

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
MUMBAI
Court-III**

ORDER SHEET OF THE HEARING ON 24th APRIL, 2024, 10:30 A.M.

**I.A. 1799/2023 (60(5))
C.P.(IB)-910/MB/2022**

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao
2. Hon'ble Member (Technical), Ms. Madhu Sinha**

IN THE MATTER OF	Assets Care & Reconstruction Enterprise Limited. V/s. Rajguru Developers Private Limited
Under Section	U/s 7 of (IBC)

For Petitioner (s) : Mr. Nimay Dave, Adv.

For Respondent (s) :

ORDER

C.P.(IB)-910/MB/2022

Mr. Nimay Dave counsel appearing for the Financial Creditor is present. None appeared for Corporate Debtor. Counsel appearing for Financial Creditor reported no objection for pronouncement of the order without any fresh hearing even though the matter is de-reserved from the RFO list.

Accordingly, the order is pronounced in the open Court. In the result, CP is allowed ordering the initiation of CIRP against the Corporate Debtor.

I.A. 1799/2023 (60(5))

IA is **dismissed**.

**Sd/-
Ms. Madhu Sinha
Member (Technical)**

**Sd/-
H.V. Subba Rao
Member (Judicial)**

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

C.P. (I.B.) No. 910 of 2022

And

I.A (I.B.C)1799 (MB) 2023

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

In the matter of

Asset Care Reconstruction Enterprise Ltd.

2nd Floor, 13, Mohan Dev Building,
Tolstoy Marg, New Delhi 110001

... Petitioner/Financial Creditor

V/s

Rajguru Developers Private Limited

139, Seksaria Chambers, 2nd Floor,
Nagindas Master Road, Fort
Mumbai 400023

... Respondent/Corporate Debtor

Order Dated: 24.04.2024

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)

Appearances (via Physical hearing):

For the Petitioner : Mr. Nimay Dave a/w Sugyata Choudhary,
Hetal Jobanputra i/b Dhaval Vussonji & Associates

For the Corporate Debtor : Mr. Viraj Parikh a/w Rohaan

Per: Smt. Madhu Sinha, Member (Technical)

ORDER

1. The Petitioners viz. **'Asset Care Reconstruction Enterprise Ltd.'** (**hereinafter as Petitioner**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "**Financial Creditor**" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against **'Rajguru Developers Private Limited'** (hereinafter as **'Corporate Debtor'**). This Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the **'Code'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of **Rs.5,17,70,59,321/-**.
2. List of documents attached to this Petition in order to prove the existence of Financial Debt, the amount and date of default are as follows:
 - a. A copy of the Term sheet dated 1st March 2018
 - b. A copy of the Debenture Trust Deed dated 17th March 2018
 - c. A copy of the Escrow Agreement dated 17th March 2018
 - d. A copy of the First Supplemental Debenture Trust Deed
 - e. A copy of the Second Supplemental Debenture Trust Deed dated 19th July 2018
 - f. A copy of the letter dated 4th January 2019 addressed by Altico Capital recording the confirmation given by Corporate Debtor.
 - g. A copy of the Termination Letter dated 16th March 2020.

- h. A copy of the Joint Development Agreement dated 27th March 2018 in respect of the property at Lower Parel (Surya Landmark JDA).
- i. A copy of the record of default provided by the Information Utility.
- j. Copies of the bankers' book certificates from HDFC Bank

Brief Facts

- 3. It is submitted that on 1st March 2018, the Corporate Debtor along with its other group entities executed a Term Sheet with Altico Capital India Limited ("**Altico**") for the purpose of financing various projects of the said group including the Project '*Raj Altezza*' situated at Mulund West, Mumbai. It was mutually agreed between the Corporate Debtor and Altico that Vistra ITCL (India) Limited ("**Vistra ITCL**") would be appointed as their Trustee.
- 4. The Debenture Trust Deed dated 17.03.2018 was executed by and between Corporate Debtor as "**Issuer**", (i) Rajesh Estates and Nirman Private Limited (**RENPL**), (ii) Rajesh Cityspaces Pvt. Ltd. (**RCPL**), and (iii) Rajesh Buildspaces Private Limited (**RBPL**) as Security Providers and Vistra ITCL (INDIA) Limited ("**Vistra ITCL**") as Debenture Trustee whereby Debentures of Rs.1 Crore each aggregating to Rs. 370 crores were to be issued through private placement offer letters (**Debenture Trust Deed**).
- 5. Thereafter, several documents were executed in pursuance to the said Debenture Trust Deed :-
 - a) A Supplemental Trust Deed dated 19th March 2018 was entered into by and between the Respondent, Vistra ITCL for recording additional representations and covenants regarding the debentures.
 - b) An Escrow Agreement dated 17th March 2018 was executed by the Respondent as Issuer, Vistra ITCL as Trustee and HDFC Bank Limited as the Escrow Agent.

- c) A Pledge Agreement dated 19th March 2018 was executed by and between group companies of the Respondent, and Vistra ITCL (Debenture Trustee) and the Respondent.
 - d) Corporate Guarantee dated 19th March 2018 was executed by the Respondent, and Personal Guarantees by promoters of the Respondent in favour of Vistra ITCL (India) Limited
 - e) Indenture of Mortgage dated 19th March 2018 executed by and between Surya Landmark Developers Private Limited as Mortgagors in favour of Debenture Trustee.
 - f) Intercreditor Agreement dated 30th May 2018 was executed in respect of 5 Debenture Trust Deeds (involving the Respondent and other associate companies) wherein, each Issuer had appointed Vistra ITCL (India) Limited as the Debenture Trustee for the purpose of co-ordinating protection and enforcement of the security interest created or to be created under the Debenture Trust.
 - g) Second Supplemental Trust Deed dated 19th July 2018 was executed to create additional collateral to secure the obligations contained in the Debenture Trust Deed. Under the Second Supplemental Deed, Parties agreed to create additional collateral to secure the obligation by way of mortgage.
 - h) Corporate Debtor vide letter dated 19.03.2018, undertakes to repay Vistra ITCL the amount of Rs. 370 crores along with the interest at the rate of 15.35% p.a.
6. It is further submitted that from 21st March 2018 till 26th June 2019, Altico disbursed a total amount of Rs. 297,21,82,000/- to the Respondent under the Debenture Trust Deed dated 19th March 2018. However, the Corporate Debtor has defaulted in making payments towards the interest as agreed under the Debenture Trust Deed.
7. Therefore, the Date of Default, of the Loan Facility is 30th September 2019, and the Corporate Debtor was declared a Non-Performing Asset on 31st December 2019. The principal amount of Rs. 297.21 crores along with the

applicable interest rate brings the total amount in default as on 31st March 2022 is Rs. 517,70,59,321/-.

8. It is submitted that the Corporate Debtor vide letter dated 4th January 2019 annexed as '*Annexure A-15*' to the Company Petition, admitted its debt to Altico and acknowledged the outstanding principal amount under the Debenture Trust Deed to be Rs. 270,79,00,000/- and the accrued interest thereon due to Altico to be an additional Rs. 17,40,26,672/-
9. Further, as per clause 9.1 of the Debenture Trust Deed, the failure of the Respondent to make agreed payments on any due date would trigger an Event of Default. As a consequence the debenture trustee become entitled to declare the debentures due for redemption, and that such redemption amount and accrued interest would become immediately due and payable.
10. It is submitted that Respondent defaulted on payment of the accrued interest on 30th September 2019, the date of default. On 7th November 2019 and 11th November 2019, Altico addressed a Notice of payment/Default to the Respondent and promoter/director/guarantor/pledgor/mortgagor/security provider respectively, calling upon to make payment of the accrued interest of Rs. 16,61,23,147/- along with default interest, failing which Altico reserved its right to initiate CIRP proceedings against the Respondent.
11. On 16th March 2020, Corporate Debtor and its group companies issued a letter to Vistra ITCL, Atico and its shareholders seeking to terminate all the transaction documents under Debenture Trust Deed and other credit facilities in other Rajesh group entities and claiming a purported amount of Rs.4260 Crores approximately towards damages from the notices. However, Altico denied that the Debenture Trust Deed and all other financial documents thereunder are terminated and denied all the allegations contained therein in toto.
12. On 20th March 2020, Altico through its advocates, P & A Law offices issued an email as a response to the aforesaid notice stating that there is no

provision under Transaction Documents for the Borrowers/Security providers/ Obligor to unilaterally terminate the Transaction Documents and further requested them to withdraw the notice dated 16.03.2020.

13. On 04th March 2021, Altico and the Financial Creditor entered into an Assignment Agreement wherein Altico has assigned the creditor facilities extended by Altico to Corporate Debtor and its associates companies under DTD in favour of the Financial Creditor/Petitioner.
14. Thereafter, on 31st May 2021 the Petitioner addressed a facility acceleration Notice to Corporate Debtor and the Corporate Guarantor and Personal Guarantors and Mortgagors of the Corporate Debtor, and Trustee calling upon them to pay outstanding Rs. 4,49,37,84,195/-.
15. On 2nd June 2021 the Financial Creditor issued a guarantee Invocation notice and demanded certificate under Debenture Trust Deed to the Corporate and Personal Guarantors of the Corporate Debtor calling upon the Guarantors to pay an amount of Rs. 4,49,37,84,195/-.
16. The Financial Creditor issued a demand letter dated 09th August 2021 to the Security Providers, the Issuer, Corporate Guarantors and Personal Guarantors in respect of the undertaking to pay provided by the Security Providers in terms of Debenture Trust Deed, Supplemental Agreement and Second Supplemental Agreement demanding the payment of Rs. 4,49,37,84,195/-. Hence this Petition.

Reply of the Respondent

17. It is submitted that Application is not maintainable as the transaction of the Respondents was with ALTICO Capital India Limited. The assignment of ALTICO Capital India Limited in favour of the Applicant has not assigned the Obligation to honor any Claim. The Respondents therefore submit that ALTICO is required as necessary party to the present application.

18. Altico Capital (India) Limited (“**Altico Capital**”) were previously known as Clear Water Capital. After induction of new shareholders, it was renamed as Altico Capital. The current prominent shareholders are Clear Water Capital Partners, Varde Partners and Abu Dhabi Investment Council (Hereinafter Altico Capital, Clearwater Partners and the Council are together referred to as "**Altico**").
19. Vistra ITCL (India) Limited, is a company primarily engaged in providing trusteeship services in respect of debts raised by the companies by issue of debt instruments within the meaning of The Companies (Issuance of Shares and Debentures) Rules, 2014.
20. Altico approached Rajesh Group and was willing to partner with them. After thorough due diligence, Altico partnered with Rajesh Group by providing financial assistance to RSSPL, forming part of the Rajesh Group.
21. It is further submitted that, Altico gave favourable terms and conditions for financing the projects, including but not limited to investing an aggregate INR 1135 Crores, out of which INR 100 crores will be lent for general corporate purpose and INR 114 crores for prefunded interest. Thereafter, Rajesh Gupta entered into a transaction with Altico Capital.
22. It is submitted that Altico has breached the transaction documents. As per the Debenture Trust Deeds, Altico was obligated to pay the Subscription Amount to Rajesh Group within 5 days from the entity of Rajesh Group making a Draw Down request. Despite Rajesh Group entity's drawn down requests made through their emails dated June 14, 2019, September 30 2019 and December 2, 2019 ("**Drawdown Emails**"). Altico failed and neglected to honor their financial obligation under the Transaction Documents. It is stated that Altico did not care to acknowledge those E-mails nor reply to the same. This have resulted in an adverse impact on Rajesh Group, its entities and to the Projects.

23. It is further submitted that Rajesh Group representatives were shocked when they were informed for the first time by Altico, that they were legally prohibited from honouring their obligations under the Transaction Documents on account of prohibition under the Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions 2015 ("RBI Circular") vide an email dated August 16, 2018. As consequence, the Projects suffered depreciation in their value.
24. It is submitted that in order to mitigate the losses, from August 2018 Rajesh Group were forced to issue NCD's worth INR 18 crores to IREP, which were originally part of Series 1, which were to be utilized towards general corporate purpose ("GCP Amount"). However, to maintain the group credential and credit score, Rajesh Group approached Avendus Capital ("Avendus Capital") for refinancing part of Transaction. One of the condition precedents to the transaction was to obtain a no objection certificate from Altico Capital. However, in spite of repeated request Altico Capital failed to provide the NOC. Due to delay providing NOC, Avendus did not consummate the transaction with Rajesh Group. Thus, all the attempts of Rajesh Group to rope in a new financial partner were strategically resisted by Altico.
25. It is further submitted that Altico's malafide and in pursuit of their oblique motives caused Rajesh Group to issue and allot the entire Series 2 NCDs which was to be utilized to meet finance required to complete the construction of the Project.
26. The sole aim and intention of Altico was to gain control and charge over valuable assets of Rajesh Group and their interest is serviced in a timely manner which would ensure that Altico's investors never questioned their decision of investing in Rajesh Group. Therefore, Altico's malicious intent resulted in financial and reputational loss to Rajesh Group entities.
27. It is further submitted that Altico on one hand was engaging with Rajesh Group to discuss further critical disbursement towards interest and other expense, however, on the other hand initiating legal proceedings by filing

various petitions before Hon'ble National Company Law Tribunal, Mumbai Bench ("NCLT") under the provisions of Insolvency & Bankruptcy Code 2016 ('the Code'). The sole aim and purpose of filing petitions before the NCLT was to exploit assets, which now has higher valuation, on which Altico has registered their exclusive charge.

28. It is submitted that Altico is registered Non- Banking Financial Company and regulated by various circulars issued by the Reserve Bank of India ("the RBI"). The RBI circular, directive 24, clearly sets out the prohibition of having exposure in a particular entity more than what is prescribed. During the year 2017, books of accounts of Altico recorded aggregate lending of about INR 2,866 Crores, which drastically increased to INR 5,645 Crores in year March 2018. During similar period. Altico was also soliciting investments from various financial investors and in order to procure these investments it was necessary for Altico to project lucrative valuation by inflating their balance sheets. In its pursuit to inflate its balance sheet Altico induced Rajesh Group to enter into the Transaction Documents to the tune of INR 1,135 Crores. However, Altico had no intention from inception to honor their financial obligation which is apparent from their conduct post execution of the Transaction Documents. Therefore, it is abundantly clear that Altico was well aware of the restrictions under the RBI Circular, however with an aim and intent of soliciting investments from potential investors and to earn revenue by charging fees on such higher sanction limit in the year end, they executed the Transaction with Rajesh Group.
29. The RBI Circular is prior to the execution of the Principal Agreement and the Transaction Documents. Had Rajesh Group been aware of Altico's dishonest intentions, then they would not have entered into the Transaction with Altico. Altico also fraudulently and dishonestly induced Rajesh Group to execute security documents in their favour under the pretext that Altico shall honour their obligations under the Transaction Documents. The entire Transaction and execution of the Transaction Documents is vitiated by fraud and deceit on the part of Altico.

30. It is submitted that the assignment by Altico Capital India Limited is on, "on an as is where is, as is, what is and without recourse basis". In spite of the fact that the assignee under the Assignment Agreement with Altico Capital India Limited that is the Petitioner herein was well aware that Altico Capital India limited has not disbursed the entire amount of INR 1,135 Crores, has taken an assignment from the said Altico Capital India Limited as if the said Altico Capital India Limited had disbursed the entire loan amount.
31. The collective of loan assets sought to be assigned by Altico Capital India Limited to the Petitioner herein is INR 1,135 Crores. Admittedly Altico Capital India Limited has not disbursed 1,135 Crores to Rajesh Group. To that extent even the deed of assignment is vitiated by fraud and misrepresentation and no rights whatsoever accrue in favour of the Petitioners herein under such assignment.
32. It is submitted that the Applicant / Financial Creditor has failed to disburse the loan amounts. The Applicant even failed to honor its commitments from the ISRA account. Though there is existence of debt, there cannot be default attributable to this Respondent. Hence the Petition deserves to be dismissed.

Findings

33. We have heard the Ld. Counsels and perused the records with their able assistance.
34. It is an undisputed fact that on 1st March 2018, the Corporate Debtor along with its other group entities entered into a Term Sheet with Altico Capital India Limited ("**Altico**") for the purpose of financing various projects of the Rajesh group including the Project '*Raj Altezza*' situated at Mulund West, Mumbai.
35. It is submitted that it was mutually agreed between the Corporate Debtor and Altico that Vistra ITCL (India) Limited ("**Vistra ITCL**") would be appointed as their Trustee. Thereafter, the Debenture Trust Deed dated

17.03.2018 was executed by and between Corporate Debtor as "**Issuer**", (i) Rajesh Estates and Nirman Private Limited (**RENPL**), (ii) Rajesh Cityspaces Pvt. Ltd. (**RCPL**), and (iii) Rajesh Buildspaces Private Limited (**RBPL**) as Security Providers and Vistra ITCL (INDIA) Limited ("**Vistra ITCL**") as Debenture Trustee whereby Debentures of Rs.1 Crore each aggregating to Rs. 370 crores were issued through private placement offer letters.

36. From 21st March 2018 till 26th June 2019, Altico has disbursed a total amount of Rs. 297,21,82,000/- to the Respondent under the Debenture Trust Deed dated 17th March 2018.

37. The contention of the Corporate Debtor in the Present Case is that a loan facility of Rs. 1135 crores was to be disbursed to the Respondent, whereas Altico/Applicant has only disbursed part of this amount. The Respondent alleged that Altico had no intention from inception to honor their financial obligation. Altico has fraudulently and dishonestly induced Rajesh Group to execute security documents in their favour under the pretext that Altico shall honour their obligations under the Transaction Documents. Consequently, the entire Transaction and execution of the Transaction Documents is vitiated by fraud and deceit on the part of Altico. In view of the above contention this Bench observes that under the Debenture Trust Deed, Altico/Applicant has the discretion to disburse or not to disburse the subscription amount upon receiving the drawdown request from the Corporate Debtor. Further, Rajesh Group entity's has drawn down requests made to Altico through their emails dated June 14, 2019, September 30 2019 and December 2, 2019 ("**Drawdown Emails**"). Therefore, the contention of the Respondent that the Altico/Applicant has fraudulently and dishonestly induces Rajesh Group to execute security does not stand. Clause 4.11.5(f) of the debenture trust deed sets out the following: -

"It is clarified that upon the inability or failure of any Debenture Holder to pay any amounts under Clause a.11.5(c) and (d), the Issuer shall not be entitled to forfeit the


Debentures or in other manner negatively alter or prejudice the rights of the Debenture Holders under the Transaction Documents.”

38. This Bench further observes that the Date of Default of the Loan Facility is 30th September 2019, and the Respondent was declared a Non-Performing Asset on 31st December 2019. The Respondent has admitted its debt to Altico vide letter dated 4th January 2019 annexed as ‘Annexure A-15’ to the Company Petition. By the said letter, Altico requested the Respondent to confirm the amount as is receivable from the Respondent. The Respondent acknowledged the outstanding principal amount under the Debenture Trust Deed to be Rs. 270,79,00,000/- and the accrued interest thereon due to Altico to be an additional Rs. 17,40,26,672/-.
39. In the Present case, amounts were disbursed to the Respondent by Altico being a principal amount of 297,21,82,000/- as follows : -

Disbursement Date	Amount disbursed (INR)
21st March 2018	255,00,00,000/-
21st March 2018	99,96,000/-
21st March 2018	3,99,88,000/-
5th June 2018	3,49,86,000/-
29th June 2018	7,29,30,0001-
30th March 2019	20,32,86,000/-
26th March 2019	6,09,96,000/-
Total Disbursement	297,21,82,000/-

40. Under the Debenture Trust Deed, interest accrued on the principal amount from the date of allotment, i.e. as on 30th September 2019, was unpaid which triggered an Event of Default. The Respondent vide letter dated letter dated 4th January 2019 annexed as ‘Annexure A-15’ to the Company Petition, has acknowledged that there exists an outstanding principal amount along with

interest accrued. The relevant extract of the letter dated 04.01.2019 is as under :



ALTICO
Financing India's Future

January 4, 2019
Rajguru Developers Private Limited
 139, Seksaria Chambers,
 2nd Floor, Nagindas Master Road,
 Fort, Mumbai 400023

cc: Price Waterhouse Chartered Accountants LLP

Dear Sirs,

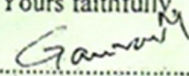
In connection with the audit of our books and records for the period ended December 31, 2018, we are writing to you requesting that you confirm the balance in favor of Altico Capital India Limited at December 31, 2018 as receivable from you.

Please confirm this on the attached copy of this letter by signing and returning it directly to our auditors, Price Waterhouse Chartered Accountants LLP to the following address:


Kind Attn: Mr. Sharad Vasant / Mr. Parag Bhavsar
Price Waterhouse Chartered Accountants LLP
 2nd floor, 252, Veer Savarkar Marg,
 Shivaji Park, Dadar,
 Mumbai – 400 028

This letter is not a request for payment and accordingly please do not enclose cheques or other payments with your confirmation.

We thank you in advance for your cooperation in complying with this request and apologise for any inconvenience caused.

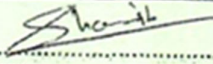

Yours faithfully,


 For Altico Capital India Limited
 (Authorised Signatory)



Confirmation as on December 31, 2018

Borrower	Facility	Outstanding Principal Amount	Accrued Interest/Other Amount Due	Securities Held/Collateral
Rajguru Developers Private Limited	NCD	270,79,00,000	17,40,26,672	

41. Under the Debenture Trust Deed, the failure of Respondent to make agreed payments on any due date would trigger an Event of Default.

“9.1 Events of Default

The occurrence of any of the events below shall constitute an Event of Default:

(a) Non-payment

Failure of the Issuer or any other Obligor or any Land Owner to make the payment of the Secured Obligations on any Due Date or otherwise, when due, of any amounts in relation to the Debentures or under any of the Transaction Documents in accordance with the term thereon the relevant due date at the place and in the currency in which it is expressed to be payable...

(d)...

(v) any Debenture Holder or any Affiliate or a Debenture Holder becomes entitled to declare a default under any other agreement or deed that is made between any Obligor or that Affiliate or Debenture Holder”

This bench further observes that the amounts advanced under the Draw Down Requests dated 29.03.2019 made by Rajguru Developers Private Limited (“**Issuer**”) to Altico Capital India Limited (“**Debenture Holder**”) were disbursed to the Respondent on demand. Allegation of fraud cannot be accepted as there is an admission that monies were advanced to the Respondent and non payment of the same has triggered the Event of Default as defined under the Debenture Trust Deed dated 17th March 2018.

42. The consequence of such default entitles the debenture trustee to declare that the debentures become due for redemption, and that such redemption amount and accrued interest would become immediately due and payable.

43. Further with respect to the contention of the Respondent that the present Petition is not maintainable since the transaction of the Respondents was with ALTICO Capital India Limited. The assignment of ALTICO Capital India Limited in favour of the Applicant has not assigned the Obligation to honor any Claim. This bench find it convenient to reproduce the relevant extract of Assignment Agreement dated 04.03.2021 annexed as “Annexure A-20” to the Company Petition which reveals that the said Agreement in para 2.1 (a) states that “Assignee shall also be entitled to get itself substituted in place of the Assignor in any pending recovery proceedings initiated by or against the Assignor, by following due process of law and the Assignor shall provide all necessary cooperation to the Assignee in this regard” and para 2.1 (b) is reproduced here under which states that Assignor hereby assigns in favour of Assignee “on an as is where is, as is, what is and without recourse basis all its rights, title and interest in the Financing Documents. All agreements, deeds.....” Therefore, the contention of the Respondent does not survive.

proceedings and take such other action as may be required for the purpose of recovery of the Loan Assets, in its own name and right and as an assignee, and not as a representative or agent of the Assignor and to exercise all other rights of the Assignor in relation thereto. On and from the Assignment Effective Date, the Assignee shall also be entitled to get itself substituted in place of the Assignor in any pending recovery

proceedings initiated by or against the Assignor, by following due process of law and the Assignor shall provide all necessary cooperation to the Assignee in this regard.

(b) With effect from the Assignment Effective Date, the Assignor hereby further assigns in favour of the Assignee “on an as is where is, as is what is and without recourse basis” all its rights, title and interest in the Financing Documents, all agreements, deeds and documents related thereto and all collateral and underlying Security Interests including pledge and/or guarantees issued, in respect of, the repayment of the Loan Assets, which Security Interest the Assignor is entitled to. On and from the Assignment Effective Date, the Assignee shall have the right to enforce the Financing Documents and / or such Security Interests including pledges and / or guarantees and appropriate the amounts realized therefrom towards the repayment of the Loan Assets and to exercise all other rights of the Assignor in relation to such Financing Documents and / or Security Interests, pledges and/or guarantees. The Assignor shall transfer/deliver or cause to be transferred / delivered, all such original documents, all deeds and/or writings

44. The date of default mentioned in Part IV of the Company Petition is 30th September 2019. The same is reflected in the Information Utility Report annexed as "Annexure A-30" with the Company petition.
45. On 7th November 2019, Altico addressed a Notice of payment/Default to the Respondent, calling upon the Respondent to arrange to make payment of the accrued unpaid interest amount due together with default interest. However, the Respondent failed to make the payment.
46. Therefore, upon consideration this bench is of the considered view that the "debt due" as well as "default" within the meaning of the Code are the facts admitted on record by the Corporate Debtor. Further the Petition was filed on 21.06.2022, therefore, is well within the period of limitation.
47. The Corporate Debtor is required to undergo the Corporate Insolvency Resolution Process as mandated by the IB Code, 2016 in view of the admission of "debt" and "default" committed by the Corporate Debtor. It is submitted that the Corporate Debtor has raised "super technical" objections to protract initiation of CIRP process.
48. This Bench further observes that the Applicant in the Present case has also filed an IA 1799 of 2023 against Rajguru Developer Private Ltd. **(Respondent No. 1) and** Slum Rehabilitation Authority **(Respondent No. 2)** praying for the following relief: -

this Hon'ble Tribunal be pleased to restrain the Respondents from in any manner revoking and./or terminating and/or cancelling the said LOIs, i.e. (A)Letter of Intent dated bearing No SRA/DYCE/90ITI MHL/LOI dated 28th October 2009 ("the First LOI") (ii) LOI bearing SRA/Eng/2521/T/PL/LOI dated July 22,2014 ("the Second LOI") ; (iii) LOI dated June 16,2017 bearing No. SRA/ ENG/2521/T/PL/LOI

("the Third LOI") ; and (iv) Letter of Intent dated 26m February 2020 bearing No. SRA/ENG/2521/T/PL/LOI (the said Final LOI) in respect of the Project Altezza issued in favour of Corporate Debtor;

49. It is submitted by the Applicant that under the DTD, the Corporate Debtor created security by way of a first ranking and pari passu charge mortgage over the entire property being land and building called by the name "Project Altezza" situated at Mulund West, Mumbai in favour of the Applicant ("Project Altezza"). Project Altezza is a Slum Rehabilitation Scheme Project undertaken by the Corporate Debtor which comprises of 5 land parcels. The Respondent No 2 has issued the said LOIs in favour of the Corporate Debtor containing terms and conditions for development of Project Altezza.
50. The Respondent No. 2 in September, 2022 issued a list of projects T/C/K-3/SRA/CO/OW/2022 for which the rents are in arrears, and in respect of which if the rents are not paid, suo moto action will be taken and the letters of intent (LOIs) will be terminated. The Project Altezza also part of the said list and the Respondent No. 1/Corporate Debtor have failed to pay the outstanding rents. Therefore, the contention of the Applicant is that Respondent No. 2/SRA will go ahead and take suo moto action in respect of the said Project and will terminate the LOI for Project Altezza.
51. It is submitted that the Project Altezza is the primary and most important asset of the Corporate Debtor. It is therefore necessary and in the interest of the creditors including Applicants that the said Project Altezza is protected and kept secured, pending the insolvency proceedings against the Corporate Debtor, for the benefit of the Applicant and other creditors of the Corporate Debtor.
52. The contention of the Applicant in IA 1799 of 2023 is that the entire object of the Insolvency & Bankruptcy Code, 2016 is to protect the interest of

Respondent No. 1 / Corporate Debtor and its Creditors. In case the Company Petition filed by the Applicant is admitted by this Hon'ble Tribunal, an order of moratorium issued under Section 14 of Insolvency & Bankruptcy Code, 2016 would prevent the Respondents from taking any steps determinantal to the interests of Respondent No. 1 /Corporate Debtor and its Creditors.

53. In view of the above contention of the Corporate Debtor , this bench is of the view that Section 14(l)(d) of the Insolvency & Bankruptcy Code, 2016 makes it amply clear that even assuming without admitting that the Respondent No.1 has mere occupancy or possessory rights over the subject Property, the same cannot be taken away from the Respondent No.1 **during the pendency of the CIRP** under the Insolvency & Bankruptcy Code, 2016. In the present case, the CIRP of the Respondent No. 1 will be initiated vide this order. Therefore, the prayer *to restrain the Respondents from in any manner revoking and./or terminating and/or cancelling the said LOIs*, before initiation of CIRP cannot be entertained and is to be prayed before the appropriate forum. Failure to pay the outstanding rents by Respondent No. 1 in IA 1799 of 2023 and any action thereupon by the Respondent No. 2 cannot be determined in this forum. The intention and purpose of IBC is revival of Corporate Debtor and not recovery proceedings. Therefore, as per the considered view of this Bench the I.A. 1799 of 2022 is dismissed and disposed of.
54. The Petitioner have also suggested the name of proposed Interim Resolution Professional in Part-III of the Petition along with his consent letter in Form-2. However, the authorization for assignment under Form – B has got expired on 25.10.2022. Therefore, this bench is appointing IRP from the authorized panel of IBBI.
55. It is therefore respectfully prayed that the above Petition C.P. No. (IB) 910 OF 2022 filed under section 7 of 1B Code, 2016 be **admitted**. In view of the findings in C.P. No. (IB) 910 OF 2022, I.A. 1799 of 2023 is **dismissed and disposed of**.

56. Consequently, the Company Petition is ordered to be admitted in the following terms:

ORDER

- a. The above Company Petition No. 910/IBC/MB/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Rajguru Developers Private Limited.**

- b. The IRP proposed by the Financial Creditor, **Shekhar Arvind Parkhi**, having registration No. IBBI/IPA- 001/IP-P-02494/2021-2022/13801, having address at A-303, Yashwin Society, Susgaon Road, Behind Mercedes Benz Show Room, Near Vigbyor School, Pune, Maharashtra- 411021, having email id – ip.shekharparkhi@gmail.com is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.

- d. That this Bench hereby declares moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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. 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.
- f. 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.
- g. 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, management of the Corporate Debtor will vest in the IRP/RP. The board of directors of the Corporate Debtor shall stand suspended. Members of the suspended board of directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P. No. 910/IBC/MB/2022 is **admitted and** I.A. 1799 of 2023 is **dismissed and disposed of**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-
Madhu Sinha
Member (Technical)
/Abhay/

SD/-
Subba Rao
Member (Judicial)