



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT – II)**

**Item No. 202**  
**IB-243/ND/2024**

**IN THE MATTER OF:**

**M/s Cosmic Infrasolutions Pvt. Ltd.**

Ground Floor, Cabin No.2, Khasra No-265,  
Opposite telephone exchange, Mundka  
New Delhi-110041

**... Applicant**

**Versus**

**Wel Intertrade Hotels Private Limited**

No.5, E Block, local Shopping Centre,  
Masjid Moth, GK-II, New Delhi-110042

**... Respondent**

**Under Section: 7 of IBC, 2016**

**Order delivered on 26.09.2024**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv. Harshal Kumar

**For the Respondent** : Adv. Apurv Rastogi

**Hearing Through: VC and Physical (Hybrid) Mode**

**ORAL ORDER**

As can be seen from Part-IV of the application preferred by M/s Cosmic Infrasolutions Pvt. Ltd, the corporate guarantor could commit default in repaying the amount of Rs. 4,65,16,985/-. Part-IV of the application reads thus:-



**PART-IV**

<b>PARTICULARS OF FINANCIAL DEBT</b>		
<b>1.</b>	<b>Total Amount of Debt Granted Date(S) Of Disbursement</b>	<b>Total Amount of Debt:Rs.4,65,16,985/-</b> comprising of due from Rs.2,95,00,000/- as the principal amount along with penal interest amounting to Rs. 1,70,16,985/- @ 12 % per month due from 01.01.2020.
<b>2.</b>	<b>Amount Claimed To Be In Default And The Date On Which The Default Occurred (Attach The Workings For Computation Of Amount And Days Of Default In Tabular Form)</b>	<b>Rs. 4,65,16,985/-</b> comprising of (a) Rs.2,95,00,000/-/- (Rupees Two Crore Ninety Five Lakh Only) being the principle outstanding. (b)Interest amounting to Rs. 1,70,16,985/- @ 12% per month due from 01.01.2020, calculated upto 09.03.2022, and thereon. <b>Date of Default:- 15.07.2022</b> <b><u>Details of Transaction of account of which debt fell due:</u></b> <b>1. The Present Petition is filed Under Section 7 of Insolvency and Bankruptcy Code, 2016 by M/s Cosmic Infra Solution Pvt. Ltd. (Financial Creditor) against M/s Wel Intertrade Hotels Private Limited. (Corporate Debtor/ Corporate Guarantor).</b> <b>2. On 20.12.2016 Borrower M/s Prudential Hotels Pvt. Ltd. (Under CIRP Vide order dated 01.10.2021) requested for granting of loan of Rs. 3,00,00,000/- (Rupees three crores only) for its daily operation needs from Financial Creditor and requested the loans to be disbursed preferably in the month of January, 2017. A Copy of letter dated 20.12.2016 is annexed herewith and marked as <b><u>ANNEXURE A5.</u></b></b>



3. M/s Prudential Hotels Pvt. Ltd. further agreed to pay the loan with interest rate mutually agreed between the M/s Prudential Hotels Pvt. Ltd. and Financial Creditor and agreed to pay the loan amount by the end of 2019.
4. That on 22.12.2016 Financial Creditor in response to the letter dated 20.12.2016 from the M/s Prudential Hotels Pvt. Ltd. considered the request of M/s Prudential Hotels Pvt. Ltd. but agreed to lend only Rs. 2,00,00,000/- (Rupees two crores only) during the last quarter of financial year 2016-2017 but not before the month of March, 2017. The rate of interest was fixed of 12% per annum. A Copy of letter dated 22.12.2016 is annexed herewith and marked as **ANNEXURE A6.**
5. That on 01.03.2017 Business Loan Agreement executed between the Financial Creditor and M/s Prudential Hotels Pvt. Ltd. requested the Financial Creditor to grant a loan of Rs.2,95,00,000/- (Rupees two Crores and ninety five lakhs only) repayable with interest @ 12% per annum payable at the time of maturity i.e.31.12.2019. A Copy of loan agreement dated 01.03.2017 is annexed herewith and marked as **ANNEXURE A7.**
6. The Loan was secured by the M/s Prudential Hotels Pvt. Ltd. by handing over post dated cheques for an amount of Rs.2,95,00,000/- and vide Corporate Guarantee provided by Wel Intertrade Private Limited the Corporate Debtor herein. M/s Prudential Hotels Pvt. Ltd. agreed to pay



		<p>the interest on the basis of amounts periodically released by the Financial Creditor to the M/s Prudential Hotels Pvt. Ltd. A Copy of Corporate Guarantee deed dated 05.10.2017 is annexed herewith and marked as <b><u>Annexure A8.</u></b></p>
		<p>7. That from 18/03/2017 to 14.03.2018 the amount of Rs. 2,95,00,000/- (Rupees Two Crores Ninety Five Lakhs only) was transferred to M/s Prudential Hotels Pvt. Ltd. via RTGS and on 01.04.2018 the M/s Prudential Hotels Pvt. Ltd. sought a balance confirmation from the Financial Creditor in writing that a sum of Rs.2,95,00,000/- (Rupees two crores and ninety five lakhs only) is payable to the Financial Creditor. A Copy of bank statement along with letter of confirmation dated 01.04.2018 is annexed herewith and marked as <b><u>ANNEXURE A9“Colly”.</u></b></p> <p>8. Thereafter on 03.01.2020 M/s Prudential Hotels Pvt. Ltd. informs its inability to pay the amount of Rs. 2,95,00,000/- (Rupees two crores and ninety five lakhs only) with interest to the Financial Creditor and requests the Financial Creditor not to present the post dated cheque and assured that they would pay the outstanding loan amount with interest. The request of the M/s Prudential Hotels Pvt. Ltd. was noted in the letter dated 03.01.2020. A Copy of letter dated</p>



		<p>03.01.2020 is annexed herewith and marked as <b><u>ANNEXURE A10.</u></b></p> <p>9. M/s Prudential Hotels Pvt. Ltd. thereafter requests the Financial Creditor to hand over the cheques which had been given as security cheques to Financial Creditor. Against the security cheques fresh cheques need to be issued from the Corporate Debtor.</p> <p>10. The Cheques were handed over to the M/s Prudential Hotels Pvt. Ltd. by the Financial Creditor and thereafter Financial Creditor shocked to know that the M/s Prudential Hotels Pvt. Ltd. with a malafide intension request to hand over the security cheque just to get free from Criminal Liability under Sec 138 of the Negotiable Instrument Act, if the cheque was presented for encashment and if it got dishonored.</p> <p>11. M/s Prudential Hotels Pvt. Ltd. has committed default in the repayment of loan of Rs. 2,95,00,000/- (Rupees Two Crores Ninety Five Lakhs only) along with interest @ 12% per annum. The default in the repayment of the loan is 01.01.2020 as the M/s Prudential Hotels Pvt. Ltd. failed to repay the above-mentioned loan along with interest at the time of maturity i.e. 31.12.2019.</p> <p>12. Thereafter Financial Creditor filed a section 7 application against M/s Prudential Hotels Pvt. Ltd. (Company Petition (IB) 969 of 2020. This Hon'ble Tribunal vide order dated 01.10.2021 initiated the Corporate Insolvency resolution Process against M/s Prudential Hotels Pvt. Ltd.</p>



		<p>13. Thereafter Financial Creditor issued a letter dated 09.03.2022 to the Corporate debtor herein to pay the outstanding amount plus interest due from M/s Prudential Hotels Pvt. Ltd. but no reply has been given to the Financial Creditor from the Corporate Debtor herein. A copy of letter dated 09.03.2022 is Annexed as <b><u>ANNEXURE A11.</u></b></p> <p>14. That thereafter the Financial Creditor vide notice dated 30.06.2022 invoked Corporate Guarantee in accordance with the Guarantee Deed dated 05.10.2017 for outstanding amount of Rs. plus Rs. 2,95,00,000/- (Rupees Two Crores Ninety Five Lakhs only) interest but no reply has been given to the Financial Creditor from the Corporate Debtor herein. A copy of letter dated 30.06.2022 is annexed as <b><u>ANNEXURE A12.</u></b></p>
		<p>15. The default therefore falls within the definition of default in terms of Section 3(12) of the I&amp;B Code. The claim of the Financial Creditor is not hit by the Insolvency and Bankruptcy Code Amendment Ordinance, 2020 dated 05.06.2020 issued by Government of India.</p> <p>16. Therefore, there is clear acknowledgement by the M/s Prudential Hotels Pvt. Ltd. Company of its default of more than Rs. 1,00,00000/- giving jurisdiction to this Hon'ble Adjudicating Authority to entertain a Petition under Section 7 of the I&amp;B Code, 2016.</p>



		<p>17. That as stated herein above, the sums mentioned in the previous paragraphs of this Application are definite and are payable by the Corporate Debtor Company to the Applicant Company.</p> <p>18. This Application is made bona fide, in the interest of justice, and the balance of convenience is also in favour of passing the orders prayed for herein.</p> <p style="text-align: center;"><b><u>PRAYER</u></b></p> <p>In the circumstances mentioned above, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to pass the following orders:</p> <ol style="list-style-type: none"><li>a. Admit the Instant Application/Petition.</li><li>b. Pass an order initiating Corporate Insolvency Resolution Process under the provisions of the Insolvency and Bankruptcy Code, 2016.</li><li>c. Pass an order/direction appointing a Resolution Professional or any other person to take charge over the Respondent Company assets, affairs, books of accounts and to conduct the affairs of the Respondent Company.</li></ol>
		<ol style="list-style-type: none"><li>d. Pass an order that pending the hearing and final disposal of Present Application/Petition an Interim Resolution Professional or any other person be appointed as Interim Resolution Professional to take over the possession of the assets, properties affairs, books of accounts and to conduct the affairs of company.</li><li>e. Pass an order awarding costs of the Present Application.</li><li>f. Further orders be made and directions be given as this Hon'ble Tribunal may deem fit and proper.</li></ol>



2. It is seen from the guarantee deed dated 05.10.2017 enclosed as Annexure-8 to the application that the respondent/corporate guarantor had extended irrevocable and unconditional guarantee to discharge the liability of principal borrower. The relevant excerpt of deed of guarantee reads thus:-

**NOW THESE PRESENTS WITNESSTH AS FOLLOWS:**

1. The Guarantor doth hereby irrevocable and unconditionally guarantee the due repayment to the Lender on demand without demur and/or contestation and notwithstanding any dispute between the Lender and the Borrower of all the amounts including the principal sum of Rs.2,95,00,000/- (Rupees Two Crore Ninety Five Five Lakh only) towards the said loan and indebtedness due and payable by the Borrower to the Lender under the said loan agreement or any part thereof for the time being outstanding under the said loaned amount and all interest whatsoever due owing and payable by the Borrower to the Lender thereunder, in the event of failure on the part of Borrower in repaying the same to the Lender or discharging its liability thereunder. The Guarantor shall pay to the Lender forthwith on first demand the said dues.

2. The liabilities of the Guarantor/Guarantors under this agreement shall be construed as joint and several and co-extensive with that of the obligations of Borrower and co-guarantor if any, and a separate action or actions may be brought against the Guarantor.

3. In the event of demand being raised by lender in respect of dues under the Agreement, the guarantor agrees to discharge it without any demur, reservation, contest, protest whatsoever within 7 days of such demand. This guarantee agreement is independent of nature and is without prejudice to such other securities that may have been created in favour of Lender in regard to Loan.

4. This Deed of guarantee shall be enforceable against the Guarantors notwithstanding any negotiable instrument or other securities referred to herein or to which it may extend or be applicable, at the time of proceedings being taken against the Guarantors and the obligations of Guarantor and the Rights of the Lender under this Deed will not be affected by any act, omission, matter or thing which would reduce, release or prejudice any such obligations under this Clause or any of the Lender's Rights (without limitations and whether or not known to it or the Lender) including:

- i. any time, waiver or consent granted to, or composition with, the Borrower(s) or other person;
- ii. the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Borrower(s) or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realize the full value of any security;
- iii. any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower(s) or any other person;
- iv. any amendment (however fundamental) or replacement of a Loan Documents or any other document or security;
- v. any unenforceability, illegality or invalidity of any obligation of any person under any Loan Documents or any other document or security; or
- vi. any insolvency or similar proceedings.

5. In the event the Borrower(s) becomes insolvent or the Borrower(s) makes any arrangement or composition with its creditors, the Lender may (notwithstanding any payment made to the Lender by the Guarantor or any other person of the whole or any part of the amount due to Lender) rank as creditor and prove against the assets of the Borrower(s) for the full amount of Lender's claims against the Borrower(s) and the Lender may receive and retain the whole of the payments to the exclusion of all the Guarantors rights in competition with Lender until Lender's claims are fully satisfied. Until all amounts which may be or become payable by the Borrower(s) under or in connection with the Loan



Documents have been irrevocably paid in full or unless the Lender otherwise directs, the Guarantor will not exercise any rights which he/she may have by reason of performance by him/her of his/hers obligations under the Loan Documents:

- i. to be indemnified by, or to receive any collateral from the Borrower(s);
- ii. to claim any contribution from any other guarantor of the Borrower(s) obligation under the Loan Documents; and/or
- iii. to take benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under the Loan Documents or of any other guarantee or security taken pursuant to, or in connection with, the Loan Documents by the Lender.

6. This Deed shall be enforceable against the Guarantor notwithstanding that any security or securities comprised in any instrument(s) executed or to be executed in favour of the Lender shall, at the time when the proceedings are taken against the Guarantor on this Guarantee, be outstanding or unrealized or lost. This Deed is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Lender.

7. The Lender's decision shall be final and binding on the Guarantor in respect of all matters concerning the aforesaid amounts and/or these presents. The Guarantors hereby authorise the Borrower herein to act as their agent to give acknowledgement of debt in respect of the dues under this guarantee from time to time. The Guarantors hereby declare that they are at all times bound by such acknowledgement of liability given by Borrower from time to time.

8. This guarantee shall not be affected by any change in the constitution of the Borrower or the Guarantor and shall not be determined or in any manner prejudiced by any absorption and amalgamation or re-constitution or alteration in the status or change in the Constitution of the Lender but shall ensure and be available for and by for absorbing or amalgamated or reconstituted or altered or changed authority or body.

9. This guarantee shall be in addition and not in substitution to any other guarantee for the Borrower signed by the Guarantor that the Lender may at any time hold.

10. In order to give effect to this guarantee, the Lender shall be entitled to act as if the Guarantor is the Principal debtor to the Lender for all payments and covenants hereby guaranteed. The Guarantee shall be a continuing one till such time Cosmic Infrasolutions Pvt. Ltd. may have any claim against the Borrower under this agreement and all the dues are discharged completely to the satisfaction of Cosmic Infrasolutions Pvt. Ltd.

11. This guarantee shall be enforceable against the Guarantor notwithstanding that the securities created/to be created by the Borrower or by the Guarantor or any other collateral securities the Lender might obtain/have obtained from the Guarantor or the Borrower or any negotiable or other securities referred to herein or to which it may extend or be applicable shall at the time of proceedings being taken against the Guarantor on this guarantee be outstanding or unrealised.

12. The demand hereunder in writing shall be deemed to have been duly given to the Guarantor by the Lender by sending the same by post/courier/email addressed to the Guarantor at the Guarantor's Registered Office hereunder written and shall be effectual notwithstanding any change thereof and notwithstanding notice thereof to the Lender, and such demand shall be deemed to have been received by the Guarantor 24 hours after the posting thereof.

13. The guarantee shall inure for the benefit of the Lender's successors and assigns, and shall be binding on the Guarantor, Guarantor's estate, effects and successors. The Guarantor specifically agrees and confirms that this Guarantee and all matters concerning the same or arising therefrom or relating thereto shall be construed in all respects by the Laws of India and shall be subject to the exclusive jurisdiction of the court at New Delhi only.

14. This guarantee is unconditional and irrevocable and shall remain so till such time Cosmic Infrasolutions Pvt. Ltd. discharge this guarantee by issuing a letter in this regard.

It is hereby expressly agreed between the parties that even if by any act of legislation and/or by any act of State and/or God if Borrower's debts under the said loan to the Lender are suspended or cancelled the Guarantor shall nevertheless be bound to pay to the Lender all the amounts demanded by the Lender from the Guarantor hereunder.

IN WITNESS WHEREOF this Guarantee Deed has been executed by the Guarantors at the place and on the date first above written.

M/s COSMIC INFRASOLUTIONS PVT. LTD.

Hitesh Jain  
Lender Authorized Signatory / Director

FOR PRUDENTIAL HOTELS PVT. LTD.

Shen  
Borrower Authorized Signatory

Wel Intertrade Pvt. Ltd.  
Anchana Talte  
Guarantor Authorized Signatory / Director



3. The Ld. Counsel appearing for the corporate guarantor has not disputed the liability of the corporate guarantor as also the default occurred in making the payment of the guaranteed amount. It is seen from order dated 13.09.2024, the corporate guarantor/respondent had taken adjournment to arrive at some settlement qua the defaulted amount. The order reads thus:-

*“Ld. Counsel appearing for the Corporate Debtor submitted that the management of Corporate Debtor has approached the Financial Creditor and is in the process of making the payment of defaulted amount. The Counsel for the Petitioner submitted that he is not aware about any development regarding settlement of defaulted amount and if payment of the amount of debt is made, he will withdraw the proceedings. The Creditor, either Operational or Financial, could be conscious of the fact that the present proceedings are not meant to recover the debt, but are instituted with the purpose and objective of ensuring that the Corporate Debtor is rescued and put back on its feet. Nevertheless, as prayed by the Ld. Counsel for the Corporate Debtor, the hearing is deferred to 26.09.2024 to place a report on the aforementioned settlement.”*

4. Today the only plea raised by the Ld. Counsel for the corporate guarantor is that when the principal borrower is already in CIRP, the amount of debt may be recovered from it. The proposition espoused by the Ld. Counsel for the CD has already been dealt with by Hon'ble Supreme Court in **Laxmi Pat Surana vs. Union of India** (Civil Appeal No. 2734 of 2020), wherein it could be ruled that the CIRP can continue simultaneously both qua corporate guarantor and principal borrower. The relevant excerpt of the Judgment reads thus:-

*“22. ....That action can still proceed against the guarantor being a corporate debtor, consequent to the default committed by the principal*



*borrower. There is no reason to limit the width of Section 7 of the Code despite law permitting initiation of CIRP against the corporate debtor, if and when default is committed by the principal borrower. For, the liability and obligation of the guarantor to pay the outstanding dues would get triggered coextensively.”*

5. Also in **Lalit Kumar Jain vs. Union of India** [(2021) 9 SCC 321], Hon'ble Supreme Court ruled that except in such cases where settlement is entered into between the creditor and the principal borrower, the discharge of part of liability of the principal borrower by operation of law, such as approval of resolution plan etc. would not absolve the guarantor from his liability. The relevant excerpt of the Judgment reads thus:-

*“125. In view of the above discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this Court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract.”*

6. In view of the aforementioned, we are left with no option but to admit the captioned application in terms of Section 7(5) of the IBC. Ordered accordingly. As a corollary, moratorium in terms of Section 14(1) (a), (b), (c) & (d), 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 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.

7. As proposed by the Applicant, this Bench appoints Mr. Mahesh Agarwal (Email ID: ip1387ma@gmail.com) as IRP having Registration No. IBBI/IPA-001/IP-P01995/2020-21/13087, subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. This Adjudicating Authority orders that Mr. Mahesh Aggarwal, is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The Court Officer will inform the IRP so appointed by all modes. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

8. The Applicant is directed to deposit Rs. 2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.



9. A copy of this Order shall be communicated to the Financial Creditor, the Corporate Debtor and the IRP mentioned above by the Court Officer/Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to the IBBI for their records.

**Sd/-**  
**(SUBRATA KUMAR DASH)**  
**MEMBER (T)**

**Sd/-**  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**

*Ashima/Ruchita*