

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

IA 797/MB/2023 IN CP (IB) No.839/MB/2022

[Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016]

IN THE MATTER OF:

Iskrupa Mall Management Company Private Limited

[CIN: U70100MH2005PTC151439]

Registered Office: Pantaloon Knowledge House, Shyam Nagar

Off Jogeshwari – Vikharoli Link Road, Jogeshwari (East)

Mumbai- 400060.

...Applicant/Corporate Debtor

V/s

Central Bank of India

[PAN NO.-AAACC2498P]

Registered Office: Central Bank of India Corporate Finance Branch

1st Floor, MMO Building, M.G. Road, Fort

Mumbai - 400001.

...Respondent/Financial Creditor

Pronounced: 30.08.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

Applicant: Sr. Adv. Gaurav Joshi, Adv. Tanisha Chaudhary a/w Petruskha
Dasgupta, Adv. Krishna Baruah, Adv. Harsh Moorjani
a/w. Adv. Ankita Yadav i/b Link Legal.

Respondent: Adv. Amir Arsiwala a/w Adv. Shradha Patil i/b India Law LLP.

ORDER

IA 797/MB/2023

[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND

1.1 This Interlocutory Application bearing IA (IB) No. 797/MB/2023 has been filed by Iskrupa Mall Management Company Private Limited, the Applicant/Corporate Debtor, who is the Principal Borrower of loan facility provided by Central Bank of India, the Respondent/Financial Creditor, on 28.02.2023, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC). This IA challenges maintainability of CP(IB) No. 839/MB/2022 (Main Application), filed under Section 7 of the IBC, on the ground that it is barred under Section 10A of the IBC and that there are parallel proceedings arising out of the same debt.

1.2 The alleged claim amount in the Main Application is Rs.72,32,17,258.14/- (Seventy-Two Crores Thirty-Two Lakhs Seventeen Thousand Two Hundred and Fifty-Eight Rupees and Fourteen Paise) as on 29.05.2022, along with interest and other charges and the date of default is stated as 31.03.2022 under the One-Time Restructuring (OTR) granted by the Respondent/Financial Creditor, as shown in Part IV of the Main Application.

1.3 The Applicant/Corporate Debtor approached the Respondent/Financial Creditor and requested financial facilities. Consequently, the Respondent/



Financial Creditor granted credit facility to the Applicant/Corporate Debtor by Sanction Letter dated 19.09.2015. Pursuant to this, the Applicant/Corporate Debtor entered into Term Loan Agreement with the Respondent/Financial Creditor on 24.09.2015. Thereafter, a default was committed by the Applicant/Corporate Debtor on 30.09.2020 and it requested the Respondent/Financial Creditor for the OTR.

1.4 The OTR was approved on 19.06.2021, pursuant to which the Applicant/Corporate Debtor entered into a Restructuring Agreement with the Respondent/Financial Creditor on 21.06.2021. The Respondent/Financial Creditor claimed that the Applicant/Corporate Debtor failed to honour its obligation to repay the principal and interest which fell due on 31.03.2022. Subsequently, demand notice dated 04.05.2022 was sent by the Respondent/Financial Creditor to the Applicant/Corporate Debtor but no payments were made. The Applicant/Corporate Debtor replied to the demand notice on 07.06.2022 seeking time to repay the dues. Thereafter, the Respondent/Financial Creditor filed the Main Application before this Tribunal for initiating Corporate Insolvency Resolution Process (CIRP) in respect of the Applicant/Principal Borrower. The Main Application which was pending before Bench III of this Tribunal got transferred to this Bench on 19.01.2024 in TA(IBC)-55(PB)/2023, as per orders of the Hon'ble President, NCLT. The Main CP and this IA were first listed before us on 16.02.2024.




1.5 While so, the Corporate Guarantors of the Applicant/Corporate Debtor, viz., Future Corporate Resources Private Limited and Ojas Tradelease & Mall Management Private Limited approached the Hon'ble High Court of Bombay in Writ Petitions (L) Nos. 25350/2023 & 27363/2023 and obtained a common order dated 15.02.2024, stating that this Tribunal may adjudicate, at the first instance, the IAs filed challenging maintainability of CP(IB) No. 865/2022 and CP(IB) No. 1111/2022 on the ground of Section 10A of the IBC. Although we find that the said order dated 15.02.2024 refers only to the above Company Petitions, on clarification, both the Ld. Counsel appearing for the Applicant/Corporate Debtor and the Respondent/Financial Creditor submitted that since the cause of action in all the connected matters between the parties is the same, by implication, the said order would apply to CP(IB) No. 839/2022 (Main Application) as well. We, therefore, took up this IA for consideration and disposal before passing final orders in the Main Application.

2. CONTENTIONS OF APPLICANT/CORPORATE DEBTOR

2.1 The Applicant/Corporate Debtor states that the Main Application is not maintainable as the Respondent/Financial Creditor has filed five proceedings against the present Applicant/Corporate Debtor, their Corporate Guarantors and Personal Guarantors, claiming the same financial debt and has concealed this information from this Tribunal. According to the Applicant/Corporate Debtor, it also submitted an OTS, without prejudice, to the

Respondent/Financial Creditor, which has been rejected by the Respondent/Financial Creditor.

- 2.2 Further, it is contended by the Applicant/Corporate Debtor that the Respondent/Financial Creditor's case is hit by Section 10A of the IBC as the first date of default fell on 30.09.2020, which is within the suspended period of initiation of CIRP brought in by way of amendment to the IBC, in the aftermath of COVID-19 Pandemic, beginning from 25.03.2020 to 25.03.2021.
- 2.3 It is further submitted by the Applicant/Corporate Debtor that the Respondent/Financial Creditor has made reference to the 'Resolution Framework for COVID-19 Related Stress' announced by the Reserve Bank of India (RBI) *vide* its Circular dated 06.08.2020 (RBI COVID-19 Circular) providing for resolution plan to address borrower defaults. The Applicant/Corporate Debtor submits that the RBI COVID-19 Circular provides for all the norms applicable to implementation of a resolution plan, including the mandatory requirement of Inter-Creditor Agreements (ICA) and specific implementation conditions as laid out in earlier directions of the RBI, viz, RBI (Prudential Framework for Resolution of Stressed Assets) Directions, 2019 dated 07.06.2019. However, in terms of Clause 48 of the RBI COVID-19 Circular, if the Applicant/Corporate Debtor was in default at the end of review period under the OTR, the only effect was that the asset classification of the Applicant/Corporate Debtor would be downgraded to NPA from the date from which the Applicant was initially classified as NPA. Further, as per Clause 22 of RBI COVID-19 Circular, where any of the timelines are breached at any



point, the resolution process would cease to apply immediately in respect of the concerned borrower and, hence, it should be regarded as if the Restructuring Agreement was never invoked. According to the Applicant/Corporate Debtor, the OTR failed on 31.03.2022 as the Applicant/Principal Borrower itself failed to repay the first installment covered under the OTR. Hence, according to the Applicant/Corporate Debtor, the date of default would not be changed in the event of failure of resolution plan under the above clauses of the RBI COVID-19 Circular. Since the OTR has failed, the actual date of default should be taken only as 29.12.2020, when its account was actually declared NPA which falls under Section 10A period. Moreover, the Information Utility (IU) record also records the date of default as 29.12.2020. Hence, the default date, i.e., 31.03.2022, as claimed by the Respondent/Financial Creditor in the Main Application is incorrect.

2.4 The debt owed to the Respondent/Financial Creditor by the Applicant/Corporate Debtor is fully secured by outsized securities pledged in favour of the Respondent/Financial Creditor. Hence, the Applicant/Corporate Debtor is in a position to pay off all its debts.

2.5 The Applicant/Corporate Debtor further submitted that the Respondent/Financial Creditor should not be allowed to pursue the Main Application as it is a secured creditor, who is not allowed to file petitions against the Applicant/Corporate Debtor and the Corporate Guarantors under Section 7 as also the Personal Guarantors under Section 95 of the IBC. Hence, the Main Application is only to be dismissed.



3. CONTENTIONS OF RESPONDENT/FINANCIAL CREDITOR

- 3.1 The Respondent/Financial Creditor states that in terms of the Report of the Insolvency Law Committee, February 2020, under Chapter 7, the Creditor is at liberty to proceed against either the debtor, the surety or both.
- 3.2 Further, there is no provision under the IBC or format under Form-1 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, requiring the Respondent/Financial Creditor to disclose list of all proceedings initiated against the Applicant/Corporate Debtor or guarantors for the same debt. Therefore, the Applicant/Corporate Debtor's allegation that the Respondent/Financial Creditor suppressed material facts by not informing the Tribunal about the other five proceedings lacks merit.
- 3.3 Regarding the contention that the debt owed by the Applicant/Corporate Debtor is fully secured by outsized securities executed in favour of the Respondent/Financial Creditor, it is argued that the primary security is a first charge *vide* Deed of Hypothecation dated 21.06.2021, covering all tangible assets created from the term loan and all receivables of the Applicant/Corporate Debtor, excluding Lease Rental Discounting for which the Applicant/Corporate Debtor has obtained a loan from Axis Bank. The tangible assets were valued at Rs.70.29 Crore and the receivables at Rs.56.04 Crore as per the Audited Balance Sheet of the Applicant/Corporate Debtor as of 31.03.2020. According to the Audited Balance Sheet for FY 2020-2021, the value of tangible assets has decreased from Rs.70.29 Crore to Rs.69.97 Crore, and the receivables from Rs.56.04 Crore to a mere Rs.2.26


Cre. Therefore, the primary security may prove insufficient to meet the dues owed to the Respondent/Financial Creditor.

- 3.4 The Respondent/Financial Creditor asserts that Section 10A does not apply to the Main Application, as the default date is to be determined as 31.03.2022, the date on which the terms of the OTR were breached by the Applicant/Corporate Debtor. Their claim that the NPA date i.e., 29.12.2020 should be taken as the date of default, i.e., three months after the first default committed by them on 30.09.2020 is incorrect as the Respondent/Financial Creditor has not taken the NPA date (29.12.2020) as date of default. Instead, they have taken 31.03.2022 as the date of default when the Applicant/Corporate Debtor failed to make payment of the first tranche of the Structured Quarterly Instalment (SQI) under the OTR requested by them and as allowed by the Respondent/Financial Creditor in terms of the RBI COVID-19 Circular. According to the Respondent/Financial Creditor, Clause 48 of the Annex to the RBI COVID-19 Circular, does not alter the date of default when the Applicant/Corporate Debtor failed to make payment of the first SQI.
- 3.5 It is submitted that the Respondent/Financial Creditor in its commercial wisdom has chosen not to proceed with the One-Time Settlement (OTS) proposal submitted by the Applicant/Corporate Debtor as they have not bothered to deposit the required amount committed by them towards the OTS until the date of filing the Affidavit-in-Reply. Furthermore, the Respondent/Financial Creditor notified the Applicant/Corporate Debtor *vide* letter dated 05.01.2023, stating that the Applicant must deposit token amount


of 10% of the settlement offer amount, amounting to Rs.5.63 Crore. However, the Applicant/Corporate Debtor has only deposited Rs.1 Crore out of the total upfront payment of Rs.5.63 Crore. Consequently, the Respondent informed the Applicant/Corporate Debtor by letter dated 13.01.2023 that the OTS proposal could not proceed due to non-compliance of the agreed terms and also non-payment of the token amount of 10% of the settlement offer. Hence, according to the Respondent/Financial Creditor, this IA is to be dismissed and CIRP in respect of the Applicant/Corporate Debtor is to be initiated.

4. ANALYSIS AND FINDINGS

- 4.1 We have perused all the documents and pleadings submitted by both the parties and considered the arguments presented by both the Ld. Counsel for the Applicant/Corporate Debtor and the Respondent/Financial Creditor.
- 4.2 It is undisputed and indisputable that the Applicant/Corporate Debtor had availed of loan facility from the Respondent/Financial Creditor and is in default of more than One Crore Rupees, making it liable to undergo CIRP under Section 7 of the IBC, as has been brought out in evidence from the pleadings in the Main Application as well as in this IA. It is the case of the Respondent/Financial Creditor in Part IV of the Main Application that the default occurred on 31.03.2022 under the OTR, when the Applicant/Corporate Debtor defaulted in payment of the very first tranche of SQI as agreed. As discussed above, the OTR was entered into between parties on 21.06.2021




pursuant to RBI COVID-19 Circular dated 06.08.2020. The RBI COVID-19 Circular was issued to mitigate the impact of COVID-19 Pandemic faced by borrowers and to reduce their financial stress across the board and provided for suitable resolution plans subject to prudential boundaries laid down in the Annex to the Circular. On 19.06.2021, the Respondent/Financial Creditor informed the Applicant/ Corporate Debtor that their Management Committee of its Board, on 17.06.2021, approved the OTR under RBI COVID-19 Circular. Consequently, the OTR was entered into between the parties on 21.06.2021. On a perusal of the Restructuring Agreement in respect of OTR, it is seen that in paragraph 'H', it is mentioned that the Board of Directors of the Applicant/Principal Borrower *vide* their Resolution dated 21.09.2020, authorised the Applicant/Corporate Debtor to seek restructuring of the outstanding original loans aggregating to Rs. 83.95 Crore (including Rs. 61.15 Crore advanced by the Respondent/Financial Creditor). Under the OTR, the Applicant/ Corporate Debtor had agreed to repay the outstanding loan of Rs. 61.15 Crore in three SQIs, viz., Rs. 18.75 Crore on 31.03.2022; Rs.18.75 Crore on 30.06.2022; and Rs. 23.65 Crore on 30.09.2022. However, the Applicant/Principal Borrower failed to make payment of even the first SQI which was due and payable on 31.03.2022. Hence, the Respondent/Financial Creditor filed the Main Application on 27.07.2022 for the said default, committed by the Applicant/Corporate Debtor, of the agreed first SQI which fell due on 31.03.2022. We do not find any legal infirmity in taking 31.03.2022 as the date of default, as in terms of Section 3(12) of the IBC, default means non-



payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid. We hold that there is no provision in the IBC that a financial creditor is under legal obligation to file application under Section 7 on the first date of default committed by a corporate debtor. The Hon'ble NCLAT, New Delhi Bench in *Koncentric Investments Ltd. & Anr. Vs. Standard Chartered Bank, London & Anr.* [Company Appeal (AT)(Insolvency) No. 911/2021] held that it is not mandatory that on first default itself, the financial creditor should rush to the Insolvency Court. A financial creditor may await and give more time to corporate debtor to find out as to whether actually the corporate debtor has become insolvent and is unable to repay the debt. In the instant case, we find that the Respondent/Financial Creditor has considered the situation arising out of COVID-19 Pandemic diligently and did not choose to file any application based on the first default that occurred on 30.09.2020 but acted prudently, based on the RBI COVID-19 Circular, by offering OTR to the Applicant/Corporate Debtor. The Respondent/Financial Creditor approached this Adjudicating Authority only on the default committed by the Applicant/Corporate Debtor when as per the terms of the OTR in payment of the very first SQI had become due and payable on 31.03.2022.

- 4.3 The Applicant/Corporate Debtor contended that the report of IU also suggests record of default as 29.12.2020 and hence, the date of default is only to be construed as the said date. However, we hold that IU record is not the only record that establishes date of default. The date of default is to be determined



by the Adjudicating Authority based on the documents available on record. There is sufficient evidence to show that the Applicant/Corporate Debtor has defaulted in payment of the agreed first instalment of the SQI, under the OTR, which is more than One Crore Rupees. Moreover, the Hon'ble NCLAT, New Delhi in *Vijay Kumar Singhania Vs. Bank of Baroda & Anr.*, [Company Appeal (AT) (Insolvency) No. 1058 of 2023] held that the record of default recorded with the IU is not the only document which has to be furnished by a financial creditor and a financial creditor is at liberty to submit any other record under Section 7 of the IBC. This view has now been upheld by the Hon'ble Supreme Court in *Vijay Kumar Singhania Vs. Bank of Baroda & Anr.*, [Civil Appeal No. 9299 of 2024] *vide* order dated 14.08.2024. Here is a case where record of default is available otherwise than IU record for us to determine the existence of default by the Applicant/Corporate Debtor.

- 4.4 As discussed above, the Resolution Framework was to support and facilitate revival of real sector activities and mitigate the impact on the ultimate borrowers. It is the Applicant/ Corporate Debtor who proposed the OTR to the Respondent/Financial Creditor *vide* Board Resolution dated 21.09.2020. This is evident from Paragraph 'H' of the Restructuring Agreement entered into between the parties on 21.06.2021, wherein the Applicant/Corporate Debtor was authorised by its Board to seek restructuring of loans aggregating Rs.83.95 Crore (Outstanding Loans). The said resolution is reproduced as under: -

“Owing to the above stated conditions of Business due to COVID 19 pandemic, the Board of Directors of the Borrower vide their resolution dated September 21, 2020, authorised the Borrower to seek restructuring of the below mentioned outstanding Original Loans aggregating to Rs. 83.95 Crores (“Outstanding Loans”) under Reserve Bank of India ‘Resolution Framework’ for COVID 19 Related Stress’ dated August 6, 2020 (“Resolution Framework”).


4.5 Pursuant to the above proposal by the Applicant/Corporate Debtor, the Respondent/Financial Creditor sanctioned the OTR dated 19.06.2021. The subject line of this OTR refers to the proposal of the company in line with RBI’s Circular dated 06.08.2020 on “Resolution Framework for COVID-19 related Stress”. The OTR Sanction Letter dated 19.06.2021 was issued to the Applicant/Corporate Debtor subject to certain conditions. One of the conditions was that the Applicant/Corporate Debtor was required to make repayment of the principal and interest in three SQIs, commencing from 31.03.2022 under the ‘Detailed Term Sheet-Annexure-I’. It is the case of the Applicant/Corporate Debtor itself that it defaulted in the payment of the first SQI which fell due on 31.03.2022. In this context it is relevant to consider Clause 22 of the RBI COVID-19 Circular which states as under: -

“If any of the above timelines are breached at any point, the resolution process ceases to apply immediately in respect of the borrower concerned. Any Resolution Plan implemented in breach

of the above stipulated timelines shall be fully governed by the Prudential Framework, or the Relevant Instructions as applicable to specific category of lending institutions where the Prudential Framework is not applicable, as if the resolution process was never invoked under this Framework.”

4.6 The Applicant/Corporate Debtor breached the timeline under the OTR. Hence, according to the Ld. Sr. Counsel for the Applicant/Corporate Debtor, the resolution process should be regarded as *non-est*. Since the resolution plan was not implemented, the OTR loses its significance and no new date of default can be attributable as per the OTR and the date of default would revert to 30.09.2020 when the Applicant/Corporate Debtor defaulted for the first time. We respectfully disagree with this argument.

4.7 Now let us consider the nature and object of RBI COVID-19 Circular. It is one of the measures taken by various authorities to mitigate the ill-effects of COVID-19 Pandemic such as *Suo Motu Writ Petition(C)* 3 of 2020 by the Hon'ble Supreme Court; enhancement of the threshold limit of default from Rs. 1 Lakh to Rs. 1 Crore to trigger IBC *vide* notification dated 24.03.2020 by the Ministry of Corporate Affairs, Government of India; the Ordinance promulgated by the Hon'ble President to introduce Section 10A into the IBC, which later became an Act of the Parliament, etc. However, the above measures never altered or intended to alter the concept of "default" as defined under Section 3(12) of IBC. Paragraph 2 of the RBI COVID-19 Circular categorically states that the economic fallout on account of COVID-19 pandemic and the resultant




stress could potentially impact the long-term viability of many firms, otherwise having good track record due to their debt burden becoming disproportionate relating to their cash-flow generation abilities. It was issued by RBI to the lending institutions to ensure that the resolution under the framework was extended only to borrowers having stress on account of COVID-19. The lending institutions were required to assess the viability of their resolution plan subject to prudential boundaries in terms of the Annex to RBI COVID-19 Circular. In view of the above, we hold that RBI COVID-19 Circular is a non-statutory, regulatory framework by RBI to support borrowers affected by COVID-19 Pandemic and to avoid more corporates slipping into insolvency, which would have otherwise created havoc in the country's economy. A plain reading of the RBI COVID-19 Circular makes it abundantly clear that it was issued for a principle-based resolution framework for addressing borrower defaults, in continuation of the earlier measures taken by the RBI. In view of the above, we are of the considered view that the regulatory RBI COVID-19 Circular cannot override or eclipse the statutory provision relating to "default" as defined in Section 3(12) of IBC. Hence, the Respondent/Financial Creditor is justified in taking 31.03.2022 as the date of default which occurred due to the non-payment of the agreed first SQI by the Applicant/Corporate Debtor. The core issue challenging the maintainability of the Main Application is thus decided against the Applicant/Corporate Debtor.

4.8 Moreover, as per Clause 48 of the RBI COVID-19 Circular, in the event of default by the borrower with any of the signatories to ICA at the end of the



review period, the asset classification of the borrower with all lending institutions, including those who did not sign the ICA shall be downgraded to NPA from the date of implementation of the resolution plan or the date from which the borrower had been classified as NPA before implementation of the plan, whichever is earlier. It is observed that this Clause was considered by the Hon'ble NCLAT, New Delhi Bench in *Pradeep Madhukar More, Suspended Director of Syntex Trading & Agencies Pvt. Ltd. Vs. Central Bank of India* [Company Appeal (AT)(Ins)No. 837/2023], wherein it was held that Clause 48 is only to be read with regard to downgrading of asset classification of borrower to NPA for the relevant date and this Clause 48 is not relevant to find out the event of default, which occurred under the OTR/Restructuring Agreement and which is the foundation of Section 7 Application. Clause 48 is intended to effect downgrading of asset classification of the borrower to NPA pursuant to default so that the reliefs and concessions granted to the borrower under the OTR can be withdrawn. Hence, reliance on Clause 48 of the RBI COVID-19 Circular is of no help to the Applicant/Corporate Debtor. This cements our finding already taken in paragraph 4.7 above.

4.9 It is well-settled that the provisions of the IBC must be given a purposive interpretation in order to serve the objective of the IBC. An interpretation which defeats the very purpose or objective of the IBC or renders it nugatory and otiose has to be avoided. If the interpretation sought to be given by the Applicant/Corporate Debtor on the above Circular is accepted, a defaulter corporate debtor would stand to derive undue advantages – having already



committed a default under the original loan documents, it once again commits default under the terms of the OTR and above all, would also manage to escape from the consequences of default of financial debt seeking shelter under the provisions of Section 10A of the IBC because all such OTRs sanctioned under the RBI COVID-19 Circular would involve defaults occurring during the period covered by Section 10A. In view of the foregoing, the Respondent/Financial Creditor is justified in taking 31.03.2022 as the date of default which occurred due to the non-payment of the agreed SQI by the Applicant/Corporate Debtor.

4.10 The Applicant/Corporate Debtor contended that they have submitted a new OTS proposal on 29.06.2022 and again on 23.11.2022 to the Respondent/Financial Creditor. However, the Respondent/Financial Creditor notified the Applicant/Corporate Debtor by letter dated 05.01.2023 that the Applicant/Corporate Debtor must deposit token amount of 10% of the settlement offer, amounting to Rs.5.62 Crore. However, since the Applicant has only deposited token amount of Rs. 1 Crore out of Rs. 5.62 Crore, the Respondent/Financial Creditor informed the Applicant/Corporate Debtor by Letter dated 13.01.2023 that the OTS proposal cannot proceed due to non-compliance with the stipulated terms. The Respondent/Financial Creditor in its commercial wisdom has chosen not to proceed with the OTS proposal at this stage. Hence, we hold that this is not a ground for allowing this IA.



4.11 We hold that having accepted the OTR and acted upon the same, the Applicant/Corporate Debtor cannot now go back and say that the resolution plan did not materialise under the RBI COVID-19 Circular and that the OTR failed due to their own default in payment of the very first SQI. The Applicant/Corporate Debtor is estopped from taking such a stand and is barred under the doctrine of estoppel. Further, as regards the contention raised by the Applicant/Corporate Debtor regarding parallel proceedings for the enforcement of the same debt, the Hon'ble NCLAT, New Delhi Bench in *Naresh Kumar Aggarwal Vs. CFM Asset Reconstruction Pvt. Ltd*, [Company Appeal (AT) (Ins) No. 470 of 2023 [NCLAT], reiterated that CIRP can be initiated simultaneously against principal borrowers and corporate guarantors. This position of law has been settled by the Hon'ble Supreme Court in *BRS Ventures Investments Ltd. Vs. SREI Infrastructure Finance Ltd & Anr.* [Civil Appeal No. 4565/2021]. In view of the above discussions, we are inclined to dismiss this IA.

ORDER

Accordingly, I.A.- 797/2023 in CP(IB)839/MB/2022 is dismissed.

This Order in the IA is adverse to the Applicant/Corporate Debtor. What is left for us in the matter is to order initiation of CIRP of the Applicant/Corporate Debtor; appoint an IRP; and declare moratorium in terms of Section 14 of the IBC. As both the Counsel for the Applicant/Corporate Debtor and the



Respondent/Financial Creditor submitted that the matter under dispute in this IA is covered in the Writ Petitions above referred to before the Hon'ble High Court of Bombay, we desist from giving effect to this Order for a period until 24.09.2024.

The designated Registrar is directed to forward electronic version of this Order to the Insolvency and Bankruptcy Board of India for information and record.

List CP(IB) No. 839/MB/2022 on 24.09.2024 for orders.

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

[LRAs Tanmay/Vani]