



**IN NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- V**

C.P. 260/IB/MB/2024

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

In the matter of

M/s, Q West Infrastructure Pvt. Ltd.

(Erstwhile Karanja Logistics Pvt. Ltd.)

ONE BKC, Unit No. 501,

C Wing, Plot No.66, G Block, BKC,

Bandra (East), Mumbai-400051

..... Financial Creditor/ Petitioner

Vs

**M/s Grevek Investments & Finance
Pvt. Ltd.**

512, Vyapar Bhavan,

5th Floor, 49, P, D'mello Road,

Carnac Bunder, Masjid (E),

Mumbai 400009

..... Corporate Debtor

Order Dated: 24.03.2025

Coram:

Hon'ble Reeta Kohli, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)



Appearances: -

For the Petitioner: Adv. Revathy Chettiyar (PH)

For the Respondent:

ORDER

Per: Madhu Sinha, Member (Technical)

The above Company Petition is filed by **M/s Q West Infrastructure Pvt. Ltd.** hereinafter called as the (“**Financial Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **M/s Grevek Investments & Finance Private Limited** hereinafter referred to as the (“**Corporate Debtor**”) on **09.03.2024** by invoking the provisions of Section 7 of Insolvency and Bankruptcy Code (hereinafter called “**Code**”) read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Financial Debt of **Rs. 17,90,73,973/-** (Rupees Seventeen Crores Ninety Lakhs Seventy Three Thousand Nine Hundred and Seventy Three Only) comprising of the principal amount (the ICD Amount) of Rs. 11,00,00,000/- (Rupees Eleven Crores Only) and Rs. 6,90,73,973/- (Rupees Six Crores Ninety Lakhs Seventy Three Thousand Nine Hundred and Seventy Three Only) as interest thereon. The Date of Default is **17.01.2024**.

Brief Facts of the Case and Submissions by the Financial Creditor

1. The Corporate Debtor, Grevek Investments And Finance Private Limited is a Company incorporated under the Companies Act, 1956 and is a Corporate Guarantor for Starwort Engineers Pvt Ltd. ("Principal Borrower") under the Inter Corporate Deposit Agreement entered into between the Financial Creditor and the Principal Borrower.
2. The Financial Creditor and the Principal Borrower had entered and executed an Inter Corporate Deposit Agreement ("**ICD Agreement**") dated 10.11.2020 for an amount of Rs. 11,00,00,000 (Rupees Eleven Crores only) ("**ICD Amount**") at the rate of 15 % p.a. interest on such terms and conditions as mentioned in the ICD Agreement. Accordingly, the repayment of the ICD Amount along with accrued interest thereon was required to be done on or before 10.11. 2021 (the Due Date). The ICD Amount



was disbursed by the Financial Creditor by cheque No. 000336 on 11.11.2020. the relevant clauses of the ICD Agreement are reproduced below:-

“...1.1 AMOUNT AND TERMS OF INTER CORPORATE DEPOSIT *The Borrower agrees to borrow from the Lender, and the Lender agrees to lend and advance a sum of up to Rs. 1 1,00,00,000 (Rupees Eleven Crores only) as an Inter Corporate Deposit (hereinafter referred to as the -ICD) for the purpose of meeting short term fund requirement of the Borrower on the terms and conditions contained herein.*

1.2 INTEREST

(a) The Borrower shall pay to the Lender, interest on the principal amount of the ICD outstanding, at the rate of 15 % p.a. Interest will be payable on repayment at maturity of the ICD or, in case of prepayment, at the time of prepayment of the ICD.

(b) All interest on ICD if not paid on relevant due date, shall carry further additional interest at the rate of 5% per annum for the continuing period of default.

.....

1.4 REPAYMENT *The Borrower undertakes to repay the entire principal amount of the ICD along with accrued interest thereon or before 10th November 2021 (hereinafter referred to as the "Due Date").*

1.5 RENEWAL/EXTENSION OF THIS AGREEMENT *The renewal/extension of this Agreement shall be at the discretion of the Lender. In case the Borrower wishes/intends to get this Agreement renewed/extended, the Borrower shall have to make a request in writing to the Lender at least 5 (five) days before the Due Date. The Lender shall have the absolute discretion of granting such renewal/extension subject to a maximum period of one year (hereinafter referred to as the "Extended Due Date").*

.....



2.1 SECURITY FOR THE ICD *The ICD together with all interest, costs, expenses, and other monies whatsoever stipulated in this ICD Agreement shall be secured by:-*

[a] Demand Promissory Note from the Borrower, in the form and manner acceptable by the Lender

[c] Irrevocable and unconditional Corporate Guarantees of:

- 1. Grevek Investments & Finance Private Ltd.*
- 2. Budding Mercantile Co. Pvt. Ltd.*
- 3. Replenish Realty Private Ltd.*
- 4. Avocado Realty Pvt. Ltd.*
- 5. Slimline Realty Pvt. Ltd.*
- 6. Winsome Realty Pvt. Ltd.*

.....

5.1 If one or more of the events specified in this section (hereinafter called 'Events of Default') occur, the Lender may by a notice in writing to the Borrower, declare the principal and interest accrued on the ICD due and payable forthwith and the security created in terms of this Agreement shall be enforceable.

A] DEFAULT IN PAYMENT OF PRINCIPAL AND/ OR ACCURED INTEREST OF THE ICD

Delay in the repayment of principal along with accrued interest on the ICD beyond the Due Date or the Extended Due Date, as the case may be as referred in clause 1.4 above.....”

3. As security for repayment of ICD Amount along with the interest thereon, the Financial Creditor was provided irrevocable and unconditional guarantees dated 10.11.2020 by the following security providers (the Corporate Guarantors) on behalf of the Principal Borrower:-
 - a. Grevek Investments & Finance Private Ltd.
 - b. Budding Mercantile Co. Pvt. Ltd.
 - c. Replenish Realty Private Ltd.
 - d. Avocado Realty Pvt. Ltd.
 - e. Slimline Realty Pvt. Ltd. f. Winsome Realty Pvt. Ltd.



4. The Principal Borrower had also provided a Demand Promissory Note dated 10.11.2020 for repayment of the ICD Amount along with the interest on demand by the Financial Creditor.
5. At this juncture, it is apt to reproduce the relevant clauses of the Corporate Guarantee also-

“....3. In the event of any default on the part of the Borrower in payment/repayment of any of the moneys referred to above or in the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the ICD Agreement, the Corporate Guarantor shall, upon demand, forthwith pay to the Lender without demur all the amounts due and payable by the Borrower under the ICD Agreement.

....

6. *The Corporate Guarantor hereby agrees that without the concurrence of the Corporate Guarantor, the Borrower and the Lender shall be at liberty to vary, alter or modify the terms and conditions of the ICD Agreement and of the security created and of the security documents executed by the Borrower in favor of the Lender and in particular to defer, postpone or revise the repayment of the ICD and/or payment of interest and other moneys payable by the Borrower to the Lender on such terms and conditions as may be considered necessary by the Lender including any increase in the rate of interest in accordance with the ICD Agreement. The Lender shall also be at liberty to absolutely dispense with or release all or any of the security/securities furnished or required to be furnished by the Borrower to the Lender to secure the ICD. The Corporate Guarantor agrees that the liability under this Guarantee shall in no manner be affected by any such variations, alterations, modifications, waiver, dispensation with or release of security, and that no further consent of the Corporate Guarantor is required for giving effect to any such variation, alteration, modification, waiver dispensation with, or release of security.*



....

18. *This Corporate Guarantee shall not be wholly or partially satisfied or exhausted by any payments made to or settled with the Lender by the Borrower and shall be valid and binding on the Corporate Guarantor and operative until repayment in full of all moneys due to the Lender under the ICD Agreement or until such time the Borrower creates and perfects the Securities in terms of Article II of the ICD Agreement, whichever is earlier.*

19. *This Corporate Guarantee shall be irrevocable and the obligations of the Corporate Guarantor hereunder shall not be conditional.*

.....

22. *The liability of the Corporate Guarantor hereunder shall not exceed Rs. 11 crores plus all interest, costs, charges and other monies payable by the Borrower to the Lender under the ICD Agreement.*

23. *Any demand for payment or notice under this Corporate Guarantee shall be sufficiently given if sent by post to or left at the last known address of the Corporate Guarantor and shall be assumed to have reached the addressee in the course of post, if given by post, and no period of limitation shall commence to run in favor of the Corporate Guarantor until after demand for payment in writing shall have been made or given as aforesaid and in proving such notice when sent by post it shall be sufficiently proved that the envelope containing the notice was posted and a certificate by any of the responsible officers of the Lender that to the best of his knowledge and belief, the envelope containing the said notice was so posted shall be conclusive as against the Corporate Guarantor, even though it was returned unserved on account of refusal of the Corporate Guarantor or otherwise.....”*




7. The amount of Rs. 12,65,00,000/- (Rupees Twelve Crores and Sixty-Five Lakhs Only) (ICD Amount+ interest@ 15% per annum thereon) fell due for repayment by the Principal Borrower on the Due Date. However, the Principal Borrower, vide letter dated 05.11.2021 addressed to the Financial Creditor, sought for extension of the Due Date in consonance with clause 1.5 of the ICD Agreement. The said extension was sought for a period of one year i.e upto 10.11.2022.
8. The said extension was granted by the Financial Creditor vide its letter dated 08.11.2021 and accordingly the due date of repayment was revised to 10.11.2022 ("the Extended Due Date"). However, the Principal Borrower failed to make payment to the Financial Creditor as per the ICD Agreement and did not adhere to the Extended Due Date citing its financial constraints and sought some relief from the Financial Creditor with regard to repayment amount and time to repay the same.
9. Thereafter, the Financial Creditor and the Principal Borrower eventually entered into a settlement agreement dated 15.02.2023 ("**the Settlement Agreement**") in order to amicably settle the said debt. Under and as per the Settlement Agreement, the Principal Borrower was required to pay only the ICD Amount in the below mentioned manner:-
 - a. Rs. 5,50,00,000/= (Rupees Five Crore Fifty Lakhs only) on or before 30th June, 2023
 - b. Rs. 5,50,00,000/= (Rupees Five Crore Fifty Lakhs only) on or before 15th December, 2023

The other relevant terms and conditions of the Settlement Agreement are as follows:

“...5. BORROWER's EVENTS OF DEFAULT AND ITS CONSEQUENCES

5.1 Any of the following events shall be considered as the Borrower's Event of Default: a) The failure of the Borrower to pay Rs. 5,50,00,000/= (Rupees Five Crore Fifty Lakhs only) on or before 30th June, 2023 b) The failure of the Borrower to pay Rs. 5,50,00,000/= (Rupees Five Crore Fifty Lakhs only) on or before 31st December, 2023 c) The failure of the Borrower to comply with any of the terms and conditions of this Settlement Agreement.



5.2 Consequence of the Borrower's Default Upon occurrence of the Borrower's Event of Default, without any further notice or reference to the Borrower, the Lender shall become entitled to enforce any or all the legal recourses available to it, including but not limited to enforcing the security(ies) available with it and/or asserting or demanding the ICD Amount along with the interest thereon in accordance with the provision(s) of the ICD Agreement.

6. RELEASE OF SECURITY INTEREST *Simultaneously upon repayment of amount in full as per the terms of this Settlement Agreement, the securities in form of corporate guarantees provided by the Corporate Guarantors shall be null and void..."*

10. The Principal Borrower once again failed to adhere to the repayment schedule as agreed between the parties in the Settlement Agreement.
11. In view of the Principal Borrower's failure to pay as per the Settlement Agreement, the Financial Creditor vide its Demand cum Invocation Notice dated 01.01.2024 called upon the Principal Borrower, Corporate Debtor/Guarantor along with the other Corporate Guarantors to repay the entire amount of Rs. 17,90,73,973/-, comprising of the ICD Amount of Rs. 11,00,00,000/- and Rs. 6,90,73,973/- towards the interest amount. The said Demand cum Invocation Notice, despite being duly received by the Principal Borrower and the Corporate Debtor/Guarantors, all have failed to make the said repayment and has thus defaulted under the Insolvency and Bankruptcy Code, 2016 ("Code"). The said default of the Corporate Debtor has also been recorded with NeSL, as per whose records, the corporate debtor is one of the corporate guarantors for the debt owed by the borrower to the Financial Creditor under the ICD Agreement.
12. Till date, neither the Principal Borrower, Corporate Debtor/Guarantor nor any of the other Corporate Guarantors who had furnished their respective Corporate Guarantees as security under the ICD Agreement have responded to the said Demand Cum Invocation Notice dated 01.01.2024 issued to them which clearly establishes and demonstrates the *mala fide* intention of the Principal Borrower, Corporate Debtor /Guarantor and its other Corporate Guarantors to not pay to the Financial Creditor the legitimate dues owed by them to the Financial Creditor. According to this notice,



payment was to be made within 15 days from the date of issuance of this notice. Accordingly, the date of default is computed as 17.01.2024.

13. Further, the Section 7 application against the Principal Borrower was filed by the Financial Creditor before the National Company Law Tribunal, Mumbai Bench on 12 February, 2024 and the same has been admitted vide order dated 16.07.2024.
14. In view of the above, the Financial Creditor has filed the present application against the Corporate Debtor being the Corporate Guarantor for the Principal Borrower. The Financial Creditor has also placed reliance on the judgement of the Hon'ble Supreme Court in *Laxmi Pat Surana v. Union Bank of India and Anr. (2021) 8 Supreme Court Cases 481*, to put forth the contention that the liability of the corporate guarantor is coextensive with the Principal Borrower, the relevant paragraph of which is reproduced below:-

“41. The appellant was at pains to persuade us that the intention behind the communication dated 08.12.2018 sent to the financial creditor by the corporate guarantor (corporate debtor) is a triable matter, as it was sent without prejudice. We are not impressed by this submission. The fact that the principal borrower had availed of credit/loan and committed default and that the (corporate) guarantor/corporate debtor had offered guarantee in respect of the loan account is not disputed. What is urged by the appellant is that the acknowledgment of liability to pay the amount in question was by the principal borrower and that acknowledgment cannot be the basis to proceed against the corporate guarantor (corporate debtor). Section 18 of the Limitation Act, however, posits that a fresh period of limitation shall be computed from the time when the party against whom the right is claimed acknowledges its liability. The financial creditor has not only the right to recover the outstanding dues by filing a suit, but also has a right to initiate resolution process against the corporate person (being a



corporate debtor) whose liability is coextensive with that of the principal borrower and more so when it activates from the written acknowledgment of liability and failure of both to discharge that liability.”

23. In relation to the submissions made by the CD in its Affidavit in Reply dated 05 June 2024, the FC submits the following: -

(a) The Corporate Guarantee continued to remain valid, binding and subsisting in view of the Clause 1.5 of the ICD Agreement read with Clauses 6 and 18 of the Corporate Guarantee. Even Clause 5.2 of the Settlement Agreement clearly indicates that the Borrower continued to remain liable under the ICD Agreement upon occurrence of Event of Default thereunder. The execution of the Settlement Agreement did not amount to discharging the CD from its obligations as a guarantor for the financial debt owned by the Borrower to the FC.

(b) Under Clause 6 of the Corporate Guarantee, the CD had agreed that the Borrower and the FC were at liberty to modify, vary or alter the arrangement between them and the CD will continue to remain liable in spite of such modification, alteration and variation until full payment is made by the Borrower to the FC under the ICD Agreement. Moreover, Clause 5.2 of the Settlement Agreement states that the FC will have the right to recover all the debts owed by the Borrower under the ICD Agreement in case of default in payment as per the terms of the Settlement Agreement. Thus, the FC has filed the present Petition on account of the financial debt owed under the ICD Agreement.

All the relevant clauses have already been reproduced above for ready reference.

Submissions by the Corporate Debtor

15. The corporate debtor is opposing the admission of the Petition on the following grounds:

a. The Corporate Guarantee dated 10th November 2020 has come to an end: The Corporate Debtor had executed the Corporate Guarantee dated 10th November 2020, to secure payment of amounts given by the Petitioner to Starwort Engineers Pvt. Ltd.



("Starwort") under an Inter-corporate Agreement dated 10th November 2020 ("ICD Agreement"). The said ICD Agreement was extended from time to time and finally replaced/substituted/subsumed in Settlement Agreement dated 15th February 2023. A perusal of the Settlement Agreement and in particular, Recital G thereof, clearly indicates that the Settlement Agreement has been executed in full and final settlement of the ICD agreement. The same is reproduced below-

“G. Based on the premises, representation and assurance given by the Borrower, the Lender has accepted the Borrower's request for an amicable full and final settlement of the ICD Agreement subject to certain terms and conditions as mentioned in this Settlement Agreement. Accordingly, in order to give effect to the same, the Parties have agreed to execute these presents.”

Thus, with the execution of the Settlement Agreement, the principal borrower i.e. Starwort would stand discharged under the ICD Agreement, and hence, as a result thereof, the Corporate Debtor herein would also be discharged from its obligations under the Corporate Guarantee.

b. The Corporate Debtor is not party to the Settlement Agreement: The amount claimed in the present petition is due under the Settlement Agreement dated 15th February 2023, which has replaced/substituted the ICD Agreement. I say that the Corporate Debtor is neither a party to the said Settlement Agreement nor was its consent taken prior to execution of the Settlement Agreement. As stated hereinabove, the Corporate Guarantee was executed only to secure amounts due under the ICD Agreement. This has been clearly recorded in Recital 3 (already reproduced above) of the Corporate Guarantee. Thus, the Corporate Debtor is not bound to guarantee payment of any amounts due under the Settlement Agreement and as such, there is no question of the Petitioner filing the present Petition against the Corporate Debtor for a default under the Settlement Agreement.

c. Invocation Notice is not in compliance of terms of the Corporate Guarantee: Without prejudice to the aforesaid, it is submitted that the Invocation cum Demand



Notice dated 01 January 2024 is not in compliance with the provisions of the Corporate Guarantee with respect to delivery thereof. The copy annexed to the present Petition does not bear any mark showing acknowledgement of receipt by the Corporate Debtor. Further, the Petitioner has not annexed any other proof of the Invocation Notice having been delivered to the Corporate Debtor. Thus, the Invocation cum Demand Notice is not valid and as such, the Corporate Guarantee has not been invoked. The relevant clause of the Corporate Guarantee is reproduced below-

“23. Any demand for payment or notice under this Corporate Guarantee shall be sufficiently given if sent by post to or left at the last known address of the Corporate Guarantor and shall be assumed to have reached the addressee in the course of post, if given by post, and no period of limitation shall commence to run in favour of the corporate guarantor until after demand for payment in writing shall have been made or given as aforesaid and in proving such notice was sent by post it shall be sufficiently proved that the envelope containing the notice was posted and a certificate by any of the responsible officers of the Lender that to the best of his knowledge and belief, the envelope containing the said notice was so posted shall be conclusive as against the corporate guarantor, even though it was returned unserved on account of refusal of the corporate guarantor or otherwise.”

In light of the aforesaid grounds, it is clear that the Financial Creditor has failed to establish the existence of debt and default, which is necessary to maintain any Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, hence this petition should be dismissed.



Findings

16. We have heard both the parties and perused all the documents placed on record.
17. The case of the Financial Creditor, in brief, is that basis the clear and express relevant terms under the ICD Agreement and the corresponding Corporate Guarantee, both dated 10.11.2020, the Corporate Debtor in this case becomes liable for default by the Principal Borrower under the Settlement Agreement dated 15.02.2023 also. In spite of issuing Invocation cum Demand Notice dated 01 January 2024, the corporate debtor has not fulfilled its financial obligations toward the financial creditor. Hence in view of the fact that both debt and default are established, this present petition deserves to be admitted.
18. On the other hand, it is the case of the corporate debtor, that the above stated Settlement Agreement substitutes the Corporate Guarantee dated 10th November, 2020 and thus the latter has terminated. Moreover, the Corporate debtor/corporate guarantor was not a party to the said Settlement Agreement and hence any default committed by virtue of the same cannot bind the corporate debtor in the present case. Furthermore, the Invocation cum Demand Notice dated 01 January 2024 is not in compliance with the provisions of the Corporate Guarantee with respect to delivery thereof as neither does it bear any mark showing acknowledgement of receipt by the Corporate Debtor nor any other proof of the Invocation Notice having been delivered to the Corporate Debtor is annexed to the present petition.
19. The fact that the Principal Borrower had availed of and the Lender/Financial Creditor had provided the loan, which was backed by the corporate guarantee of the present corporate guarantor/corporate debtor, is not disputed. The contentions of the corporate debtor are that the corporate guarantee has come to an end by virtue of the Settlement Agreement and this termination is aggravated by the fact that the corporate debtor/corporate guarantor was not made a party to the Settlement Agreement. At this juncture, in order to deal with the above stated contentions, we deem it apt to reproduce the relevant clauses of the Corporate Guarantee dated 10.11.2020 -
- “....3. In the event of any default on the part of the Borrower in payment/repayment of any of the moneys referred to above or in the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the*



ICD Agreement, the Corporate Guarantor shall, upon demand, forthwith pay to the Lender without demur all the amounts due and payable by the Borrower under the ICD Agreement.

....

6. The Corporate Guarantor hereby agrees that without the concurrence of the Corporate Guarantor, the Borrower and the Lender shall be at liberty to vary, alter or modify the terms and conditions of the ICD Agreement and of the security created and of the security documents executed by the Borrower in favor of the Lender and in particular to defer, postpone or revise the repayment of the ICD and/or payment of interest and other moneys payable by the Borrower to the Lender on such terms and conditions as may be considered necessary by the Lender including any increase in the rate of interest in accordance with the ICD Agreement. The Lender shall also be at liberty to absolutely dispense with or release all or any of the security/securities furnished or required to be furnished by the Borrower to the Lender to secure the ICD. The Corporate Guarantor agrees that the liability under this Guarantee shall in no manner be affected by any such variations, alterations, modifications, waiver, dispensation with or release of security, and that no further consent of the Corporate Guarantor is required for giving effect to any such variation, alteration, modification, waiver dispensation with, or release of security.

....

18. This Corporate Guarantee shall not be wholly or partially satisfied or exhausted by any payments made to or settled with the Lender by the Borrower and shall be valid and binding on the Corporate Guarantor and operative until repayment in full of all moneys due to the Lender under the ICD Agreement or until such time the Borrower creates and perfects the Securities in terms of Article II of the ICD Agreement, whichever is earlier.



19. This Corporate Guarantee shall be irrevocable and the obligations of the Corporate Guarantor hereunder shall not be conditional.

.....”

On perusal of the above clauses, it is sufficiently and reasonably crystal clear that the Corporate Guarantee of the Corporate Debtor is persistent in nature to the point of satisfaction of the outstanding liability towards the Financial Creditor. Furthermore, Clause 6 of the Corporate Guarantee clearly mentions that terms and conditions of the ICD Agreement can be modified/varied or altered without making the Corporate Guarantor a party to the same and the Settlement Agreement dated 15.02.2023, is a by-product of the same clause very much imbibed in the ICD Agreement. Thus, the corporate guarantor/corporate debtor is liable even when not made a party to the Settlement Agreement. It is also pertinent to note that Clause 18, reproduced above, exclusively mentions that no settlement between the Lender and Principal Borrower would discharge the present corporate guarantor/corporate debtor of its liability by virtue of the guarantee. Therefore, in light of all the relevant clauses considered together, we reach the conclusion that the Corporate Guarantor is liable not only under the ICD Agreement but also when default has taken place under the Settlement Agreement. Additionally, vide order dated 16.07.2024, this Hon'ble Tribunal has already admitted the Principal Borrower into CIRP which adds more strength to this case thereby making it full proof.

Debt of more than Rs. 1 crore against the Corporate Guarantor thus stands proved.

20. We will however, now examine the next contention of the corporate guarantor/corporate debtor, that the Notice cum Invocation dated 01.01.2024 is not valid/legally tenable since neither does it bear any mark showing acknowledgement of receipt by the Corporate Debtor nor any other proof of the Invocation Notice having been delivered. Hence since guarantee was never invoked in accordance with Corporate Guarantee agreement dated 10.11.2020 therefore default has not incurred. Thus, this present petition is liable to be dismissed. In order to address this contention, we deem it apt to reproduce the relevant clause of the corporate guarantee which is as follows:-



3. *In the event of any default on the part of the Borrower in payment/repayment of any of the moneys referred to above or in the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the ICD Agreement, **the Corporate Guarantor shall, upon demand, forthwith pay to the Lender without demur all the amounts due and payable by the Borrower under the ICD Agreement.***

*“23. Any demand for payment or notice under this Corporate Guarantee shall be **sufficiently given if sent by post to or left at the last known address of the Corporate Guarantor** and shall be assumed to have reached the addressee in the course of post, if given by post, and no period of limitation shall commence to run in favour of the corporate guarantor until after demand for payment in writing shall have been made or given as aforesaid and in proving such notice was sent by post it shall be sufficiently proved that the envelope containing the notice was posted and a certificate by any of the responsible officers of the Lender that to the best of his knowledge and belief, the envelope containing the said notice was so posted shall be conclusive as against the corporate guarantor, even though it was returned*



unserved on account of refusal of the corporate guarantor or otherwise.”

Since the present case is one in which guarantee invocation is on demand as is clearly evident from clause 3 reproduced above **the date of notice cum invocation, i.e. 01.01.2024 will be the date of default only if the said notice is legally tenable.** Clause 23 (reproduced above) clearly stipulates that any demand for payment or notice under this corporate guarantee shall be sufficiently given if sent by post or left at the last known address of the corporate guarantor. The same clause provides that the conclusive proof of such above stated delivery would be an envelope containing the notice signifying it was posted and a certificate by any of the responsible officers of the lender that to the best of his knowledge and belief, the envelope containing the said notice was so posted. It is pertinent to note that the Financial Creditor has not placed any of the above mentioned evidence on record to substantiate the fact of sufficient delivery of the notice cum invocation of guarantee. Neither did the financial creditor attach/place on record any proof of delivery of the Notice cum Invocation dated 01.01.2024 nor has it opposed this contention of the corporate guarantor by any arguments in its reply or written submissions. Hence there is clear violation of the terms and conditions of the corporate guarantee dated 10.11.2020. Since the demand notice was never purportedly delivered to the Corporate Guarantor, the corporate guarantee never got invoked by the financial creditor in terms of the guarantee agreement which forms the basis of this petition, the default by corporate guarantor cannot be established.

The bench thus comes to the conclusion that since the financial creditor has failed to establish that the notice cum invocation dated 01.01.2024 was not sufficiently delivered therefore default on the part of the corporate guarantor does not stand to be established either. This view of the bench is substantiated by the judgement of the Hon'ble NCLAT in *Mudhit Madanlal Gupta v. Supreme Constructions and Developers I.A. No. 4789 of 2023 in Company Appeal (AT) (Insolvency) no. 920 of 2023* in which it was held:-

“7. Liability of corporate guarantor although is coextensive of the Principal Borrower but when the Guarantee requires invocation of the guarantee deed, default on



*the guarantor shall be the date when
corporate guarantee has been invoked.”*

21. Hence, in view of the fact, that although the existence of debt is established in this case based on the documents and arguments presented, the financial creditor is not able to establish invocation of the corporate guarantee, and consequently, the default on the part of the corporate guarantor also is not established and hence, the bench deems it fit to that the **present CP No. 260/MB/2024 be rejected.**

22. Ordered accordingly

Sd/-

Madhu Sinha

Member (Technical)

Sd/-

Reeta Kohli

Member (Judicial)

//VLM//