12,00,00,000/- (Rupees Twelve Crores Only) in April, 2015. In consideration of the sanction of the said loan, the Borrower Company along-with the Corporate Debtor (Guarantor) executed Hypothecation / Loan Agreements dated 24.04.2015, signed Guarantee Agreements and other loan documents in favor of the Financial Creditor. The loans were/are to be repaid along-with interest at the flat rate of 9.50% per annum and the same were to be repaid in 36 monthly installments in each loan, more particularly described in "Schedule B" of the said Loan Agreements and Sanction Letters. As per Para No. 7 of the said Agreements, "Without prejudice to the other rights of the Company, if the Borrower defaults in making payments to the Company on due dates, the late fee at the rate of 3% per month compounded monthly shall be charged or at such higher rate as the Company may specify from time to time, on the defaulted amount from the dates of default till the date of payment of the defaulted amount."
 - c) The Loans were secured by way of mortgage of immovable properties Land measuring "07 Kanal 10 Marla comprised in Khewat No. 2/2, Khata No. 3 in Killa No. 6 & 7 (27 Mustatil), situated at Mauza Sarai Aurangabad, Tahsil

Bahadurgarh, Dist. Jhajjar, Haryana" mortgaged by Corporate Debtor through Letter Evidencing deposit of Title Deeds dated 24.04.2015 and "7/32 share in land comprised in Khevat No. 146 Khata No. 185, Killa No. 24 & 27 Mustatil Mauja Sarai Aurangabad Tahsil Bahadurgarh Dist. Jhajjar total measuring 05 Kanal mortgaged by Corporate Debtor through Letter Evidencing deposit of Title Deeds dated 24.04.2015.

- d) The Corporate Debtor along-with Shri Bijender Singh Lather and Shri Joginder Singh Lather stood as Guarantors for the Loans availed by the Borrower Company. After paying few instalments, the Borrower Company has continuously failed to make the payment of instalments on due dates. Even the PDCs handed over by the Borrower Company to the Financial Creditor, when presented to Bank, stood dishonoured. The Financial Creditor vide its Demand Notice dated 03.08.2018 and Notice Invoking Guarantee dated 10.08.2018 raised demand of its outstanding dues against the Corporate Debtor. That on the assurances given by the Borrower Company and the Corporate Debtor Company, Financial Creditor sent various reminders to Borrower Company for the payment of the due amount and patiently waited for the said payments but the Borrower Company and Corporate Debtor cheated the Financial Creditor as the Cheques were also getting dishonoured due to reasons 'Payment Stopped by Drawer'.
- e) In view of the aforementioned facts, Financial Creditor has sufficient reasons to believe that Corporate Debtor Company is not willing to pay the balance amount of Rs. 38,40,30,454/- which comprises of Rs. 4,55,81,267/- towards overdue installments, Rs. 33,80,04,187/- towards late fee and Rs. 4,45,000/- towards cheque bouncing charges as on 24.01.2022.
- f) It is contended that the Corporate Debtor is unable to pay its creditors, its liability far exceeds its present and probable assets. It is commercially insolvent. In this premises it is just, fit and equitable that the Petition be admitted initiating the Corporate Insolvency Resolution Process against the Corporate Debtor under the provisions of Section 7 of The Insolvency and Bankruptcy Code, 2016.

Submissions of Learned Counsel appearing for the Corporate Debtor are as under:

6. The details of the submissions made by the Corporate Debtor are as follows:
 - a) In the present case the Principal Borrower failed to pay the debt of several Financial Creditors, one creditor being AU Small Finance Bank Limited filed a petition under Section 7 of the Code against M/s Prabhu Shanti Real Estate Private Limited /Principal Borrower seeking initiation of CIRP. The Adjudicating Authority vide its order dated 13.06.2018 has admitted the said Company Petition being C.P. (IB) 477 (PB) / 2017 and initiated the CIRP against the Principal Borrower. After initiation of Section 7 Petition against the Principal Borrower, the Financial Creditor filed a Section 7 Petition being C.P. (IB) No. 106 (PB)/2019 against the Corporate Debtor seeking initiation of CIRP against the Corporate Debtor/Guarantor. This Adjudicating Authority had dismissed the said Company Petition being C.P. (IB) No. 106 (PB) /2019 as filed under Section 7 of the Code by the Financial Creditor. This vital fact has been concealed by the instant Applicant.
 - b) After passing of three years from 28.03.2019, the Applicant / Financial Creditor has filed the present Company Petition being (IB) No. 438 of 2022 seeking initiation of CIRP against the Corporate Debtor / Guarantor for same cause of action. The present Company Petition is filed under Section 7 of the Code is barred by the doctrine of Res Judicata. The earlier Section 7 Petition was filed for the cause of action, i.e., debt and default pursuant to loan agreements dated 24.04.2015, guarantee agreement dated 24.04.2015, and sanction letter dated 22.04.2015. Further, the present Section 7 Petition has also been filed for the same cause of action, as shown in earlier Company Petition (IB) No. 106 (PB) / 2019. Further, no appeal against the order dated 28.03.2019, was preferred by the Financial Creditor.
 - c) The Principal Borrower to the Corporate Debtor was undergoing CIRP before the Hon'ble NCLT, New Delhi (Principal Bench) in C.P. (IB) No. 477 of 2017 titled as "AU Small Finance Bank Limited versus Prabhu Shanti Real Estate Private Limited. The present application has been filed for seeking initiation of CIRP, despite the fact that the Financial Creditor has already filed its claim in the CIRP

of Principal Borrower and same has been admitted in full to the tune of Rs. 10,77,68,575/-. The Applicant was also a member of Committee of Creditors of the Principal Borrower and had 5.29% voting share. The Resolution Professional in C.P. (IB) No. 477 of 2017 has fully admitted the claim of the Financial Creditor and the Resolution Plan submitted by Successful Resolution Applicant which was approved by CoC with 99.59%, to which the Financial Creditor was also a member and has voted in favour and has been subsequently approved by the Adjudicating Authority, New Delhi (Principal Bench) vide order dated 24.10.2024.

- d) The present Section 7 Petition is defective as the Financial Creditor has failed to mention about the date of default. Form I of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 provides Form - I for filing a Section 7 Petition. Part - IV of Form - I deal with the particulars of Financial Debt, wherein column no. 2 mandates a Financial Creditor to provide for the amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and days of default in tabular form). It is evident from the present Company Petition that the Petitioner has failed to provide any date of default. Therefore, concealing the material fact for the purpose of computing the limitation period.
- e) In terms of Schedule B of the loan agreements dated 24.04.2015, Principal Borrower agreed to pay the loan amount in 36 monthly instalments, starting from 27.04.2015 till 26.03.2018, 25.04.2015 till 24.03.2018, and 27.04.2015 - 26.03.2018, respectively. Further, in lieu of afore-stated loan and guarantee agreement, the Financial Creditor sanctioned the loan amount of Rs. 4.25 Crores, Rs. 3.00 Crores, and Rs. 4.75 Crores, respectively through letter dated 22.04.2015. Principal Borrower paid monthly instalments for two loans of Rs. 4,75,00,000/-, and Rs. 4,25,00,000 till 12th instalment as prescribed in Schedule B; however, failed to pay any other amount after this particular date. Further, the Principal Borrower paid monthly instalments for loan of Rs. 3,00,00,000/- till 14th instalment; however, failed to pay any other amount after this particular date. It is stated that 13th, 14th, and 15th instalment became due on 26.04.2016, 26.05.2016, and 26.06.2016, respectively.

f) In the present case, default by the Principal Borrower occurred around April - May 2016 due to non-payment of monthly instalments. The definition of expression "default" has been defined as non-payment of either whole debt or any part or instalment of the amount debt when the same has becomes due and payable and is not paid by the Corporate Debtor. In the present case, 13th instalment became due and payable on 25.04.2016; however, the same was not paid by the Corporate Debtor. Accordingly, in terms of Section 3(11) default occurred during April and May 2016. Further, in terms of Paragraph No. 7 of loan agreements dated 24.05.2015, a late fee at rate of 3% per month was to be charged from the date of default. That admittedly in the present case the Applicant started charging late fee at rate of 3% per month from the date of default being April - May 2016. Therefore, if the default has occurred over three years prior to the date of filing of application, the application would be barred under Article 137 of the Limitation Act, 1963.

Analysis and Findings

7. We have heard the Learned Counsels for the Financial Creditor and the Corporate Debtor and perused the averments made in the petition, reply, rejoinder and written submissions of both the parties. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.
8. It is noteworthy that the Corporate Debtor/Corporate Guarantor has not disputed the facts relating to guarantee deed, but has mainly taken a defense under the Principle of res judicata. Therefore, we need to examine whether the order dated 28.03.2019 passed in C.P. (IB) No. 106 (PB)/2019 by the Hon'ble Principal Bench, NCLT, the principle of Res Judicata will apply in the present petition or not.
9. In the present case, the Respondent is a Corporate Guarantor to the Principal Borrower i.e. M/s Prabhu Shanti Real Estate Private Limited. A petition bearing C.P. (IB) 477(PB)/2017 was filed by AU Small Finance Bank Limited against M/s Prabhu Shanti Real Estate Private Limited for initiation of CIRP and vide order dated

13.06.2018 the Hon'ble Principal Bench, NCLT had initiated CIRP against the Principal Borrower i.e. M/s Prabhu Shanti Real Estate Private Limited. Thereafter, after initiation of Section 7 Petition against the Principal Borrower, the Financial Creditor i.e. Paisalo Digital Limited filed a Section 7 Petition being C.P. (IB) No. 106 (PB)/2019 against the Corporate Debtor seeking initiation of CIRP against the Corporate Guarantor. This Hon'ble Principal Bench, NCLT vide order dated 28.03.2019 had dismissed the said Company Petition being C.P. (IB) No. 106 (PB) /2019 as filed under Section 7 of the Code by the Financial Creditor on the ground that since the petition against the Principal Borrower had already been admitted, no second petition would be maintainable for the same set of claim and default.

10. As per the Order dated 28.03.2019 passed by the Hon'ble Principal Bench, NCLT in the earlier Section 7 Application, the said Section 7 Application was dismissed solely on the ground that a petition against the Principal Borrower was already admitted and CIRP proceedings were initiated and no second petition would be maintainable for the same set of claim. Further, in this regard the Applicant states that after the dismissal of the previous petition, the Hon'ble NCLAT, New Delhi vide its judgment dated 24.11.2020 in the case of State Bank of India Vs Athena Energy Ventured Pvt Ltd (Company Appeal (AT) Insolvency No. 633 of 2020) has held that it is clear that in the matter of guarantee, CIRP can proceed against the Principal Borrower as well as Guarantor. In light of the said NCLAT's order, the Applicant has filed the present petition and contends that the present petition filed by the Applicant is not barred by the doctrine of Res Judicata.

11. We observe that, one of the major ingredient of res judicata is that the issue must be decided on merits, therefore the dismissal of Section 7 application solely on the preliminary ground that CIRP proceedings were initiated against the Principal Borrower, cannot be said to be the conclusive determination of the petition and hence it would be safe to conclude that the matter was not "heard and finally decided". Since, a major ingredient of res judicata is that the issue must be decided on merits, therefore the dismissal of Section 7 application on preliminary, does not make the said Order dated 28.03.2019 binding as res judicata, for subsequent fresh filing of the present Application against the Corporate Debtor. Further, the Hon'ble Supreme Court in **Prem Kishore & Ors. versus Brahm Prakash & Ors.** decided on

29.03.2023 has observed that for res judicata to apply, the previous should have been decided on merits. The relevant extract of the said judgment is reproduced hereunder for ready reference:

*“34. The general principle of res judicata under Section 11 of the CPC contain rules of conclusiveness of judgment, but for res judicata to apply, the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. **Further, the suit should have been decided on merits and the decision should have attained finality.** Where the former suit is dismissed by the trial court for want of jurisdiction, or for default of the plaintiff’s appearance, or on the ground of non-joinder or mis-joinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letter of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation, or for failure to pay additional court fee on a plaint which was undervalued, or for want of cause of action, **or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision, not being on the merits, would not be res judicata in a subsequent suit.**”*

12. On perusal of the records and arguments of both the Parties, on the issue of res-judicata, this Adjudicating Authority has come to a conclusion that res-judicata will not apply to the present Section 7 application. Therefore, the Contention of the Corporate Debtor with this regard does not hold ground.
13. Further, in the present matter the Corporate Debtor/Corporate Guarantor raises contentions in light of Hon’ble NCLAT’s judgment dated 08.01.2019 *in Dr. Vishnu Kumar Agarwal v. Ms. Piramal Enterprises Ltd., Company Appeal (AT) (INS) No. 346 of 2018* in which the NCLAT has observed that once for same set of claim, an application under Section 7 is admitted against one of the Corporate Debtor (Principal Borrower' or Corporate Guarantor(s)) second set of application against

same claim cannot be admitted. However, it is pertinent to mention that Hon'ble NCLAT vide its judgment dated 24.11.2020 in the matter of **State Bank of India vs Athena Energy Ventures Pvt Ltd, Company Appeal (AT) Insolvency No. 633 of 2020** has observed that simultaneous proceedings can be initiated against the principal borrower and corporate guarantor. The relevant extract of the said judgment is reproduced hereunder for ready reference:

“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 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.”

14. Therefore, the contention of the Corporate Debtor/Corporate Guarantor in this regard does not hold ground.
15. Further, the Corporate Debtor/Corporate Guarantor contends that the Financial Creditor has already filed its claim in the CIRP of Principal Borrower and same has been admitted in full to the tune of Rs. 10,77,68,575/-. The Applicant was also a member of Committee of Creditors of the Principal Borrower. The Resolution Professional in C.P. (IB) No. 477 of 2017 has fully admitted the claim of the Financial Creditor and the Resolution Plan was approved by the Hon'ble Principal Bench, NCLT vide order dated 24.10.2024. In this regard we observe the findings given by the Hon'ble Supreme Court of India in **BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd.** decided on 23.07.2024. The relevant extract of the said judgment is reproduced hereunder:

“28. Hence, we summarize some of our conclusions as under:

a. Payment of the sum of Rs.38.87 crores to the 1st respondent-financial creditor under the resolution plan of the corporate guarantor-ACIL will not extinguish the liability of the 2nd respondent principal borrower/corporate debtor to pay the entire amount payable under the loan transaction after deducting the amount paid on behalf of the corporate guarantor in terms of its resolution plan;

b. A holding company is not the owner of the assets of its subsidiary. Therefore, the assets of the subsidiaries cannot be included in the resolution plan of the holding company, and

c. The financial creditor can always file separate applications under Section 7 of the IBC against the corporate debtor and the corporate guarantor. The applications can be filed simultaneously as well;”

16. Further, the Hon’ble Supreme Court in **Lalit Kumar Jain v. Union of India (2021) 9 SCC 321 decided on 21.05.2021** has held that approval of a resolution plan relating to a corporate debtor does not operate so as to discharge the liabilities of personal guarantors. The relevant extract of the said judgment is reproduced hereunder for ready reference:

“108. It is therefore, clear that the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor’s liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself. However, this court has indicated, time and again, that an involuntary act of the principal debtor leading to loss of security, would not absolve a guarantor of its liability.”

17. Therefore, in light of the above judgments, it would be safe to conclude that approval of a resolution plan under section 31(1) of the Code does not automatically result in the discharge of the guarantor. It is also pertinent to mention that the Guarantee given by the Corporate Guarantor with respect to the Principal Borrower is not extinguished.

18. Further, in order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a “financial debt” owed to the Financial Creditor and, if so whether there is a “default” with respect to such debt.
19. In the present case, M/s Prabhu Shanti Real Estate Pvt. Ltd. (Borrower Company) through its directors approached the Financial Creditor for obtaining loans of Rs. 12,00,00,000/- (Rupees Twelve Crores Only). Thereafter, on 24.04.2015 Hypothecation/Loan Agreements, Guarantee Agreements and other loan documents in favour of the Financial Creditor were executed by the instant Corporate Debtor as Guarantor. After paying few instalments till February, 2016, the Borrower Company has continuously failed to make payment of instalment on due dates. Ledger containing the details of amount outstanding is placed on record at Page 241-252 of the petition. Therefore, one essential ingredient with respect to Section 7, that there has been a “debt”, stands substantiated.
20. Further, a demand notice dated 03.08.2018 was sent by the Financial Creditor to the Borrower Company and its guarantors for an outstanding amount of Rs.11,23,43,306/- and on 10.08.2018 the Financial Creditor had sent a notice invoking the guarantee against the Corporate Debtor for default of payment by the Borrower Company. The same is placed on record before us as Annexure-5. The Borrower Company had issued PDC cheques to the Financial Creditor, however when the same was presented to the bank, it stood dishonoured. Further, several emails were sent by the Financial Creditor to the Corporate Debtor and the Borrower for the payment of outstanding dues and the said emails are placed on record as Annexure 6. Therefore, another major essential ingredient of Section 7 i.e., “default” with respect to the debt stand substantiated.
21. From the perusal of aforesaid facts, it is clear that the applicants are Financial Creditors and the debt owed to them by the Corporate Debtor is a Financial Debt, and there has been a default, as stipulated in Sections 3(12), 5(7) and Section 5(8) of the IBC which are as follows:

Section 3(12) of IBC defines Default. *“Default means non-payment of debt when whole or any part or installment of the amount of debt has become due*

and payable and is not repaid by the debtor or the corporate debtor, as the case may be.”

Section 5(7) of IBC defines Financial Creditor: *“Financial Creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.”*

Section 5(8) of IBC defines Financial Debt. *“Financial Debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-*

- (a) Money borrowed against the payment of interest;*
- (b) Any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as maybe prescribed;*
- (e) Receivables sold or discounted other than any receivables sold on non-recourse basis;*
- (f) Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
- (g) Any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
- (h) Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
- (i) The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause.”*

22. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petitioner established that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under Section 4(1) of the Code, stipulated at the relevant point of time.

We are of the view that since this Petition was filed on 18.02.2022, and even admittedly the debt owed to the Financial Creditor is an amount of Rs. 38,40,30,454/- (Rupees Thirty-Eight Crore Forty Lakh Thirty Thousand Four Hundred and Fifty-Four) which meets the threshold of Rs. One Crore.

23. In the light of the above facts and circumstances, and in terms of Section 7(5) (a) of the Code, the instant petition **COMPANY PETITION IB (IBC)/438(PB) 2022** filed by M/s Paisalo Digital Limited, the Financial Creditor, under Section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s Amiprabhu Developers Private Limited, the Corporate Debtor, stands **admitted** and CIRP of M/s Amiprabhu Developers Private Limited is initiated.
24. That the petitioner in part-III of the petition has proposed the name of Mr. Mukesh Gupta, as Interim Resolution Professional, having Registration Number IBBI/IPA-001/IP-P01494/2018-2019/12254 and E-mail ID camukeship@rediffmail.com, is hereby appointed as an Interim Resolution Professional (IRP) for Corporate Debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. The proposed Interim Resolution Professional is directed to give his written consent in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration certificate as well as a valid AFA within 5 days of receipt of this order.
25. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
- (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.*
- (e) *The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*
26. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
27. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
28. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Mr. Mukesh Gupta to meet out the expenses to perform the initial functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
29. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings

with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.

30. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex- management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing appropriate orders.
31. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
32. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
33. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./438 (PB)/2022 stands admitted.**
34. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)