



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI BENCH
COMPANY PETITION IB (IBC) NO. 152/ND/2023**

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:

**Aditya Birla Finance Limited
(Now known as Aditya Birla Capital Limited)**

Having its registered office at:
Indian Rayon Compound, Veraval,
Gujarat-362266.

...Applicant/Financial Creditor

Versus

MPG Realty Private Limited

Having its registered office at
Office No. 208, Second Floor, Plot No.20,
Parmesh Business Towers,
Karkardoma Community Centre,
East Delhi - 110092

Corporate Address:
D-247/26, D Block, Sector 63, Noida,
Uttar Pradesh — 201301

...Respondent/Corporate Debtor

Order Delivered on: 18.12.2025

CORAM:

**SHRI MAHENDRA KHANDELWAL
HON'BLE MEMBER (JUDICIAL)**

**SMT. ANU JAGMOHAN SINGH
HON'BLE MEMBER (TECHNICAL)**

Appearances:

For the Applicant:	Ashim Sood, Varun Kalra, Shahan Ulla & Prateek Kundu, Advs.
For the Respondent:	Akash Chatterjee, Adv.



ORDER

1. The instant Company Petition is 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 *Aditya Birla Finance Limited*, a company incorporated under the Companies Act, 1956 (hereinafter referred to as 'Financial Creditor'), represented by Shri Jahirul Laskar authorized vide board resolution dated 11.05.2022, seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against *MPG Realty Private Limited* ("Corporate Debtor").
2. The Corporate Debtor was incorporated on 17.04.2009, having CIN: U70102DL2009PTC189454 under the Companies Act, 1956. Its registered office is at Office No. 208, Second Floor, Plot No.20, Parmesh Business Towers, Karkardoma Community Centre, East Delhi - 110092. Since, the registered office of the Corporate Debtor is situated at Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent Corporate Debtor under sub-section (1) of Section 60 of the Code. The Authorized Share Capital of the Corporate Debtor is Rs. 1,25,00,000/- (One Crores and Twenty-Five Lakhs). The Paid-Up Capital of the Corporate Debtor is Rs. 1,05,000/- (One Lakhs and Five Thousands). The present petition was filed on 27.02.2023 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of Rs. 81,28,48,834.85/- (Rupees Eighty-One Crores Twenty-eight Lakhs Forty-Eight Thousand Eight Hundred Thirty-four and Eighty-Five Paise Only).

The averments made by the applicant in the application and argued by the Ld. Counsel for the applicant are summarized hereunder: -

3. The details of transactions leading to the filing of this petition as averred by the Financial Creditor is as follows:
 - a) M/s Sequel Buildcon Private Limited and M/s Ajnara India Limited ("Borrowers") are the borrowers of the Financial Creditor o whom the Financial Creditor/ABFL sanctioned financial assistance(s) amounting to Rs. 90,00,00,000/- (Rupees Ninety Crore Only) ("Loan Facility") vide Sanction Letter dated 06.06.2018 and a Facility Agreement dated 06.06.2018 ("Facility Agreement") which was to be repaid within a period of 24 months with a moratorium period of 36 months.
 - b) The aforesaid Loan Facility was, inter alia, secured by an irrevocable and unconditional corporate guarantee dated 06.06.2018 given by M/s MPG



Realty Private Limited ("Corporate Guarantor / Corporate Debtor"), in favour of ABFL vide Deed of Corporate Guarantee dated 06.06.2018. Principal Borrower also provided various securities to the Financial Creditor to secure the above loan facility.

- c) Besides that, Mr. Ashok Kumar, Mr. Pramod Kumar Gupta and Mr. Vinod Gupta ("Personal Guarantors") also executed a Deed of Guarantee in favour of the Financial Creditor to secure the Loan Facility (of Rs. 90,00,00,000/-), given to the Borrower by the Financial Creditor, by virtue of the aforementioned Facility Agreement. On 29.12.2020, vide sanction letter dated 29.12.2020, the Financial Creditor sanctioned a grant of a Guaranteed Emergency Credit Line ("GECL") of Rs. 9,91,00,000/- (Rupees Nine Crores Ninety-One Lacs Only) to the Borrowers.
- d) Despite giving reasonable time to the Principal Borrower by the Financial Creditor, to repay the debt, the Borrowers failed to clear the outstanding payable debt, amounting to Rs. 2,11,06,484/- (Rupees Two Crores Eleven Lakhs Six Thousand Four Hundred and Eighty-four Only), as on 22.06.2022. Owing to the aforesaid, the Financial Creditor filed an application under Section 7 of the Code against the Borrower, Sequel Buildcon Pvt. Ltd., before this Hon'ble Tribunal bearing number C.P.(IB) No. 558 of 2022 titled Aditya Birla Finance Limited v. Sequel Buildcon Pvt. Ltd. which was redundant in view of order dated 16.06.2023 in C.P.(IB) No. 558/(ND)/2022.
- e) wing to the continuous default of the Borrowers to repay the debt, the Financial Creditor was constrained to issue a Legal Notice dated 03.01.2023, inter alia, invoking the Corporate Guarantee dated 06.07.2018 given by the Corporate Guarantor/Debtor to secure the Loan Facility. By way of the said Legal Notice, repayment of an aggregate amount of Rs. 70,74,45,661/- (Rupees Seventy Crores Seventy-Four Lakhs Forty-Five Thousand Six Hundred and Sixty-One Only) pending, was sought within 7 days of receipt of the same
- f) The Corporate Guarantor/Debtor has failed to make good the amount due till date, hence the Financial Creditor is constrained to approach this Tribunal, by virtue of this present application.
- g) In response to the contention raised by the Corporate Debtor/Guarantor, the Financial Creditor stated that the Corporate Guarantee was never released/novated. Clause 3 of the Corporate Guarantee Agreement states that no discharge from guarantee is possible with the permission of Financial Creditor. GECL was extended to the Principal Borrower



pursuant to scheme launched under Prime Minister as part of the Atma Nirbhar Bharat package to mitigate distress caused due to Covid-19. Hence, it cannot be said to have altered the conditions of the Corporate Guarantee with CD. Further, the present Company Petition is only concerned with defaults of CD under Facility Agreement dated 06.06.2018 and not with the GECL.

- h) The Corporate Guarantor alleged that the statement of accounts was not made as per Bankers Book Evidence Act, 1891, Per contra, the Applicant Financial Creditor is a Non-Banking Financial Company, therefore, not governed by Bankers Book Evidence Act, 1891. The Respondent contended that Financial Creditor has forced the Principal Borrower to enter into a Development Management Agreement dated 02.07.2021 with Adhikari Infrastructure Builders Pvt. Ltd. (Eldeco Group). In terms of Clause 13 of the said agreement, Eldeco was supposed to pay the interest, which it failed to do so, however, the aforesaid Development Management Agreement was entered into by Principal Borrower on its own volition, and ABCL is not party to the same. Further, the change in interest rates was made with the four corners of the facility agreement.
- i) The CIRP proceedings can be sought to be initiated against a Principal Borrower and the Corporate Guarantor simultaneously. The ongoing reverse CIRP of the Principal Borrower has no bearing on the present Company Petition against the Corporate Guarantor/Debtor.
- j) The Applicant for the purpose of proving the existence of debt, consequential default, acknowledgement of debt, have annexed the following document with the instant application: -
- i. Copy of Sanction Letter dated 06.06.2018
 - ii. Copy of the Facility Agreement dated 06.06.2018, executed between Financial Creditor and the Borrowers
 - iii. Copy of the RBI circular dated 07.02.2020
 - iv. Copy of the RBI circular dated 17.04.2020
 - v. Board resolution dated 06.06.2018 passed by the Corporate Debtor approving Corporate Guarantee in favour of the Financial Creditor.
 - vi. Proof of service of legal notice dated 03.01.2018 invoking the Guarantee dated 06.06.2018 along with proof of delivery.
 - vii. Copy of the Commercial Credit Information Report issued by the TransUnion CIBIL dated 24.04.2023 of the Principal Borrower, Sequel Buildcon.
 - viii. Copy of Registration of Security Interest Acknowledgement Report dated 18.04.2023.



- ix. Certificate of Record of Default (RoD) by Information Utility pertaining to Facility Agreement dated 06.06.2018 and Guaranteed Emergency Credit Line dated 29.12.2020.
- x. Copy of Order dated 16.06.2023 passed in CP (IB) No. 555 of 2021 titled Neerav Bhatnagar & Ors. Vs. Sequel Buildcon Private Limited & Anr.
- xi. Copy of Order dated 16.06.2023 passed in CP (IB) No. 558 of 2022 titled M/s Aditya Birla Finance Limited Vs. Sequel Buildcon Private Limited & Anr.

The defence placed by the Corporate Debtor in its reply and submissions made and argued by the Learned Counsel of the Corporate Debtor are summarized hereunder: -

4. The details of the submissions made by the Corporate Debtor are as follows:
 - a) The Applicant had already initiated insolvency proceedings under Section 7 of the IBC against the Principal Borrower in CP (IB) No. 558/2022 on 29.06.2022, even before the account was declared NPA on 14.10.2022. Due to admission order passed by the Hon'ble NCLT in CP(IB) No. 555 of 2022, the petition filed by the applicant against the principal borrower was disposed of by the Hon'ble NCLT.
 - b) The Applicant is using IBC as the recovery mechanism. The Hon'ble NCLAT, in Company Appeal (AT)(Ins) No. 823 of 2023 vide order dated 25.07.2023, directed continuation of the Corporate Debtor as a going concern under the supervision of Resolution Professional and disbursement of the interim finance amount of Rs. 75 Crores. The Hon'ble Tribunal has also ordered the principal borrower and the IRP to submit a fresh proposal to the financial creditor.
 - c) The remaining dispute between the parties pertains only to quantum of dues i.e., whether the respondent is entitled to Rs. 81.48 Crores or Rs. 86 Crores. There is no dispute regarding default or repayment mechanism. Hence, the present proceedings are not maintainable.
 - d) Ajnara Belvedere is a commercially viable project having positive net worth. The Financial Creditor has sanctioned Rs. 90 Crores and the project has total receivables of Rs. 508.44, implying the project would be in the best interest of all the stakeholders including homebuyers, lenders, vendors, and the Corporate Debtor.



- e) The guarantee executed on 06.06.2018 stood discharged/novated upon Financial Creditor extending a fresh Guaranteed Emergency Credit Line (GECL) facility on 29.12.2020 to the principal borrower, Sequel Buildcon Pvt. Ltd., without MPG Realty's consent or involvement as guarantor for the new facility.
- f) MPG Realty Pvt. Ltd. was not a party to the 2020 and 2021 GECL Facility Agreements which creates a material deviation. The guarantee given in 2018 cannot extend to a wholly new facility without endorsement which did not happen. The absence of MPG Realty as a guarantor under the GECL facility nullifies any ongoing liability under the prior 2018 guarantee.
- g) The Financial Creditor unilaterally altered the underlying financing terms by Addendum dated 15.11.2021 enhancing liability by Rs. 9.91 Crores without guarantor consent which constitutes novation in terms of the underlying contract between the Financial Creditor and the Principal Borrower, thereby discharging the Corporate Guarantor from any liability under the original Guarantee Deed dated 06.06.2018. The execution of the Development Management Agreement with *Eldeco Group* without consent of the Corporate Guarantor materially altered project risk and constitutes variation under Section 133 of the Contract Act.
- h) The Corporate Debtor cannot be held liable for amounts not actually disbursed, particularly when delay/default arises from Financial Creditor's own breach. The invocation notice dated 03.01.2023 was served improperly and hence, invalid.
- i) The Guarantee Deed dated 06.06.2018 contains an arbitration clause (Clause 17.2). Financial Creditor has bypassed the agreed dispute resolution mechanism and directly invoked the IBC proceedings, contrary to Section 8 of the Arbitration and Conciliation Act, 1996.

Analysis and Findings

- 5. We have heard the Learned Counsels for the Financial Creditor and the Corporate Debtor and perused the averments made in the petition, reply and rejoinder.
- 6. In order to ascertain whether this petition falls within the ambit of Section 7 of the Insolvency and Bankruptcy Code, 2016, it must be examined whether there exists a *financial debt* owed to the Financial Creditor and *default* in its repayment as contemplated under Section 3 of the Code, and whether the



Applicant-Financial Creditor is qualified to initiate proceedings under Section 7 against the Corporate Debtor.

7. In the present case, the Corporate Debtor has contended that the Corporate Guarantee executed on 06.06.2018 stood discharged upon the grant of a fresh loan facility, i.e., the Guaranteed Emergency Credit Line (GECL) Facility sanctioned on 29.12.2020 to the principal borrower, Sequel Buildcon Pvt. Ltd., without the consent of the Corporate Debtor. It is submitted that since the Corporate Debtor was not a party to the Facility Agreements executed in 2020 and 2021 relating to the GECL extension, the Guarantee executed in 2018 cannot extend to such subsequent facilities. Per Contra, the Applicant Financial Creditor while relying on Clause 3 of the Corporate Guarantee Agreement dated 06.06.2018 stated that there will be no discharge from guarantee obligations without the concurrence of Financial Creditor except in accordance with the provisions of the Indian Contract Act, 1872, or any statutory modification or re-enactment thereof. Clause 3 of the Guarantee Agreement is reproduced below:

“3. NO DISCHARGE

3.1 The Lender's decision shall be final and binding on the Guarantor in respect of all matters concerning the Guaranteed Amounts and this Guarantee. Neither the obligations of the Guarantor contained herein, nor any other rights, powers and remedies conferred in respect of the Guarantor upon the Lender shall be adversely affected as to their enforceability by:

- (a) any amendment or variation in the terms of Facility or any time, any composition or compounding, or forgiveness or other indulgence granted to the Borrower or any other person in relation to the Facility*
- (b) liquidation, bankruptcy, insolvency, winding up, dissolution, reorganization, de-merger, the take over of the management of the Borrower by any governmental authority or the acquisition or nationalization of the Borrower or any other person or any of their undertaking(s);*
- (c) invalidity or unenforceability on any grounds in or of the terms of any of the documents pertaining to the Facility;*
- (d) any change in the constitution or management [if the Guarantor is not an individual] of the Guarantor or the Borrower or the Lender howsoever or dissolution of the Guarantor [if the Guarantor is a partnership firm], or absorption or amalgamation of Guarantor [if the Guarantor is not an individual] or Borrower or Lender with any other company or corporation or concern or take over of the management /business/ concern of the Borrower or the Guarantor by Central or State Government or by any other authority;*



- (e) *any dispute or disagreement whatsoever under or in relation to any Facility whether between the Lender and the Borrower or any other person;*
- (f) *acquisition or nationalisation of the Borrower or the Guarantor [if the Guarantor is not an individual or a proprietorship concern] and/ or of any of its undertaking(s) / business / assets pursuant to any law;*
- (g) *the absence or deficiency of powers on the part of the Guarantors to give this Guarantee or any irregularity in the exercise of such powers;*
- (h) *any forbearance or delay on the part of the Lender in asserting any of its/their rights against the Borrower or any other person in relation to the Facility;*
- (1) *any person becoming, or ceasing to be, a party with the Lender to any document relating to the Facility or becoming a party to any document relating to the Facility in place of the Lender in each case pursuant to rights of assignment, charge, novation or other succession or alienation expressly conferred by such document relating to the Facility;*
- (j) *any failure to take, or fully take, or any release, discharge, exchange or substitution of any guarantee, bond or security contemplated or otherwise agreed to be taken in respect of any of the obligations of the Borrower under any document relating to the Facility;*
- (k) *any act of legislation and/or by any act of State and/or God by which the Borrower's debts under the Facility or any payments under these, are suspended or cancelled; or*
- (1) *any other act, event or omission (including, without limitation, any amendment, waiver, supplement or modification to any document relating to the Facility which, but for this Clause [3.1], might operate to discharge, impair or otherwise affect the enforceability of any of the obligations contained in this Guarantee.*

The Guarantor shall not be released by any exercise by the Lender of their liberty with reference to the matters aforesaid or any of them. The Guarantor hereby waives any rights available to it as surety under the provisions of the Indian Contract Act, 1872 or its statutory modification or re-enactment thereof especially but not limited to those arising under Sections 133, 134, 135, 139 and 141.”

A bare perusal of Clause 3 makes it clear that the circumstances relied upon by the Corporate Debtor do not absolve or discharge the Guarantee. There is no material to show that the Guarantee Agreement was novated or that the Guarantor was discharged in accordance with law.

8. The Corporate Guarantee executed by the Corporate Debtor is an unconditional and irrevocable guarantee. In terms of Section 128 of the Indian Contract Act,



1872, the liability of the guarantor is co-extensive with that of the principal borrower, unless otherwise provided by the contract. Therefore, the Corporate Debtor/Guarantor cannot evade its obligations arising from the Guarantee Agreement dated 06.06.2018. Further, the GECL Facility was an independent emergency credit facility introduced under the *Atma Nirbhar Bharat* scheme to mitigate financial distress caused by the COVID-19 pandemic. It being a distinct facility sanctioned by the Financial Creditor, it does not lead to novation of the original loan terms. Hence, no novation can be inferred in respect of the Guarantee executed in 2018.

9. The Development Management Agreement dated 02.07.2021 executed between the Principal Borrower and Adhikari Infrastructure Pvt. Ltd. was a voluntary commercial arrangement of the Principal Borrower which does not affect the obligations of the Guarantor. Further, the NoC dated 01.07.2021 issued by the Financial Creditor explicitly clarifies that the said *NoC shall not be construed as any extension/waiver/change in any terms of the sanction conditions/repayment schedule/Transaction Documents*. Since no variation in the primary guarantee obligations under the Facility Agreement dated 06.06.2018 has been established by the Corporate Debtor, thus, it cannot claim discharge under Section 133 of the Indian Contract Act, 1872.
10. The Ld. Counsel for the Corporate Debtor has further relied upon the order of the Hon'ble NCLAT dated 25.07.2023, wherein the time was granted to the Principal Borrower to complete the project through Reverse CIRP, protecting the interest of all stakeholders. However, the pendency of Reverse CIRP cannot constitute a ground to disregard the present insolvency petition filed against the Corporate Debtor/Guarantor for the outstanding dues of Principal Borrower. It is settled law that insolvency proceedings against a guarantor are maintainable independent of CIRP/Reverse CIRP proceedings initiated against the principal borrower, and such consideration is irrelevant at the admission stage.
11. Upon perusal of the material placed on record, including the Facility Agreement dated 06.06.2018, Guarantee Deed dated 06.06.2018, the Statement of Accounts (Annexure A-14), and the computation sheet (Annexure A-9), a *prima facie* case of financial debt and default exceeding the threshold of Rs. 1 Crore is established. The invocation notice (Annexure A-15) demonstrates compliance with statutory requirements. The contention of the Corporate Debtor that the Demand certificate was not issued in the prescribed format cannot be sustained since the Code does not prescribe any demand notice be issued to Corporate Guarantors. The issues of demand notice is only limits to enforcing legal rights under section 128 of the Contract Act, 1872, which can be seen as intimation of invocation. Thus, the said contention of the Corporate Debtor holds no merit.



Since the Applicant is a Financial Creditors and the debt owed 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 I & B Code, the ingredients of Section 7 stands satisfied.

13. As regard to the Corporate Debtor's contention that applicant has made a mala fide attempt to file duplicate claims with respect to the same debt on same facts and for the same default, it is pertinent to note that under section 128 of the Indian Contract Act, 1872 the liability of the surety is coextensive with that of the principal debtor, unless otherwise provided under the contract. The Hon'ble Supreme Court in the matter of **Laxmi Pat Surana Vs. Union Bank of India & Anr. (2021) 8 SCC 481** wherein it was held that the liability of the 'Corporate Guarantor' is 'coextensive' with that of the 'Principal Borrower' and that acknowledgment given by the 'Principal Borrower' also binds the 'Corporate Guarantor'. The relevant extract of the said judgment is reproduced below:

*“49. The appellant was at pains to persuade us that the intention behind the communication dated 8-12-2018 sent to the financial creditor by the corporate guarantor (corporate debtor) is a triable matter, as it was sent without prejudice. We are not impressed by this submission. The fact that the principal borrower had availed of credit/loan and committed default and that the (corporate) guarantor/corporate debtor had offered guarantee in respect of the loan account is not disputed. What is urged by the appellant is that the acknowledgment of liability to pay the amount in question was by the principal borrower and that acknowledgment cannot be the basis to proceed against the corporate guarantor (corporate debtor). Section 18 of the Limitation Act, however, posits that a fresh period of limitation shall be computed from the time when the party against whom the right is claimed acknowledges its liability. **The financial creditor has not only the right to recover the outstanding dues by filing a suit, but also has a right to initiate resolution process against the corporate person (being a corporate debtor) whose liability is coextensive with that of the principal borrower and more so when it activates from the written acknowledgment of liability and failure of both to discharge that liability.**”*

14. Further, the Hon'ble Supreme Court in the **BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd. and Anr., (2024) ibclaw.in 170 SC** observed that the scheme of I & B Code, 2016 permits the Financial Creditor to initiate separate or simultaneous insolvency proceedings against the Principal Borrower and its Corporate Guarantor. The relevant extract of the aforesaid precedent is reproduced below:



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

15. The Corporate Debtor/Guarantor has further challenged the maintainability of the present petition on the ground that Clause 17.2 of the Corporate Guarantee Agreement dated 06.06.2018 provides for an arbitration mechanism. It is contended by the Ld. Counsel for the Corporate Debtor that initiation of proceedings under Section 7 of the IBC violates Section 8 of the Arbitration and Conciliation Act, 1996. However, the Hon’ble Supreme Court in *Indus Biotech (P) Ltd. v. Kotak India Venture (Offshore) Fund*, (2021) 6 SCC 436, has categorically held that the Insolvency and Bankruptcy Code, 2016 has an overriding effect over the Arbitration and Conciliation Act, 1996 in view of Section 238 of the Code. The Hon’ble Supreme Court has clarified that the filing of an application under Section 8 of the Arbitration and Conciliation Act is an independent proceeding and does not impede or override adjudication under Section 7 of the IBC. Therefore, the presence of an arbitration clause in the Guarantee Agreement cannot operate as a bar to maintainability of a petition filed under Section 7 of the IBC. The relevant extract of the Hon’ble Supreme Court judgment in **Indus Biotech (P) Ltd. v. Kotak India Venture (Offshore) Fund (supra)** is reproduced below:

*“27. As noted, the issue which is posed for our consideration is arising in a petition filed under Section 7 of IB Code, before it is admitted and therefore not yet an action in rem. In such application, the course to be adopted by the adjudicating authority if an application under Section 8 of the 1996 Act is filed seeking reference to arbitration is what requires consideration. **The position of law that the IB Code shall override all other laws as provided under Section 238 of the IB Code needs no elaboration. In that view, notwithstanding the fact that the alleged corporate debtor filed an application under Section 8 of the 1996 Act, the independent consideration of the***



same dehors the application filed under Section 7 of IB Code and materials produced therewith will not arise. The adjudicating authority is duty-bound to advert to the material available before him as made available along with the application under Section 7 of IB Code by the financial creditor to indicate default along with the version of the corporate debtor. This is for the reason that, keeping in perspective the scope of the proceedings under the IB Code and there being a timeline for the consideration to be made by the adjudicating authority, the process cannot be defeated by a corporate debtor by raising moonshine defence only to delay the process. In that view, even if an application under Section 8 of the 1996 Act is filed, the adjudicating authority has a duty to advert to contentions put forth on the application filed under Section 7 of IB Code, examine the material placed before it by the financial creditor and record a satisfaction as to whether there is default or not. While doing so the contention put forth by the corporate debtor shall also be noted to determine as to whether there is substance in the defence and to arrive at the conclusion whether there is default. If the irresistible conclusion by the adjudicating authority is that there is default and the debt is payable, the bogey of arbitration to delay the process would not arise despite the position that the agreement between the parties indisputably contains an arbitration clause.”

In view of above findings of Hon'ble Supreme Court, the contention of the Corporate Debtor hold no ground and thus, cannot be relied upon.

16. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition 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, admittedly the debt owed by the Corporate Debtor/Guarantor to the Financial Creditor is an amount of Rs. 81,28,48,834.85/- (Rupees Eighty-One Crores Twenty-eight Lakhs Forty-Eight Thousand Eight Hundred Thirty-four and Eighty-Five Paise Only) which meets the threshold of Rs. One Crore.
17. In the light of the above facts and circumstances, and in terms of Section 7(5) (a) of the Code, the instant Company Petition **IB (IBC)/152(ND) 2023** filed by the **Aditya Birla Finance 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 **MPG Realty Private Limited**, the Corporate Debtor, stands **admitted**.

18. That the petitioner in part-III of the petition has proposed the name of M/s RR Insolvency Professionals LLP, as Interim Resolution Professional, having Registration Number IBBI/IPE-0056/IPA-1/2022-23/50009 and E-mail ID ca.rakeshjindal@gmail.com, is hereby appointed as an Interim Resolution Professional (IRP) for corporate debtor. Resolution Professional so appointed also directed to file Valid AFA along with requisite FORM 2 within the 5 days of receipt of this order.
19. 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.*



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.

21. 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.
22. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely M/s RR Insolvency Professionals LLP 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.
23. 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.
24. 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.
25. 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.

26. 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.
27. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B. /152 (ND)/2023 stands admitted.**
28. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(ANU JAGMOHAN SINGH)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)