IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

C.P. (IB) 1220/MB/2020

Under Section 7 of the IBC, 2016

In the matter of

Anand Rathi Global Finance Limited

Express Zone, A wing, 10th Floor,
Western Express Highway, Goregaon –
East, Mumbai - 400063

.... Petitioner

v/s.

Doshi Holdings Private Limited

58, Nariman Bhavan, Nariman point,
Mumbai- 400021

…. Corporate Debtor

Order Delivered on: 19.02.2021

Coram: Smt. Suchitra Kanuparthi, Member (Judicial)
Shri Chandra Bhan Singh, Member (Technical)

For the Petitioner: Adv. Prateek Seksaria a/w Adv. Saket Mone, Adv. Vishesh Kalra, Adv. Radhika Kulkarni, Adv. Nishant Chothani and Adv. Abhishek Saliani i/b Vidhi Partners

For the Corporate Debtor: Adv. Ankit Lohia a/w Adv. Dhanyashree Shah and Adv. Debashree Dey i/b Desai & Diwanji

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. This Company Petition is filed by Anand Rathi Global Finance Limited (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Doshi Holdings Private Limited (hereinafter called "Corporate Debtor")

alleging that Corporate Debtor committed default in making payment of Rs. 8,35,25,398/- including interest as per the terms of the agreementsby invoking the provisions of Section 7 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 4 Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Facts of the case:

2. The Petitioner is a Non-Banking Financial Company which extended loan amount of ₹3,00,00,000/- against securities facilities to the Premier Limited along with the co-borrower namely Corporate Debtor herein, under the Loan cum Pledge Agreement dated 29.06.2015 for a period of 6 months from the date of disbursement. The amount was disbursed to the Corporate Debtor on 29.06.2015. Thereafter, the tenure of the Loan cum Pledge Agreement dated 29.06.2015 was extended by a period of 6 months up to 28.06.2016 through an addendum dated 28.12.2015 and the same was further extended by a period of 24 months up to 28.06.2018 through an addendum dated 31.03.2016 (Facility 1).
3. The Petitioner granted a loan of ₹2,00,00,000/- to Premier Limited and Corporate Debtor under another Loan cum Pledge Agreement dated 04.05.2016 for a term of 6 months from the date of disbursement. The amount was disbursed to Premier Limited on 05.05.2016. Thereafter, the tenure of the Loan cum Pledge Agreement dated 04.05.2016 was extended by a period of 18 months up to 04.05.2018 through an addendum dated 06.10.2016 (Facility 2).
4. The Petitioner granted a loan of ₹1,00,00,000/- to Premier Limited and Corporate Debtor under another Loan cum Pledge Agreement dated 05.10.2016 for a term of 1 month from the date of disbursement. The amount was disbursed to the Corporate Debtor on 06.10.2016 (Facility 3).

5. Under the Loan Agreement, the Corporate Debtor, pledged 53,01,000 shares held by it in the Premier Limited in favor of the Petitioner to secure the repayment of amounts disbursed under the Loan Agreements.
6. The tenure of the above said Facilities got expired and the amounts became due and payable on the following dates:

   Facility 1: 28.06.2018

   Facility 2: 04.05.2018

   Facility 3: 04.11.2016
7. Premier Limited made a payment of ₹2,00,00,000/- to the Petitioner through a cheque bearing No. 064101 dated 21.05.2020 towards monthly interest in respect of the aforementioned facilities under the said agreements. However, Premier Limited did not pay the whole remaining outstanding to the Petitioner. The Petitioner then issued many margin Shortfall Notices/ Emails to Premier Limited on 27.06.2019, 28.06.2019, 04.07.2019, 07.02.2020, 10.02.2020, 14.02.2020 and 17.02.2020 to call upon the Premier Limited and the Corporate Debtor to clear the margin shortfall at the earliest before filing the Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016. Thereafter, Premier Limited sent the following email dated 19.02.2020 to the Petitioner:

From: Maitreya Doshi <md@premier.co.in>
Sent: 19 February 2020 11:45
To: amitrathi@rathi.com
Cc: manishjain@rathi.com, sachinshah@rathi.com, KS Nair
Subject: LAS loan default by Premier

Dear Amit,

Yesterday your CFO Mr.Manish Jain was in touch with our CFO Mr.Nair regarding the default on the LAS loan aggregating to Rs.7.65 Cr (Rs.6 Cr Principal & Rs.1.65 Cr Interest) He was calling to inform us and personally let me know that there is now no choice but for them to take legal action with respect to this default unless we can demonstrate steps to regularize the problem. Unfortunately I was out of the office when he called hence this mail in response.

I have been personally keeping you updated about our situation and the severe challenges we are facing, particularly in the context of the cash flow control (via Escrow account) exercised over our receivables and collections by Edelweiss ARC (EARC), being the 100% secured lender to the Company. As the secured lenders have not been paid any interest they are not permitting us to service any other financial creditors dues until there is a comprehensive restructuring and resolution plan for the Company.

Since EARC took over our debt in mid-2017 they were supposed to do a debt restructuring plan for us including working capital support to run our operations. Unfortunately, for various reasons this did not materialise and our operations were progressively starved resulting in rapidly declining operations and collections.

We were to receive nearly Rs.20 Cr fr..n the Railways for the part acquisiti... of our land at Dombivli in 2018, which was permitted by EARC to partially repay ICDs as well as infuse in operations. Unfortunately this payment, despite regular and vigorous follow up, has been withheld for unjustified reasons by the Government finally forcing us to file a writ petition in the Bombay High Court last month. Fortunately the matter has been heard urgently and the next hearing is on 4th March, 2020.

During 2018-19 with the direction and approval from EARC (representing the secured lenders), we relocated our Pune plant and sold our factory land to the Runwal Group. However, the entire proceeds (being under the control of EARC) were adjusted against debt repayment to secured lenders. Despite our desire to use part of this money to clear ICDs, as explained above, the matter was not in our control.

In 2018-19 Corporation Bank, who was a 9% secured creditor filed an NCLT petition against us for non-implementing an OTS settlement that they had agreed accepting a substantial haircut of their dues. Finally this matter was resolved in September 2019 and our account with Corporation Bank is settled and closed. Even currently, our Company is facing NCLT petitions from various financial and operational creditors due to be heard in 12th March 2020. We are making all efforts in the High court for the Railway money as well as to gain time in the NCLT.

EARC has finally agreed to a restructuring plan for the Company but is not willing to commit any fresh funds towards operations and working capital. Consequently we are still struggling to find an alternate source of finance to restart operations. At the new site (20 km away in Chakan Industrial Area). We still hold 42 acres land at Dombivli value at Rs.250 Cr in addition to nearly Rs.100 Cr of plant & machinery at book value as against a principal amount of Rs.160 Cr due to secured lenders, namely EARC. There is interest in the land from various real estate developers including Runwal, but there are certain structural challenges that we are working to overcome.

I hope this gives you a honest and transparent update on our situation. I am, as always, deeply grateful for your timely assistance and support with the LAS loan. Unfortunately the difficult environment coupled with our specific situation have led to do this unintended delay and default. As an NBFC I fully appreciate that you also face RBI, auditor and other scrutiny. Consequently if you have to initiate legal action I understand your position. The shares given as pledge have reduced dramatically in value and are not very heavily traded. Any sale will not yield any significant recovery. Hence, I request that you hold the pledged shares for whatever their worth presently.

Once again my sincere apologies for all this but it was genuinely unintentional.

Regards

Maitreya

CMD

Premier Ltd

NOTARY
GOVT. OF INDIA

8. Later, a notice dated 12.06.2020 was sent by the Counsel for the Petitioner to the Corporate Debtor and nine others under Section 138 of the Negotiable Instruments Act, 1881 calling upon them to pay the Petitioner a sum of ₹7,91,69,662.36/- within 15 days from the date of receipt of the notice. Then, the Counsel for Premier Limited replied to the above notice on 23.06.2020 and called upon the Counsel for the Petitioner to not initiate proceedings.
9. Premier Limited even after many reminder mails/ notices sent by the Petitioner, failed to repay the monies advanced as per the terms of the Loan Agreements. Then, the Petitioner invoked 53,01,000 shares pledged by the Corporate Debtor on 02.07.2020. The securities are listed on the stock exchange as on 14.09.2020 at ₹3.90 per share and therefore, the notional value thereof would be

₹2,06,73,900/-. However, the security as shares is not realizable at present and/or cannot be liquidated inasmuch as there are no buyers for buying a large stake (17.45% of the share capital) of the said shares on the stock exchange/s. Therefore, the estimated value of the security as per the Petitioner is NIL. Hence, the Petitioner filed the present Petition on 18.09.2020.

10. The Petitioner has enclosed the copy of following documents along with the Petition:

    i. Copy of Sanction Letter dated 27.06.2015
    ii. Copy of Loan cum Pledge Agreement dated 29.06.2015
    iii. Copy of Addendum to the Loan cum Pledge Agreement dated 28.12.2015
    iv. Copy of Addendum to the Loan cum Pledge Agreement dated 31.03.2016
    v. Copy of Sanction Letter dated 04.05.2016
    vi. Copy of Loan cum Pledge Agreement dated 04.05.2016
    vii. Copy of Addendum to the Loan cum Pledge Agreement dated 06.10.2016
    viii. Copy of Sanction Letter dated 05.10.2016
    ix. Copy of Loan cum Pledge Agreement dated 05.10.2016
    x. Bank Account statements of the Petitioner showing debits in favor of the Corporate Debtor
    xi. Copies of the correspondences between the Petitioner and the Corporate Debtor
    xii. Copy of the cheque bearing No. 064101 dated 21.05.2020 of Rs. 2,00,00,000/- provided by the Corporate Debtor to the Petitioner
    xiii. Ledger Account of the Corporate Debtor in the books of the Petitioner for the period 2015 to 2020

<u>Reply of the Corporate Debtor</u>:

11. The Counsel for the Corporate Debtor submits that the present Petition has been filed by the Petitioner on the incorrect and illegal

premise that the Doshi Holdings Private Limited is a corporate debtor and it is liable to pay the Petitioner an amount of ₹8,35,25,398/-. It is submitted that the purported financial debt claimed by the Petitioner is lawfully and contractually not existing and not payable by the Corporate Debtor to the Petitioner.

12. The Counsel for the Corporate Debtor submits that as evident form the Petition, the Petitioner has not disbursed any amounts to the Corporate Debtor. The Bank Statements of the Petitioner clearly reflect that the debt in question had been disbursed by the Petitioner to Premier Limited and not to the Corporate Debtor. Therefore, as per Sections 5(7) and 5(8) of the Code, there is no existence of debt.

13. The Counsel for the Corporate debtor further submits that the Corporate Debtor merely pledged shares of the Premier Limited as security against the amount loaned by the Petitioner to Premier Limited. Such creation of security by the Corporate Debtor does not fall within the purview of 'financial debt' as set out in the Code. Therefore evidently, the Corporate Debtor fulfilled its obligations as a pledgee/ security provider under the Loan Agreements and the Corporate Debtor did not avail any loan amounts from the Petitioner under the Loan Agreements which is also evident from the Corporate debtor's books of accounts for the year ended 31.03.2015 to 31.03.2019. No part of the principal and/ or interest amounts were directly and/ or indirectly required to be paid and/ or serviced by the Corporate Debtor. Also, nowhere in the Petition, the Petitioner even contended that the Corporate Debtor was liable to pay the interest on the loan amounts that were disbursed to the Premier Limited.

14. It is submitted by the Counsel for the Corporate Debtor that assuming that the Corporate Debtor is liable to pay any amounts to the Petitioner under the Loan Agreements, even then the Petition is not maintainable on the ground that as on the date of filing the

Petition, the debt of ₹8,35,25,398/- was not outstanding and that the said debt amount stood reduced on account of invocation of pledge of the shares of Premier Limited. Having invoked he pledge, the Petitioner has illegally and wrongfully chosen not to sell/ transfer the shares of the Premier with *malafide* intent on the frivolous ground that there are no buyers for buying a large stake. Here, the Petitioner has sought to reduce the Corporate Debtor's shareholding in Premier Limited and additionally recover an amount of ₹8,35,25,398 illegally. Therefore, the alleged debt stands reduced to the extent of the valuation of the shares of Premier Limited and thus, the question of debt of ₹8,35,25,398/- as on the date of the Petition cannot arise.

15. The Counsel for the Corporate Debtor then submits that in terms of the Loan Agreements, the debtor-creditor relationship existed only between Premier Limited and the Petitioner. A reading of the Loan Agreements reveal that only the party that has borrowed amounts was liable to repay the required amounts to the Petitioner. Therefore, in terms of the Agreements and understanding between the parties, the Corporate Debtor is not liable to pay any amounts that may be owed by the Premier Limited to the Petitioner.

<u>Findings:</u>

16. The CIRP against the Premier Limited was passed vide order dated 29.01.2021, the said admission of the CIRP of Premier Limited was based under the loan agreement which was sanctioned to M/s. Premier Limited who had defaulted payment of Rs. 8.35 crores. An amount of the Petitioner had disbursed an amount of Rs. 6 crores as loan to M/s Premier Limited and the present Corporate Debtor as the co-borrower under three different loan cum pledged agreement with subsequent addendums. Under these loan agreements, the co-borrower has been the Corporate Debtor herein pledged Rs. 53.01 lacs shares of Corporate Debtor to the Petitioner to secure repayment of the amount disbursed.

17. The Counsel for the Corporate Debtor further stated that assuming that the Corporate Debtor is liable to pay any amounts to the Petitioner under the Loan Agreements, even then the Petition is not maintainable on the ground that as on the date of filing the Petition, the debt of ₹8,35,25,398/- was not outstanding and that the said debt amount stood reduced on account of invocation of pledge of the shares of Premier Limited. Having invoked he pledge, the Petitioner has illegally and wrongfully chosen not to sell/ transfer the shares of the Premier with *malafide* intent on the frivolous ground that there are no buyers for buying a large stake. Here, the Petitioner has sought to reduce the Corporate Debtor's shareholding in Premier Limited and additionally recover an amount of ₹8,35,25,398 illegally. Therefore, the alleged debt stands reduced to the extent of the valuation of the shares of Premier Limited and thus, the question of debt of ₹8,35,25,398/- as on the date of the Petition cannot arise.

18. This bench is the considered opinion that the Corporate Debtor in the capacity of co-borrower/Pledgor has defaulted in repaying the loan as the liability of borrower and co-borrower/pledgor is co-extensive as defined under Sec128 of the Contract Act 1872.

19. It is beneficial to refer to the judgment of Hon'ble NCLAT in Company Appeal No. 633 of 2020 dated 24.11.2020, in the matter of *SBI vs. Athena Energy Ventures Pvt. Ltd.,* wherein the Hon'ble NCLAT has observed at para no. 18 that in the matter of guarantee, the CIRP can proceed against the principal borrower as well as guarantor. The para no. 19 and para no. 20 and the order of Hon'ble NCLAT is as follows:

> *"Para 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 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.

Para 20: It is not shown that the application was otherwise incomplete. We thus, proceed to pass the following Order:-

ORDER

The Appeal is allowed. Impugned Order passed by the Adjudicating Authority dated 4th March, 2020 is quashed and set aside. CP(IB)No. 466/7/HDB/2019 filed by the Appellant before Adjudicating Authority is restored to the file of the Adjudicating Authority. The Adjudicating Authority is directed to admit the Application CP(IB)No.466/7/HDB/2019 and pass further necessary Orders as per provisions of IBC. The Adjudicating Authority is requested to appoint the same IRP/RP as has been appointed in CP(IB)616/7/HDB/2018 in the CIRP proceeding against M/s. Athena Chattisgarh Power Ltd. (Principal Borrower). The IRP/RP will act in accordance with law keeping observations in this Judgment in view.

No Orders as to costs."

20. The Hon'ble NCLAT while dealing with an appeal filed the appellant bank against the CorporateGuarantor held that the appellant bank had filed a Section 7 application against the principal borrower which was admitted, and had also filed an application under Section 7 seeking imitation of the CIRP against the Corporate Guarantor the application was filed arising out of the same transaction and the same common loan agreement. The Respondent/ Corporate Guarantor relied upon the judgment of Vishnu Kumar Agrawal Vs. Piramal Enterprises Ltd. dated 08.01.2019 wherein it was held that

once the petition under Section 7 of IBC is filed against the principalCo-Guarantor and the CIRP is initiated the financial creditor cannot filed another applications onthe very same set of claim. Adjudication Authority relying upon the judgment of Piramal declining to admit the application under Section 7 against the Corporate Guarantor. The contentions of the said appeal before the Hon'ble NCLAT was that under Section 128 of the Indian Contract Act, 1872, the liability of the principal borrower and the guarantor is coextensive and the creditor is entitled to proceed against either or both andno sequence is required to be followed.

21. The Hon'ble NCLAT framed issues for consideration as follows:
    i. Whether the 'Corporate Insolvency Resolution Process' can be initiated against a 'Corporate Guarantor', if the 'Principal Borrower' is not a 'Corporate Debtor' or 'Corporate Person'? and;
    ii. Whether the 'Corporate Insolvency Resolution Process' can be initiated against two 'Corporate Guarantors' simultaneously for the same set of debt and default?"

22. The Hon'ble NCLAT at para 14 in its judgment also discussed the observation made by the Insolvency Law Committee in the report of Feb, 2020. The Report is produced below:

7. **ISSUES RELATED TO GUARANTORS**

7.1. Under Section 128 of the Indian Contract Act, 1872, the liability of a surety towards a creditor is coextensive with that of the principal borrower. When a default is committed, the principal borrower and the surety are jointly and severally liable to the creditor, and the creditor has the right to recover its dues from either of them or from both of them simultaneously.[26] The Committee discussed whether in light of this rule of co-extensive liability of the surety and the principal borrower, a creditor should be permitted to initiate CIRP against both the principal borrower

[23] *S. N. Plumbing Pvt. Ltd., (Through RP- Sanjay Kumar Ruia) v IL&FS Engineering & Construction Co. Ltd.*, Company Appeal (AT) (Insolvency) No. 283/2018, NCLAT. Decision date - 7 December 2018

[24] Company Appeal (AT) (Insolvency) No. 786/2019, NCLAT. Decision date - 1 October 2018

[25] Insolvency and Bankruptcy Code Bill, 2015, Notes on Clauses, p. 117, <https://www.prsindia.org/sites/default/files/bill_files/Insolvency_and_Bankruptcy_code%2C_2015.pdf> accessed 26 November 2019

[26] Pollock and Mulla, *Indian Contract and Specific Relief Acts* vol. II (12th edn., LexisNexis Butterworths 2006) p. 1814-1816

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and its surety and whether it should be permitted to file its claims in the CIRPs of both the principal borrower and its surety.

Initiation of Concurrent Proceedings against the Principal Borrower & the Guarantor

7.2. The Committee noted that the Appellate Authority, in *Dr. Vishnu Kumar Agarwal v. M/s. Piramal Enterprises Ltd.*,[27] has prevented admission of multiple CIRP applications which were filed by the same creditor for the same set of claims against different corporate debtors by holding that: "*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 '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').*"[28]

7.3. The Committee noted that while, under a contract of guarantee, a creditor is not entitled to recover more than what is due to it, an action against the surety cannot be prevented solely on the ground that the creditor has an alternative relief against the principal borrower.[29] Further, as discussed above, the creditor is at liberty to proceed against either the debtor alone, or the surety alone, or jointly against both the debtor and the surety.[30] Therefore, restricting a creditor from initiating CIRP against both the principal borrower and the surety would prejudice the right of the creditor provided under the contract of guarantee to proceed simultaneously against both of them.

7.4. Further, Section 60(2) of the Code provides that when a CIRP or liquidation process against a corporate debtor is pending before an Adjudicating Authority, any insolvency resolution, liquidation or bankruptcy proceeding against any guarantor of that corporate debtor should also be initiated before the same Adjudicating Authority. Similarly, Section 60(3) requires transfer of any such proceeding which may be pending before any court or tribunal to the Adjudicating

Authority dealing with the CIRP or liquidation process of the corporate debtor. Therefore, as the Code does require proceedings against a corporate debtor and its guarantors to be simultaneously heard by the same Adjudicating Authority, the Committee was of the view that the Code in fact, envisages initiation of concurrent proceedings against both a corporate debtor and its sureties. **Given this, the Committee recommended that a creditor should not be prevented from proceeding against both the corporate debtor and its sureties under the Code.**

7.5. However, the Committee noted that the Appellate Authority has, in certain cases, taken a view contrary to its decision taken in the *Piramal Enterprises Ltd.*[31] case. For example, in *Edelweiss Asset Reconstruction Company Limited v Sachet Infrastructure Pvt. Ltd. & Ors.*,[32] the Appellate Authority has permitted simultaneous initiation of CIRP against the principal borrower and its corporate guarantors. Further, the Appellate Authority has also admitted a petition to review its aforesaid judgement in the *Piramal Enterprises Ltd.* case.[33] **Given this, the Committee decided that no legal changes may be required at the moment, and this issue may be left to judicial determination.**

7.6. It was also represented before the Committee that in certain cases creditors extend loans to a debtor solely by relying on the contract of guarantee provided by a third-party surety, and without considering the commercial viability of the debtor and its ability to repay the debt. The Committee deprecated this practice, and agreed that creditors should necessarily carry out adequate due diligence regarding the debtor's financial position and should not extend a loan solely by relying on a contract of guarantee without assessing the financial and technical feasibility of the respective project.

Filing of Claims by a Creditor in Proceedings of the Principal Borrower & the Guarantor

7.7. The Committee further discussed whether, in cases where CIRP has already been initiated against the principal borrower and the surety, a creditor should be allowed to file claims (with respect to the same set of debts) in the CIRP of both the corporate debtors. The Appellate Authority, in *Dr. Vishnu Kumar Agarwal v*

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[31] *Dr. Vishnu Kumar Agarwal v M/s. Piramal Enterprises Ltd.*, Company Appeal (AT) (Insolvency) No. 346/2018, NCLAT. Decision date - 8 January 2019

[32] Company Appeal (AT) (Insolvency) No. 377/2019, NCLAT. Decision date - 20 September 2019

[33] *TUF Metallurgical Pvt. Ltd. v Wadhwa Glass Processors Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No. 611/2019, NCLAT. Decision date - 31 May 2019

M/s. Piramal Enterprises Ltd.,[34] had opined that "*for same set of debt, claim cannot be filed by same 'Financial Creditor' in two separate 'Corporate Insolvency Resolution Processes'*".

7.8. However, as discussed above, the principal borrower and the surety being jointly and severally liable to the creditor is a key feature of a contract of guarantee. Therefore, the very object of a contract of guarantee would be prejudiced if the creditor is prohibited from filing claims in the CIRP of both the principal borrower and the surety.[35] Even in the First ILC Report, this Committee, while discussing the scope of moratorium under Section 14 *vis-à-vis* the assets of a surety of the corporate debtor, had observed that the "*characteristic of such contracts i.e. of having remedy against both the surety and the corporate debtor, without the obligation to exhaust the remedy against one of the parties before proceeding against the other, is of utmost important for the creditor and is the hallmark of a guarantee contract, and the availability of such remedy is in most cases the basis on which the loan may have been extended.*"[36] If a creditor is denied the contractual right to proceed simultaneously against the corporate debtor and the surety, the ability of the creditor to recover its debt may be seriously impaired.

7.9. **As the right to simultaneous remedy is central to a contract of guarantee, the Committee suggested that in cases where both the principal borrower and the surety are undergoing CIRP, the creditor should be permitted to file claims in the CIRP of both of them. Since, as the Code does not prevent this, the Committee recommended that no amendments were necessary in this regard.**

7.10. It was brought to the Committee that this right may be misused by a creditor to unjustly enrich herself by recovering an amount greater that what is owed to her. However, the right to simultaneous remedy under a contract of guarantee does not entitle a creditor to recover more than what is due to her, and the Committee **agreed that upon recovery of any portion of the claims of a creditor in one of the proceedings, there should be a corresponding revision of the claim amount recoverable by that creditor from the other proceedings.**

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[34] Ibid

[35] *Bank of Bihar Ltd v Damodar Prasad & Another* AIR 1969 SC 297

[36] Ministry of Corporate Affairs, *Report of the Insolvency Law Committee* (2018) para 5.9, <www.mca.gov.in/Ministry/pdf/ReportInsolvencyLawCommittee_12042019.pdf> accessed 26 November 2019

23. In view of the judgment of Hon'ble NCLAT in the aforesaid paragraphs this Bench is of the considered opinion that the petitioner being a non-banking financing company had extended the amount of Rs. 8,35,00,000/- to the principal borrower (M/s. Premier Limitedand the Corporate Debtor / co-borrower/guarantor under the loan cum pledgeagreement dated 04.05.2016 for a term of 6 months from the date of disbursement. The recital of the Loan cum Pledge Agreement expressly declares the Corporate Debtor to be a borrower/ pledgor. The recital of the Agreement is reproduced below:

LOAN CUM PLEDGE AGREEMENT

THIS AGREEMENT is made at Mumbai this , 29th June 2015 between Anand Rathi Global Finance Ltd., a Non Banking Finance Company registered with Reserve Bank of India and incorporated under the Companies Act, 1956, having its registered office at 4th Floor, Sliver Metropolis, Jai Coach Compound, Opp. Bimbisar Nagar, Goregaon (East), Mumbai – 400 063 (hereinafter called the "Lender" or "Pledgee" which expression shall unless repugnant to the meaning or context thereof, shall be deemed to mean and include its successors in title and permitted assigns) of the ONE PART;

and

Premier Limited, a company incorporated under Companies Act 1956, having its registered office at –Mumbai-Pune Road, Chinchwad ,Pune ,Maharashtra ,411019 (hereinafter referred to as the "Borrower 1" which expression shall, unless it be repugnant to the meaning or context thereof, mean and include its successor in title and permitted assign appointed or co-opted of the SECOND PART.

and

Doshi Holdings Pvt Ltd, a company incorporated under Companies Act 1956, having its registered office at 58, Nariman Bhavan Nariman Point, Mumbai, Maharashtra - 400021 (hereinafter referred to as the Borrower(s) 2" or "Pledgor" which expression shall, unless it be repugnant to the meaning or context thereof, mean and include its successor in title and permitted assign appointed or co-opted of the THIRD PART;

Borrower 1 and Borrower 2 / Pledgor are collectively referred to as "Borrower(s)" and individually as a "Borrower or pledgor" (as the case may be)

Whereas;

A. ARGFL as part of its business provides loans against the deposit of securities such as shares, mutual funds and other financial instruments;
B. Borrower(s) is desirous of availing of a loan facility for a sum of Rs. 30000000 (Rs. Rupees Three Crores Only) at an interest rate of 16 % p.a. for the period of ______ days from to
C. The Lender in lieu of granting such loan facility, has requested a Master Agreement to be entered into between both the parties concerned, for the loan facility to be so granted to the Borrower(s), and also the pledge which shall be provided by the Borrower(s) / Pledgor to the Lender;
D. In consideration of the Lender granting or agreeing to grant the loan facilities to the Borrower(s), the Borrower(s) is are desirous of executing this Agreement which sets out the general terms and conditions (so far as they may applicable) with regard to both the aforementioned. The special terms and conditions governing the Facility and the pledge (are set forth in their respective schedules to this Agreement) as executed between the Parties from time time.

For Doshi Holding Pvt Ltd.

Upon perusal of the categorical declaration, it can be said that the Corporate Debtor and Premier Limited are commonly/collectively called as Borrowers and individually as borrower or pledgor.

Therefore, once the CIRP against the Premier Limited is initiated, CIRP against this Corporate Debtor in the capacity of Borrower/Pledgor who defaulted in repayment of debt due to the Petitioner. Infact, it can be said that the Corporate Debtor has accepted the additional liability of being a Borrower and a Pledgor.

24. The tenure of Loan cum Pledge Agreement dated 04.05.2016 was extended by a period of 18 months up to 04.05.2018 through an addendum dated 06.10.2016. Under the Loan Agreement, the Corporate Debtor being the Co-borrower had pledged 53,01,000 shares of Corporate Debtor in favour of the Petitioner. In view of default of not servicing the loan/pledge Agreement by Premier Ltd. who is already under CIRP vide admission order dated 29.01.2021 and no recoveries were possible under the said pledge document, the debt and default are established and the ingredients of Section 7 of the Code are thus fulfilled.

25. The definition of Pledge under Section 172 of the Indian Contract Act, 1872 states that Pledge is a Bailment of goods for security for payment or performance of a promise. The principles of promise of payment are akin to the principles of contract of Surety under Section 126 of the Contract Act, 1872. The facts of the present case, the Corporate Debtor as borrower No.1 and Pledgor. The entire Loan cum Pledge Agreement executed in favor of the Petitioner confirms the liability of borrower(s) is co-extensive/ joint and several as entailed in the terms & conditions of payment/repayment, and even where the events of default is triggered under the contract. It is irrelevant whether the pledge was invoked late, the moot question is whether the liability exist and whether there is default of non-payment of dues under the Loan Cum Pledge Agreement. It is an undisputed fact that the default is proved and liability is established and that an order of admission is passed against the Borrower (Premier Limited) for the same set of loan.

26. This Bench, on perusal of the documents filed by the Financial Creditor, is of the view that the Premier Limited and the Corporate Debtor defaulted in repaying the loan availed. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Petitioner as a major constituent for admission of a Petition under Section 7 of the Code. Therefore, the Petition under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-(I), namely:

(I) (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 (SARFAESI Act);
(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.

(II) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(IV) That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.

(VI) That this Bench hereby appoints, Mr. Kanak Jani, having office at 17, Sai Moreshwar Luxuria, Plot No. 74, Sector 18, Kharghar, Navi Mumbai – 410210; having Registration No. IBBI/IPA-001/IP/P-01757/2019-2020/12685 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

27. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)