



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

IA (IBC)/502/KOB/2024

IN

CP(IBC)/12/KOB/2024

*(Under Section 60(5) of IBC, 2016 read with
Rules 11 of the NCLT Rules, 2016)*

In the matter of:

**M/s Asten Properties and Developers
Private Limited**

MEMO OF PARTIES:

Mr. MIBU JOHN, Paduthottu House, Manjadi
P.O, Thiruvalla, Kerala—689 105

Email: mibujohn@hotmail.com

... Applicant

-Vs-

Mr. RAJENDRAN P. R, Interim Resolution
Professional of Asten Realtors Private
Limited

Email: astprocirp@gmail.com

... Respondent No.1

**M/s PIRAMAL TRUSTESHIP SERVICES
PRIVATE LIMITED**

4th Floor, Piramal Tower Annexe, Ganpatrao
Kadam Marg Lower Parel, Mumbai,
Maharashtra - 400 013.

Email: sarita.iyer@piramaltrustee.com

... Respondent No.2



Order delivered on: 02.04.2025

Coram:

Hon'ble Member (Judicial) : Shri. Vinay Goel

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

Appearances:

For the Applicant : Ms. Siji Abraham, Advocate
Ms. Hema R, Advocate

For the Respondent No.1 : Mr. Vinod P V, Advocate

For the Respondent No.2 : Mr. Prashant Kumar, Advocate

ORDER

Per Coram

1. The present application has been filed by Mr. Mibu John, a homebuyer and a member of the Committee of Creditors of the Corporate Debtor M/s. Asten Properties and Developers Private Limited under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 seeking the following relief: -

- a) *To set aside verification of the claim of Piramal Trusteeship Services Private Limited (2nd Respondent) filed under Form C dated 27.06.2024 in as much verification of claim is illegal and in violation of Section 67 and Section 185 of Companies Act, 2013;*
- b) *Consequent upon the above prayer, to declare Piramal Trusteeship Services Private Limited (2nd Respondent) as not a financial creditor;*
- c) *Consequential to the above prayers, to direct the committee of creditors to be reconstituted with other members by excluding*


Piramal Trusteeship Services Private Limited (2nd Respondent);

- d) Consequently, to declare all decisions taken by Piramal Trusteeship Services Private Limited (2nd Respondent) till disposal of this Application to be illegal;*
- e) Consequent to the prayers above, to declare that Piramal Trusteeship Services Limited (2nd Respondent) is solely liable to pay every and all the expenses incurred by the Interim Resolution Professional (1st Respondent) in the CIRP to date up to the final disposal of this application for the reason of delay caused in taking decisions in CoC meeting;*
- f) Pass such other order or direction that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

2. The Applicant is aggrieved by the verification of the claim filed by Piramal Trusteeship Service Private Limited, Respondent No.2 as verified by Mr. Rajendran P. R., Interim Resolution Professional, Respondent No.1 of Asten Properties and Developers Private Limited (hereinafter 'Corporate Debtor'), based on an illegal corporate guarantee furnished in favor of the Respondent No.2 related to a loan facility taken by its holding company, Asten Realtors Private Limited (hereinafter 'Holding Company'). Asten Realtors is undergoing a Corporate Insolvency Resolution Process (CIRP) under CP(IB)/54/KOB/2022. The claim submitted by Piramal Trusteeship violates the provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter 'the Code') and the Insolvency and Bankruptcy Board of India (CIRP Regulations), as the guarantee breaches provisions of the Companies Act, 2013.




3. The Applicant submitted that the corporate guarantee is illegal due to a bar under Sections 67 and 185 of the Companies Act, 2013 as it amounts to financing the purchase of shares of Asten Properties and Developers Private Limited by its holding company. The legal doctrine *Quando aliquid prohibetur ex directo, prohibetur et per obliquum* applies here.
4. It is submitted that erroneous verification has allowed Respondent No.2, who holds a majority stake in the Committee of Creditors of the Corporate Debtor, to engage in majoritarian practices, making unilateral decisions and illegally abstaining from voting in the meetings, thus derailing the CIRP.
5. The Applicant stated that Respondent No.2 cannot be classified as a financial creditor under Section 5(7) of the Code, as no financial debt is owed to them, and they have failed to prove the disbursement of funds or the legal assignment of debt, which are required to substantiate their claim. Hence, Respondent No. 2's claim should not have been recognized or categorized as that of a financial creditor.
6. The Applicant argues that the classification of Respondent No. 2 as a financial creditor violates the Code and CIRP Regulations. The Applicant, a homebuyer in the Corporate Debtor's Dew Dale project, was unaware of a corporate guarantee provided to the Holding Company and only discovered this after requesting an inspection of the claim documents, granted on 18.10.2024. The Corporate Debtor, which was in the real estate business, is part of



a group where Asten Realtors Private Limited holds 99.98% equity. Asten Realtors is undergoing CIRP, with Respondent No.1 as its Resolution Professional. The directors of both companies are the same.

7. Further submitted that the Corporate Debtor's project was stalled in 2016 due to a lack of funds, with no further construction taking place thereafter. Similarly, the Holding Company faced funding issues, resulting in delays for its projects and affecting many homebuyers. To address this, the Holding Company approached Piramal Capital Housing & Finance Limited (PCHFL) and executed a sanction letter on 19.11.2018 for a term loan intended for specific Holding Company projects. The sanction letter, however, does not mention the use of funds for the Corporate Debtor's projects. Subsequently, the Holding Company entered into a loan agreement with PCHFL on 22.01.2019. In addition, a Security Trustee Agreement was signed between the Holding Company, PCHFL, and the Corporate Debtor, appointing Respondent No.2 as the security trustee with duties limited to the benefit of the lender, PCHFL.
8. It is submitted that the Corporate Debtor provided a guarantee for loans availed by the Holding Company from PCHFL, but no funds from the loan were used for the Corporate Debtor's projects, including the Dew Dale project. No further construction on the Dew Dale project took place after 2016, and funds from PCHFL were not utilized. The Corporate Debtor failed to create a charge as required by the Companies Act, 2013, and no valid special



resolution was passed in favor of Respondent No.2, violating Section 185 of the Act. The Corporate Debtor was admitted into CIRP on 13.06.2024, and the Interim Resolution Professional invited creditors to submit claims. The Applicant's claim was verified and classified as an allottee under the real estate project, while Respondent No.2's claim was illegally classified as that of a financial creditor with 71.57% voting shares in the Committee of Creditors. Respondent No.2 has been exercising majoritarian influence in Committee of Creditors meetings based on this illegal claim, which violates Section 67 and Section 185 of the Companies Act, 2013.


9. The Applicant further stated that Respondent No.2's actions in the Committee of Creditors meetings are not in line with the provisions of the Code, Committee of Creditors guidelines, and the code of conduct. Based on an illegal and erroneous claim verification, Respondent No.2 has exercised majoritarianism, hindering decisions crucial to the CIRP. In several Committee of Creditors meetings, Respondent No.2 abstained from voting or delayed decisions, such as appointing auditors and approving necessary resolutions, creating deadlocks and delays. Despite Respondent No. 1's warnings regarding Respondent No. 2's non-cooperation, the issue continues. Respondent No.2 also influenced the appointment of a new Resolution Professional, without transparency on fees. This majoritarian influence is delaying the CIRP and further harming the interests of the Applicant and other homebuyers.



10. The reply filed by Respondent No.1 was submitted by the new Resolution Professional, Mr. Sreenivasan P.R., on behalf of Mr. Rajendran P.R., who was replaced by this Tribunal in IA(IBC)/459/KOB/2024 vide order dated 02.12.2024.
11. In his reply, Respondent No.1 submitted that the Interim Resolution Professional's actions were lawful and that the claim from Respondent No.2 was valid, as it was supported by evidence, including a guarantee issued by the Corporate Debtor.
12. It is submitted that Respondent No.2 submitted a claim for Rs. 70,83,53,110/- on 27.06.2024, which was verified and admitted a claim of Rs.64,20,34,777/-by the Interim Resolution Professional on 04.07.2024. This claim was based on a credit facility granted to Asten Realtors Private Limited, a sister concern of the Corporate Debtor, along with a corporate guarantee provided by the Corporate Debtor. The guarantee was invoked on 21.03.2024 after a default by Asten Realtors, and the claim was submitted within the prescribed period under the CIRP.
13. Respondent No.1 further submits that the Interim Resolution Professional's decision to admit the claim was based on substantial evidence, including the sanction letter, corporate guarantee agreement, and account statements. The claim was verified as unsecured, as no security or charge was created in favour of Respondent No.2. The claim was properly collated and admitted under the provisions of the Insolvency and Bankruptcy Code, 2016, specifically under Section 18(b) regarding the verification of claims.



14. Respondent No. 2 submitted that the Applicant has approached this Tribunal with unclean hands, claiming ignorance of a corporate guarantee provided by the Corporate Debtor, which was not disclosed during the registration under the Real Estate Regulatory Authority Act. The Applicant has relied on confidential documents of Respondent No. 2, which he was not privy to, and how he obtained these documents is questioned. The Applicant's inspection request was allegedly made without proper communication or opportunity for objection, and the application was filed four months after the Respondent's claim was submitted. The Applicant never raised objections regarding the Corporate Guarantee in any Committee of Creditors meetings.
15. Respondent No.2 submitted that the Applicant has claimed that the Corporate Guarantee violates Sections 67 and 185 of the Companies Act, 2013, as it allegedly involves financing the purchase of shares by the holding company. However, even assuming a violation of these provisions, it does not prevent Respondent No. 2 from initiating proceedings under the Code or filing a claim with the Interim Resolution Professional. The debt is still due and payable, and defaults have occurred.
16. The Respondent No.2 has relied on the order of the Hon'ble National Company Law Appellate Tribunal in ***Kalpesh Ramniklal Shah v. Mundara Estate Developers Limited and Another (Company Appeal (AT) (Insolvency) No. 71 of 2023)***, which upheld that violations under the Companies Act do not hinder proceedings under the Code. In this order, the NCLAT referred to the judgment



of the Hon'ble Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank and Anr (2018) 1 SCC 407***, which clarified that the Adjudicating Authority need only verify the existence of the debt and default to proceed with matters relating to Section 7 of the Code.


17. Respondent No.2 further relied upon ***AVJ Heightss Apartment Owners Association v. India Infoline Finance Ltd. (Company Appeal (AT) (INS) No. 626 of 2021)***, the Hon'ble NCLAT considered the claim of a creditor despite noting a violation of Section 185 of the Companies Act, 2013. The Tribunal highlighted that Section 185(4) of the Companies Act provides for punitive actions for such violations, but this does not prevent the admission of a claim under the Code. The Tribunal emphasized that a guarantee provided for a loan fall within the definition of financial debt under Section 5(8)(i) of the Code, and the claim was admitted despite the regulatory violation.
18. It is further submitted that the Applicant's request for relief regarding the Corporate Guarantee cannot be granted, as the proceedings before the Tribunal are summary in nature, and such issues are matters for trial, not for adjudication in this context. The Respondent asserts that there is no dispute regarding the amounts disbursed, the existing debt, or default, and Respondent No. 2 had the right to file a claim based on the Corporate Guarantee. They have further cited ***Surpreet Singh Suri v. Pragati Impex India Private Limited (Company Appeal (AT) (Insolvency) No.1431 pf 2022*** where Hon'ble NCLAT upheld that the admission of a Section

7 application is based on evidence of loan disbursement and default.

19. It is stated that the Applicant's claims are contradictory and without merit, and appear to be aimed at unlawfully removing Respondent No. 2 from the Committee of Creditors of the Corporate Debtor. The Applicant has made several allegations regarding Respondent No. 2's conduct in the 2nd Committee of Creditors meeting on August 12, 2024, including not voting on key decisions. However, Respondent No.2 points out that the Applicant himself was absent from the meeting and did not participate in voting.
20. Respondent No.2 has also cited the case of ***Consolidated Finvest & Holdings Ltd. v. Subhash Kumar Kundra (Company Appeal (AT) (Insolvency) No. 312 of 2023)***, where the Hon'ble NCLAT held that a creditor who fails to attend Committee of Creditors meetings cannot challenge the process. In that case, the Appellant's absence from most meetings and failure to file a Resolution Plan led to the rejection of their appeal. Respondent No.2 asserts that, as a creditor with only a 0.82% voting share, the Applicant cannot challenge the majority decisions taken in the Committee of Creditors, especially considering their failure to attend the meetings.
21. It is submitted that the appointment of the Resolution Professional, Mr. Sreenivasan P.R., which the Applicant contests, has already been approved by this Tribunal in IA(IBC)/459/KOB/2024 vide

order dated 20.12.2024, making the Applicant's concerns irrelevant.

22. The Applicant in his rejoinder submitted that Respondent No. 2 was unlawfully admitted as a financial creditor in the CIRP failing to meet the necessary criteria under the Code.
23. The Applicant denies the claims made by Respondent No. 2 and disputes their qualification as a "financial creditor" under the Code. The Applicant argues that Respondent No. 2's reliance on misinterpreted judgments is flawed and that they fail to meet the essential definition of "financial debt" under Section 5(8) of the Code. Financial debt is defined as a debt disbursed in exchange for the time value of money, which includes loans, bonds, and similar instruments. The Applicant points out that Respondent No. 2 has failed to demonstrate such a disbursement.
24. The Applicant refers to the Hon'ble Supreme Court ruling in the ***Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited and Ors., Civil Appeal Nos. 8512-8527 of 2019***, where it was held that for a debt to qualify as "financial debt" under the Code, it must involve a disbursement of money in exchange for the time value of money. The Court affirmed that the mere existence of guarantees or securities for the parent company does not automatically make a creditor a "financial creditor," unless the conditions of Section 5(8) are met. This reinforces the Applicant's argument that Respondent No. 2 cannot be considered a financial creditor, as they have not demonstrated



the disbursement of money or compliance with the statutory definition of financial debt.

25. The Applicant also criticizes Respondent No. 2's attempt to sidestep the core issue by citing irrelevant case law, such as ***Surpreet Singh Suri v. Pragati Impex India Private Limited (Company Appeal (AT) (Insolvency) No. 1431 of 2022)***. In that case, the Adjudicating Authority found sufficient evidence of a loan agreement and the disbursement of funds, which distinguished it from the present case. Here, Respondent No. 2 has failed to prove that they meet the core requirements of "financial debt," namely the disbursement of money in exchange for the time value of money.
26. The Applicant also argues that their request for clarification on the issue of the corporate guarantee is not an attempt to retry the matter but to resolve a legal question regarding Respondent No. 2's qualification as a financial creditor under the Code.
27. We have heard the counsel for the parties and have gone through the records.
28. The Definition of financial debt as provided under Section 5(8) of the Code is as follows:
- (8)"financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-*
- (a) money borrowed against the payment of interest;*
 - (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

[Explanation. - For the purposes of this sub-clause,-

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;



29. The Hon'ble Supreme Court of India in the matter of ***Laxmi Pat Surana vs Union Bank of India (2021) 8 SCC 481***, considered the question of whether an action under Section 7 of the Code can be initiated by a financial creditor against a corporate person in respect of a guarantee offered by it concerning the loan account of a principal borrower, who has committed default, and whether the principal borrower qualifies as a 'corporate person' under the Code. The relevant Para of the said judgment of the Hon'ble Supreme Court is reiterated herein:

27. In law, the status of the guarantor, who is a corporate person, metamorphoses into corporate debtor, the moment principal borrower (regardless of not being a corporate person) commits default in payment of debt which had become due and payable. Thus, action under Section 7 of the Code could be legitimately invoked even against a corporate guarantor being a corporate debtor. The definition of "corporate guarantor" in Section 5(5A) of the Code needs to be so understood.

28. A priori, we find no substance in the argument advanced before us that since the loan was offered to a proprietary firm (not a corporate person), action under Section 7 of the Code cannot be initiated against the corporate person even though it had offered guarantee in respect of that transaction. Whereas, upon default committed by the principal borrower, the liability of the company (corporate


person), being the guarantor, instantly triggers the right of the financial creditor to proceed against the corporate person (being a corporate debtor). Hence, the first question stands answered against the appellant.

30. Further in ***K. Paramasivam vs. Karur Vysya Bank Ltd.*** (2022 SCC OnLine SC 1163), the Hon'ble Supreme Court of India held that CIRP proceedings can be initiated against a corporate entity that has provided a guarantee securing the lender's dues. Once the principal borrower defaults, the guarantor becomes a corporate debtor, making Section 7 applicable.

31. Once the Adjudicating Authority appoints an Interim Resolution Professional or Resolution Professional, the said Professional will call for claims from all creditors, irrespective of whether the debt is secured or unsecured. In the Committee of Creditors, both secured and unsecured creditors will be allowed to participate, subject to certain restrictions and mechanisms devised for the fair functioning of the Committee of Creditors, the rights of related party creditors are limited.

32. Now, the question before us is whether Respondent No. 2 has any involvement with the project for which the CIRP has been initiated. It is further pointed out that there are several irregularities in the loan granted by Respondent No. 2, and it violates Section 67 and Section 185 of the Companies Act, 2013.

33. There is no illegality on the part of the Interim Resolution Professional regarding the admission of the claim made by M/s



Piramal Trusteeship Services Private Limited and including said entity in the Committee of Creditors. The process of constitution of the Committee of Creditors has nothing to do with the fact that a particular debt or subject on which a petition under Section 7 of the Code has been admitted, pertains to a different transaction. Once a Resolution Professional calls claims, every creditor has the independent right to submit its claim along with relevant evidence.

34. Once the amount payable comes under the ambit of Section 5(8) of the Code, Respondent No. 2 would be considered as the financial creditor, and the Interim Resolution Professional was well within his domain to verify the claim and allocate appropriate space in the Committee of Creditors. The alleged violation of provisions of the Companies Act, 2013 would not be a bar to verifying the claims of Respondent No. 2 in the light of judgments in *Kalpesh Ramniklal Shah v. Mundara Estate Developers Limited and Another* and *AVJ Heightss Apartment Owners Association v. India Infoline Finance Ltd.*

35. In light of the above, we find no merit in the application, and it is **dismissed**.

36. However, before parting with this order, as this is a case involving a homebuyer, the legislature, and courts are concerned about their agony. Therefore, it is expected that the members of the Committee of Creditors will make prudent decisions in the true spirit of the Code, addressing its concerns on the rights of homebuyers.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

IA (IBC)/502/KOB/2024 IN CP(IBC)/12/KOB/2024
In re: M/s Asten Properties and Developers Private Limited.



37. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and to take necessary steps.
38. Let the certified copy of the order be issued upon compliance with requisite formalities.
39. File be consigned to records.

Sd/-
MADHU SINHA
(MEMBER TECHNICAL)

Sd/-
VINAY GOEL
(MEMBER JUDICIAL)

Signed on this, the 2nd day of April, 2025.

Adarsh M Nair/LRA