

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing platform)

CP (IB) No.103/BB/2021

U/s. 7 of the IBC, 2016

R/w Rule 4 of the IBC (AAA) Rules, 2016 &

I.A No.158 of 2022

U/s. 60(5) of the IBC, 2016

R/w Rule 11 of the NCLT Rules, 2016

IN THE MATTER OF:

M/s. KKR India Asset Finance Limited

R/o: Regus Citicentre, Level-6,
10/11 Dr. Radhakrishna, Salai
Chennai – 600 004.

... Petitioner/Secured
Financial Creditor

VERSUS

M/s. Mantri Developers Private Limited,

#41, Vittal Mallya Road,
Bengaluru – 560 011.

... Respondent/Corporate Debtor/
Corporate Guarantor

IN THE MATTER OF:

I.A No. 158 of 2022

Mr. Pratik Mantri,

Door No.8-2-684/3, Lilac Homes,
4th Floor, Flat No.D4, Road No. 12,
Banjara Hills,
Hyderabad – 500 034

... Intervenor/Applicant

Order delivered on: 5th May, 2022

Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Sh. S.S. Naganand, Sr. Counsel a/w
Ms. Poornima Hatti
For the Respondent : Sh. Shyam Sundar, Sr. Counsel a/w
Ms. Krutika Raghavan
For the Applicant in
I.A No. 158 of 2022 : Sh. C.K. Nandakumar, Sr. Counsel a/w
Ms. Roshini Jacob

CP (IB) No.103/BB/2021 &
I.A No.158 of 2022

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ORDER**Per: Ajay Kumar Vatsavayi, Member (Judicial)**

1. The present petition is filed, under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 4 of the I&B (Application to Adjudicating Authority) Rules 2016, by M/s. KKR India Asset Finance Limited (for brevity 'Financial Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of M/s. Mantri Developers Private Limited (hereinafter referred as 'Corporate Debtor/Respondent/MDPL'). The contents of the Application are supported by an affidavit dated 31.08.2021 filed by Mr. Rakesh Bajaj, Authorised Representative of the Financial Creditor.
2. The Corporate Debtor, namely, M/s. Mantri Developers Private Limited was incorporated on 06.12.1990 with CIN: U70102KA1990PTC027924 having its registered office at #41, Vittal Mallya Road, Bengaluru - 560011, which falls within the territorial jurisdiction of this Adjudicating Authority. The Authorised Share Capital of the Respondent/Corporate Debtor is Rs.110,00,00,000/- and the Paid-Up Share Capital is Rs.46,19,33,000/-.
3. The present application has been filed by the Financial Creditor against the Corporate Debtor in respect of the default amount of Rs.101,20,25,989/- (Rupees One Hundred and One Crore Twenty Lakhs Twenty Five Thousand Nine Hundred and Eighty Nine Only)as on 31.08.2021.
4. The Financial Creditor is a public limited company registered with the Reserve Bank of India as a non-deposit taking, systematically important Non-banking Financial Company (NBFC). Smarthomes Developers (India) Pvt Ltd. ('SDPL') is a special purpose vehicle company incorporated by MDPL and Jasmine Enterprises Pvt Ltd. ('JEPL').
5. It is stated by the Petitioner that on 07.05.2016, SDPL availed a term loan facility of Rs.145,00,00,000/- (Rupees One Hundred Forty Five Crores Only) from the Financial Creditor and the Borrower (SDPL) and Lender (KKR India Asset Finance Limited) entered into a loan agreement dated 07.05.2016 in respect of the same. On 07.05.2016 MDPL executed a deed of corporate

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guarantee in favour of Security Trustee i.e. IL&FS Trust Company Ltd, guaranteeing payment of amounts due from SDPL under the Facility. Thereafter, SDPL separately executed a deed of hypothecation dated 09.05.2015 and a memorandum of entry dated 19.05.2016 in favour of the Security Trustee, towards securing the Facility.

6. The Petitioner/Financial Creditor in support of the C.P. averments has enclosed the following documents among other documents, to the C.P:

- i. Loan Agreement dated 07.05.2016 executed by and between M/s. Smarthomes Developers (India) Private Limited as Borrower and the persons set out in Schedule I as Lender i.e. KKR India Asset Finance Limited.
- ii. Deed of Corporate Guarantee dated 07.05.2016 executed by and between M/s. Mantri Developers Private Limited as Guarantor and M/s. IL&FS Trust Company Limited as Security Trustee and M/s. Smarthomes Developers (India) Private Limited as Borrower.
- iii. Security Trustee Agreement dated 07.05.2016 executed by and between M/s. Smarthomes Developers (India) Private Limited as Borrower and M/s. IL&FS Trust Company Limited as Security Trustee and the persons set out in Schedule I as Lender i.e. KKR India Asset Finance Limited.
- iv. The Record of default report in the matter of M/s. Smarthomes Developers (India) Private Limited dated 31.08.2021 from National E-Governance Services Limited.
- v. The Board Resolution dated 27.08.2021 authorising Mr. Rakesh Bajaj to represent the Financial Creditor.
- vi. The Account statements relevant to loan granted from 11.05.2016 to 31.08.2021 demonstrating the outstanding amount due from the Borrower.
- vii. Deed of Hypothecation between SDPL, Jasmine Enterprises Pvt. Ltd, MDPL and Security Trustee dated 09.05.2016.
- viii. Certificate of Registration of charge issued by the ROC, MCA with Charge Identification No. 100025164 dated 11.05.2016 and 25.05.2016 for charge created in favour of the Security Trustee for Rs.145,00,00,000/- and for modification of charge created in favour of the Security Trustee to include the mortgage of properties pursuant to memorandum of entry dated 19.05.2016.
- ix. Memorandum of entry executed between MDPL acting as the Corporate Guarantor, SDPL, JEPL and the Security Trustee dated 19.05.2016.
- x. Email dated 11.06.2019 by the Financial Creditor to MDPL intimating it the event of default and Email dated 01.10.2019 by MDPL to Financial Creditor with the acknowledgment of debt.

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- xi. Notice of occurrence of event of default issued by the Financial Creditor to SDPL dated 01.10.2019 and also notice invoking the Corporate Guarantee issued by the Security Trustee dated 04.10.2019.
- xii. Reply issued by the SDPL to the Financial Creditor dated 07.10.2019 confirming that part-payment had been made, and that amounts had been collected towards making payment for the remaining outstanding amount. And also the Reply issued by MDPL to Security Trustee dated 07.10.2019 stating that the default is being cured and that the Financial Creditor had been informed of the same.
- xiii. Notice dated 31.10.2019 issued by Security Trustee to MDPL calling upon MDPL to fulfil guarantor obligations and also issued by the Financial Creditor to SDPL and MDPL for rectifying defects dated 31.10.2019.
- xiv. Notice of repayment issued by Financial Creditor to SDPL and MDPL dated 07.11.2019 calling upon them to cure the defaults and notice issued by the Security Trustee to MDPL dated 11.11.2019.
- xv. Email dated 16.11.2019 & 27.12.2019 addressed by MDPL to Financial Creditor communicating repayment schedule and confirming that amounts had been collected towards making payment for the remaining outstanding amount.
- xvi. Demand Notice issued by the Financial Creditor to SDPL & MDPL dated 06.01.2020 for an aggregate principal and interest amount of Rs.26,22,86,195/-, a default interest of Rs.7,95,48,957/- and a Cash flow Share of Rs.5,87,72,688/-.
- xvii. Demand Notice issued by Security Trustee to MDPL dated 08.01.2020 invoking the Corporate Guarantee for an amount of Rs.26,22,86,195/-. The Demand Notice dated 23.09.2020 issued by Security Trustee to MDPL invoking the Corporate Guarantee for total outstanding amount of Rs.21,70,00,975/-.
- xviii. Response issued by SDPL to the Financial Creditor dated 19.03.2020 undertaking to meet its obligations by sale of 34 units in the Identified apartments.
- xix. Notice of Occurrence of default dated 14.01.2021, 11.06.2021 & 19.07.2021 issued by the Security Trustee to SDPL and MDPL intimating them of the seven covenant breaches of the loan agreement.
- xx. Notice invoking Corporate Guarantee dated 04.02.2021, 26.07.2021 & 20.08.2021 issued by the Security Trustee to MDPL to pay amount of Rs.44,01,11,960/- overdue as on 04.02.2021 and Rs.506,580,964/- overdue as on 30.06.2021 and Rs.1,018,207,953/- on account of expiration of tenor of loan on 11.08.2021.
- xxi. Demand Notice dated 16.08.2021 issued by the Security Trustee to SDPL and MDPL upon expiration of the tenor of the loan on 11.08.2021.

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- xxii. Extracts of Financial Statement of SDPL for the year 2019-2020 acknowledging the term loan borrowings, agreed applicable interest, corporate Guarantee & the current maturities as on 31.03.2020.
 - xxiii. Extracts of Financial Statement of MDPL for the year 2019-2020 acknowledging the Corporate Guarantee given to SDPL to the extent of 14,500 Lakhs.
 - xxiv. Email dated 10.11.2020 issued by MDPL to the Secured Financial Creditor along with a statement showing admission of outstanding principal and accrued interest.
 - xxv. Acknowledgment of outstanding amounts by the Borrower, dated 28.05.2020.
 - xxvi. Certificate of incorporation issued by ROC, Mumbai, pursuant to change of name from IL&FS Trust Company Limited to Vistra ITCL (India) Limited dated 25.08.2016.
7. It is stated that SDPL started committing breach of the terms of the Facility in June 2019. Accordingly, the Financial Creditor issued email dated 11.06.2019 to MDPL intimating the event of default and on 01.10.2019, MDPL acknowledged the debt owed. Subsequently, on 01.10.2019, the Financial Creditor issued another notice to SDPL intimating the event of default. On 04.10.2019, the Security Trustee issued a notice to MDPL invoking the corporate guarantee. On 07.10.2019, SDPL issued reply confirming that part payment had been made towards curing default, and that amounts had been collected towards making payment for the remaining outstanding amount. Further, on 07.10.2019, MDPL issued response to the Security Trustee, stating that the default was being cured and the same had been informed to the Financial Creditor.
8. It is further stated that on 31.10.2019, due to failure to cure default, the Financial Creditor issued notice to SDPL and MDPL for rectifying defaults and on the same day, the Security Trustee also issued notice calling upon MDPL to fulfil its guarantor obligations. Again, as the defaults were not cured, the Financial Creditor issued notice of repayment dated 07th November to SDPL and MDPL calling upon them to cure the defaults. Corresponding to this, the Security Trustee issued notice dated 11.11.2019 to MDPL invoking corporate guarantee. Subsequently, MDPL issued email dated 16.11.2019 to the

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- Financial Creditor communicating a repayment schedule towards outstanding dues.
9. On 27.12.2019, MDPL issued email to the Financial Creditor containing details of cheques advanced towards part-payment and confirmed that amounts had been collected towards making payment for the remaining outstanding amount. However, on account of MDPL and SDPL to fulfil their obligations under the Transaction documents, the Financial Creditor issued a Demand Notice dated 06th January calling upon SDPL and MDPL to pay an aggregate principal and interest amount of Rs.26,22,86,195/-, a default interest of Rs.7,95,48,957/-, and a Cash Flow Share of Rs.5,87,72,688/-. Further, the Security Trustee issued a Demand Notice to MDPL dated 08.01.2020 invoking the corporate guarantee for an amount of Rs.26,22,86,195/-.
 10. Pursuant to discussions between the parties, SDPL issued notice dated 19.03.2020 undertaking to meet its obligations as borrower by sale of 34 units in the identified Apartments. However, SDPL and MDPL failed to meet these obligations. Subsequently, the Security Trustee issued Demand Notice dated 23.09.2020 to MDPL invoking the corporate guarantee for a total outstanding amount of Rs.21,70,00,975/- comprising of unpaid default interest of Rs.10,79,57,561/- and cash flow share of Rs.10,90,43,414/- up to 23.03.2020.
 11. On 14.01.2021, the Security Trustee issued a notice of occurrence of default to SDPL and MDPL intimating them of the seven covenant breaches of the Loan Agreement committed and calling upon MDPL to pay all amounts due and outstanding and cure all defects. Pursuant to this, the Security Trustee invoked the corporate guarantee on 04.02.2021 and called upon MDPL to pay an amount of Rs.44,01,11,960/- overdue as on 04.02.2021, the amount comprises the default interest and cashflow share, and part of the amount due from SDPL and MDPL. Further, on 11.06.2021 and 19.07.2021, the Security Trustee issued a notice of occurrence of default intimating to fulfil the aforesaid obligations. Pursuant to this, the Security Trustee again issued

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a notice invoking corporate guarantee dated 26.07.2021 to MDPL to pay amount of Rs.506,580,964/- overdue as on 30.06.2021.

12. It is further stated that the tenor of the loan expired on 11.08.2021. The Security Trustee issued a Demand Notice dated 16.08.2021 to SDPL and MDPL and also issued a notice invoking corporate guarantee to MDPL dated 20.08.2021 to pay the due amount Rs.1,018,207,953/-. MDPL has acknowledged the debt several times though MDPL and SDPL have not paid the due amount as on date.
13. The Respondent/Corporate Debtor opposed the C.P., by *inter alia* contending as under:
- i) The C.P. is not maintainable as there was no supporting Board Resolution of the Petitioner Company resolving to initiate Corporate Insolvency Resolution Process against the Respondent/Corporate Debtor.
 - ii) The Deed of Corporate Guarantee was executed by the Respondent/Corporate Debtor in favour of M/s. IL&FS Trust Company Limited, (Security Trustee) and the Petitioner was not a party in the said Deed of Corporate Guarantee and hence cannot be treated as Financial Creditor to the Corporate Debtor and cannot maintain the C.P. independently.
 - iii) The Petitioner in its capacity as the Lender of M/s. Smarthomes Developers (India) Private Limited which is the Principal Borrower, cannot initiate CIRP proceedings against the Respondent/Corporate Debtor, without initiating CIRP process against the Principal Borrower.
 - iv) The Respondent/Corporate Debtor entered into the Deed of Corporate Guarantee with M/s. IL&FS Trust Company Limited, but the Guarantee was invoked by M/s. Vistra ITC (India) Limited, a stranger, and hence the said invocation as well as the subsequent filing of the instant C.P. are not maintainable.
 - v) The interest of the Financial Creditor is fully served in the form of hypothecation of flats and either the Petitioner or the Security Trustee

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cannot proceed against the Respondent without exhausting the alternate remedy of appropriating the hypothecated properties.

- vi) The Respondent/Corporate Debtor is a well-known real estate entity and executed number of prestigious projects and cannot be pushed into Corporate Insolvency Resolution Process for alleged debt and default of another Company.
- vii) The Various acts required under the Deed of Corporate Guarantee, including invocation of Guarantee was done by the Security Trustee but whereas the C.P. was filed by the Lender which is impermissible.
- viii) The Corporate Guarantor has also placed reliance on the following decisions:
 - (a) *EMC Corporation v. XTO Energy Inc*
 - (b) *Tweddle v Atkinson (1861) EWHC J57 (QB)*
 - (c) *Murlidhar Aggarwal v. State of UP (1974) 2 SCC 472*
 - (d) *All India Power Engineer Federation and Ors. v. Sasan Power Limited and Ors. (2017) 1 SCC 487*
 - (e) *Shalimar Tar Products Ltd. v. H.C. Sharma (1988) 1 SCC 70.*
 - (f) *Lachoo Mal v. Radhey Shyam (1971) 1 SCC 619*

14. Heard Mr. S.S Naganand, learned Senior Counsel along with Ms. Poornima Hatti, learned Counsel for the Petitioner and Mr. Shyam Sundar, learned Senior Counsel along with Ms. Krutika Raghavan, learned Counsel for the Respondent and have also perused the pleadings carefully including the Written Submissions filed and Judgements relied on by both sides.

15. In the back drop of the above referred contentions and also the various submissions made through various pleadings on record, the following issues fell for our consideration:

- (1) Whether the C.P. was not supported by a valid Board Resolution of the Petitioner approving for initiation of CIRP against the Respondent?
- (2) Whether the Petitioner is not the Financial Creditor to the Respondent as the Corporate Guarantee executed by the Respondent was in favour of M/s. IL&FS Trust Company Limited?
- (3) Whether the Petitioner cannot initiate the CIRP against the Corporate Debtor without initiating the CIRP against the Principal Borrower?

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- (4) Whether the CIRP can be initiated against the Corporate Debtor which is a Solvent Company for the alleged debt and default of another Company?
- (5) Whether the debt and default are proved?

16. The Petitioner has filed Annexure 1 Board Resolution dated 27.08.2021 to show that the Board of Directors of the Petitioner Company resolved to initiate CIRP against the Corporate Debtor and the same reads as under:-

22 ANNEXURE - 1

KKR Schilling Kreis Roberts

CERTIFIED COPY OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF KKR INDIA ASSET FINANCE LIMITED BY CIRCULATION DATED AUGUST 27, 2021

Approval for initiating / defending any insolvency proceedings relating to Mantri Developers Private Limited and/or Smarthomes Developers (India) Private Limited for and on behalf of the Company

“RESOLVED THAT any Director of the Company or Mr. Anesh Sivakumar or Mr. Rama Teja Yedda (the “Authorized Signatories”) be and are hereby severally authorised to represent the Company insolvency proceedings defend such insolvency proceedings (along with any appeals arising out of it) before any Court or Tribunal including the National Company Law Tribunal, High Court, Supreme Court or such other statutory authority (hereinafter referred to as the “Court”).


RESOLVED FURTHER THAT the said authorization shall include the authority:

1. To appear and represent the Company and to file applications/ petitions/ replies/ objections/ appeals/ writ petitions and such other affidavits, deeds, declarations, undertakings, documents, papers and vakalathnamas from time to time;
2. To file and sign pleadings and/or applications/ affidavits or execute any document and to initiate any incidental proceedings thereto or other proceedings arising therefrom, including filing appeal/revisions/reviews, etc..
3. To obtain order/approval from the Court or other competent authority and parties;
4. Execute, sign and submit the necessary forms, returns, deeds, documents, applications, petitions, affidavits, undertakings, declarations, certificates as may be required to be filed with the Court;
5. Lead oral and documentary evidence or evidence by way of affidavit, for and on behalf of the Company;
6. To engage advocates or consultants or insolvency resolution professionals, both interim and otherwise and, to declare and file all pleadings, reports and sign vakalathnamas and issue public advertisements and notices;
7. To vote at the committee of creditors, take decisions, make representations, invite resolutions, approve resolution plans, instruct the resolution professional, consultants, counsels, lawyers and other professionals;
8. To compromise and/or settle civil suit and criminal complaints and to sign compromised documents to be submitted in the Court or to enter into compromise, to withdraw money deposited in the Court and to pass receipt for the same in the name and for and on behalf of the Company and to withdraw the proceedings from the Court, and
9. To file caveats on behalf of the Company.
10. To do all acts and things as may be considered necessary and expedient in relation thereto.

RESOLVED FURTHER THAT a Power of Attorney if required, be issued by any of the Authorized Signatories in favour of any representative of the Company to do the above- mentioned acts on behalf of the Company duly executed by any one of the Director of the Company.

KKR India Asset Finance Limited

Corporate Office: 2nd Floor, Pramal Tower, Peninsula Corporate Park, Ganpatrao Kadam Road, Lower Parel (W), Mumbai 400 013, India
 Registered Office: Regus Citi Centre, Level 6, 10/ 11 Dr. Radhakrishna Salai, Chennai, Tamil Nadu - 600 004, India
 T +91.22.4355.1300 F +91.22.4355.1301 E kkrindia@kkcr.com W www.kkr.com
 CIN: U65191TN1989PLC017616



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KKR Capital. Credit. Risk.

RESOLVED FURTHER THAT all the acts, deeds and things done by Authorized Signatory by virtue of this resolution shall be binding on the Company.

RESOLVED FURTHER THAT copy of this resolution certified as true and signed by any Director(s) of the Company or the Company Secretary, be submitted to all authorities as may be required and they be requested to act thereon unless this resolution is amended or rescinded by the Company.”

Certified True Copy
For KKR India Asset Finance Limited

YESHWANT Digitally signed by
RAMCHANDR YESHWANT
A NADKARNI RAMCHANDRA
NADKARNI
Date: 2021.08.27
15:58:19 +05'30'

Yeshwant Nadkarni
Executive Director and Chief Executive Officer
DIN: 02782082
Place: Mumbai
Date: August 27, 2021



KKR India Asset Finance Limited

Corporate Office: 2nd Floor, Piramal Tower, Peninsula Corporate Park, Ganpatrao Kadam Road,
Lower Parel (W), Mumbai 400 013, India
Registered Office: Regus Citi Centre, Level 6, 10/ 11 Dr. Radhakrishna Salai, Chennai,
Tamil Nadu - 600 004, India
T +91 22 4355 1300 F +91 22 4355 1301 E kkrindia@kkcr.com W www.kkr.com
CIN: U65191TN1989PLC017616

TRUE

17. A careful examination of the above Resolution shows that the C.P. was supported by the valid Resolution of Board of Directors of the Petitioner,

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wherein and where under it was resolved to approve for initiating the CIRP proceedings against the Corporate Debtor, and to authorise certain officers of the Petitioner Company to represent the Company in the said process. Hence, this issue is held against the Respondent.

18. The Deed of Corporate Guarantee (Annexure 10) was executed by the Respondent in favour of M/s. IL&FS Trust Company Limited, (Security Trustee). Whereas, M/s. Vistra ITC (India) Limited issued the demand under the Deed of Corporate Guarantee, vide Annexure 34 dated 20.08.2021. The Petitioner produced Annexure 42, wherein and where under the Registrar of Companies, Mumbai vide Certificate dated 25.08.2016 certified that the name of M/s. IL&FS Trust Company Limited has been changed to M/s. Vistra ITC (India) Limited. The Petitioner has also produced an affidavit of Mr. Palash Singh, the Authorised Representative of M/s. Vistra ITC (India) Limited confirming its change of name and also that M/s. Vistra ITC (India) Limited is not a part of the larger M/s. IL&FS Trust Company Limited Group and is not subject to the on-going M/s. IL&FS insolvency proceedings or in other proceedings in relation to M/s. IL&FS Group. In view of this, the contention with regard to the authority of M/s. Vistra ITC (India) Limited to act as a Security Trustee and its status with regard to the Company undergoing CIRP, are rejected.
19. Admittedly, Annexure-10 the Deed of Corporate Guarantee was executed by the Respondent/Corporate Debtor in favour of M/s. IL&FS Trust Company Limited, now known as M/s. Vistra ITC (India) Limited. It is also clear from the said Deed of Corporate Guarantee that M/s. IL&FS Trust Company Limited has been appointed as the Security Trustee to act for and on behalf of the Lender under the Security Trustee Agreement. The conjoint reading of the Loan Agreement dated 07.05.2016, Deed of Corporate Guarantee dated 07.05.2016 and the Security Trustee Agreement also dated 07.05.2016 clearly shows that the Petitioner is empowered and entitled to file the instant C.P., independently or jointly with the Security Trustee, in whose favour the Respondent/Corporate Debtor executed the Deed of Corporate Guarantee. Further, since the Guarantee was executed by the Corporate Debtor for

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securing loan facility by SDPL, the Petitioner is the Financial Creditor to the Respondent. Hence, this issue held against the Respondent.

20. As rightly contended by the learned Senior Counsel appearing for the Petitioner the liability of the Guarantor is co-extensive with that of the Principal Borrower and the Financial Creditor can initiate CIRP against the Guarantor even without initiating CIRP against the Principal Borrower. None of the decisions relied on by the Respondent expressed any different view. Hence, this issue is held against the Respondent.

21. The Hon'ble Supreme Court of India in *M/s. Innoventive Industries Ltd. vs. ICICI Bank & Anr. in Civil Appeal Nos.8337-8338 of 2017* observed as under:

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with

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the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

22. As per the above enunciation of law by the Hon'ble Apex Court, in an Application under Section 7 of the IBC, 2016, what is required to be seen by this Adjudicating Authority in order to accept or reject the Application is whether the C.P. is filed within the period of limitation and whether the debt and default are proved.
23. It is the settled principle of law that solvency or insolvency of a Corporate Debtor has no relevancy while considering for initiation of CIRP against the Corporate Debtor. If the debt and default are proved, CIRP can be initiated.
24. The various documents placed on record by the Petitioner and the notice of invocation of Corporate Guarantee by the Security Trustee clearly establishes the debt and default thereon. Therefore, the other issues are also held against the Respondent.
25. After the orders in the C.P. were reserved, one Mr. Pratik Mantri sought to intervene in the C.P. by filing an I.A. As the same was not numbered, and listed for hearing, he filed W.P. No. 3658/2022 before the Hon'ble High Court of Karnataka at Bengaluru. The said W.P was disposed of by order dated 03.03.2022 by observing that 'since final arguments were already completed, it may not be appropriate to direct the NCLT to consider the Intervener Application. However, it is for the NCLT to consider the Application in accordance with law'. It is stated that Mr. Pratik Mantri having not satisfied with the said order preferred an appeal bearing W.A No. 276/2022 before the

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Hon'ble High Court of Karnataka at Bengaluru, which was disposed of by order dated 25.03.2022 with the observation that "*in case any intervenor application is pending before the NCLT, it will be at the discretion of the NCLT to consider and decide the same before it may proceed to admit the case*". Thereafter, on making a mention, the Intervening Application filed by the said Mr. Pratik Mantri, was listed for hearing on 19.04.2022. After hearing the learned Senior Counsel appearing for the Intervening Applicant and the learned Counsel appearing for the Petitioner and the Respondent, orders were reserved in the said I.A also. It is the case of the Intervening Applicant that he is a Stakeholder of substantial interest in the Corporate Debtor Company and was also a Nominee Director of the same and there were differences among the Members of the Board of the Corporate Debtor Company and hence, in the interest of the Corporate Debtor Company, he may be permitted to intervene in the C.P. to place certain facts before the Adjudicating Authority. It is the settled principle of law that under the scheme of IBC, 2016, there is no place to any third party in an Application filed U/s.7 of the IBC, 2016, other than the Financial Creditor and the Corporate Debtor. If any of the Shareholder or Director have any grievance with regard to any of the affairs of either Financial Creditor or the Corporate Debtor, can seek redressal of the same under the appropriate provisions of the Companies Act, 2013, but they cannot seek intervention or impleadment in the C.P. filed U/s. 7 the IBC, 2016. Accordingly, the said I.A No.158 of 2022 filed for seeking intervention is rejected as not maintainable.

26. Section 7(5)(a) of the Code is as follows:-

"5) Where the Adjudicating Authority is satisfied that-

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

27. In the present case, the debt and default are evidenced by various documents furnished by the Petitioner. The Respondent not placed any document contradicting the said fact.

— Sd —

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28. The other issue for consideration is whether the present application is filed within limitation. The date of default of the debt is well within the 3 years period from the date of filing of the C.P. Therefore, the Petition has been filed within the period of limitation.
29. None of the decisions on which the learned Counsel for the Respondent placed reliance, support the Respondent's contentions.
30. The application filed in the prescribed Form No.1 is found to be complete.
31. In the circumstances and for the aforesaid reasons and since the C.P. is complete, the same is **admitted** in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:
- (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in
 - (b) any court of law, tribunal, arbitration panel or other authority;
 - (c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (d) 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;
 - (e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
 - (f) It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
 - (g) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
 - (h) The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31

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or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

32. In Part-III of Form No.1, Mr. Ayyagari Viswanadha Sarma bearing Registration No. IBBI/IPA-001/IP/P-01524/2018-19/12396 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 30.08.2021 has been filed along with the C.P are found at Page Nos.24-26 of the Petition. The Law Research Associate of this Tribunal has checked the credentials of Mr. Ayyagari Viswanadha Sarma and there is nothing adverse against him. In view of the above, we appoint Mr. Ayyagari Viswanadha Sarma bearing Registration No. IBBI/IPA-001/IP/P-01524/2018-19/12396, having registered address at Building 03, Flat-301, My Home Vihanga, Gopanpally Village, Serlingampally Mandal, Hyderabad - 500107, email- ayya.vish@gamil.com, as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.
33. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.
34. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

— Sd —

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

— Sd —

(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)