



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT-V NEW DELHI BENCH**

**COMPANY PETITION IB (IBC) NO. 779 of 2022**

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**IN THE MATTER OF:**

**DMI Finance Private Limited**

Through its Authorised Representative,  
Mr. Ashok Anand  
3rd Floor, 9-10, Express Building  
Bahadur Shah Zafar Marg  
New Delhi -110002

...Applicant/Financial Creditor

*Versus*

**Dauphin AKG Hotels Private Limited**

G- 14, Maharani Bagh Road  
Delhi - 110065

...Respondent/Corporate Debtor

**Order pronounced on: 01.04.2026**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL  
HON'BLE MEMBER (JUDICIAL)**

**MS. ANU JAGMOHAN SINGH  
HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant : Mr. Vipul Ganda, Mr. Ishan Upadhaya, Ms. Arpita Sahu,  
Ms. Nitu Barik, Advs.  
For the Respondent :  
For the CD : Mr. Manish Paliwal, Mr. Sumit Sinha and Mr. Trupti Das,  
Advs.



## **ORDER**

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity “the Code”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by DMI Finance Private Limited (hereinafter referred to as ‘Financial Creditor’), represented by Mr. Ashok Anand, Authorized Representative of the Financial Creditor, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s Dauphin AKG Hotels Private Limited [CIN: U74899DL1960PTC003280] (“Corporate Debtor”). The instant application was filed on 27.08.2022.
2. The Corporate Debtor was incorporated on 15.09.2010, having CIN: U55101DL2010PTC208320, under the Companies Act, 1956. Its registered office is at G-14, Maharani Bagh Road, New Delhi - 110065, India. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 27.08.2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make payment of a sum of Rs. 18,58,39,873 (Rupees Eighteen Crore Fifty-Eight Lakh Thirty-Nine Thousand Eight Hundred and Seventy-Three) as on 30.06.2022(date of default).

**Submissions of learned Counsel appearing for the Financial Creditor are as under: -**

4. The present application was filed on 27.08.2022 before this Adjudicating Authority by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiation of corporate insolvency resolution process against the Corporate Debtor, i.e., Dauphin AKG Hotels Private Limited, in its capacity as the Corporate Guarantor, who has failed to pay the due and payable financial debt which is a sum of Rs. 18,58,39,873 (Rupees Eighteen Crore Fifty-Eight Lakh Thirty-Nine Thousand Eight Hundred and Seventy-Three) as on 30.06.2022(date of default). The Financial Creditor had extended financial facilities to the principal borrowers under two separate term loan agreements,



which were secured inter alia by corporate guarantees issued by the Corporate Debtor.

5. The Financial Creditor had executed a Term Loan Agreement dated 30.12.2014 (“Loan Agreement 1”) with Ninex Developers Limited, Redtopaz Real Estate Private Limited, RMG Developers Private Limited, Mr. Sandeep Garg and Mr. R.M. Garg (collectively, the “Borrowers under TLA 1”) for a total loan facility of Rs. 27,00,00,000/-. Pursuant to notices of drawal issued by the Borrowers under TLA 1, the Financial Creditor disbursed the said amount in tranches on 31.12.2014 and 28.02.2015. The terms of Loan Agreement 1 were subsequently amended on 01.01.2016. The copy of the same documents is placed on record.
6. Thereafter, the Financial Creditor executed another Term Loan Agreement dated 27.04.2016 (“Loan Agreement 2”) with Ninex Developers Limited, Redtopaz Real Estate Private Limited, RMG Developers Private Limited, Abloom Infotech Private Limited, Mr. Sandeep Garg and Mr. R.M. Garg (collectively, the “Borrowers under TLA 2”) for a loan facility of Rs. 16,00,00,000/-. Pursuant to notices of drawal, the Financial Creditor disbursed the said facility in tranches on 04.05.2016, 12.02.2018, 13.03.2018 and 16.05.2018. The copy of the same documents is placed on record.
7. The Financial Creditor submits that the aforesaid loan facilities were secured by creation of various security interests. In addition thereto, the Corporate Debtor executed two separate Deeds of Corporate Guarantee dated 15.05.2018 in favour of the Financial Creditor, thereby guaranteeing the repayment obligations of the Borrowers under Loan Agreement 1 and Loan Agreement 2.
8. Thereafter, the Borrowers under Loan Agreement 1 and Loan Agreement 2 committed defaults in repayment of their dues and failed to adhere to the terms and conditions of the respective agreements, thereby resulting in occurrence of events of default. Despite issuance of demand notice dated 19.03.2019 and legal notice dated 27.06.2019, the Borrowers failed to regularize the accounts.



9. In view of the continuing defaults, the Financial Creditor was constrained to invoke the corporate guarantees furnished by the Corporate Debtor by issuing two separate invocation of guarantee notices dated 03.01.2020 in relation to Loan Agreement 1 and Loan Agreement 2, calling upon the Corporate Debtor to discharge the outstanding dues within a period of 5 days from receipt of the said notices.
10. The said invocation notices were received by the Corporate Debtor on 07.01.2020; however, the Corporate Debtor failed to make any payment within the stipulated period. Accordingly, default on the part of the Corporate Debtor, in its capacity as Corporate Guarantor, occurred on 14.01.2020. A copy of the invocation notice is placed on record.
11. Despite invocation of guarantees and repeated demands, the Corporate Debtor has failed and neglected to repay the outstanding dues. As on 30.06.2022, a sum of Rs. 18,58,39,873/- remains due and payable by the Corporate Debtor to the Financial Creditor, which includes principal, accrued interest, penal interest and other charges.
12. In view of the aforesaid facts and continuing default by the Corporate Debtor in discharging its liability as Corporate Guarantor, the Financial Creditor filed the present application under Section 7 of the Code seeking initiation of CIRP against the Corporate Debtor.
13. The Financial Creditor has placed reliance on *Innoventive Industries Ltd. v. ICICI Bank & Anr.* (2018) 1 SCC 407 to contend that under Section 7 of the Insolvency and Bankruptcy Code, 2016, this Adjudicating Authority is required to ascertain the existence of financial debt, occurrence of default, and completeness of the application, all of which stand satisfied in the present case. The outstanding amount of ₹18,58,39,873/- arises out of the Term Loan Agreements dated 30.12.2014 and 27.04.2016, read with the Corporate Guarantee Deeds dated 15.05.2018, and constitutes a “financial debt” within



the meaning of Section 5(8) of the Code, including liabilities arising out of guarantees.

14. Further, it is contended that the loan facilities were duly disbursed in terms of the agreements, and the Corporate Debtor, by executing the guarantee deeds, undertook an unconditional and continuing obligation to repay the outstanding dues till full discharge. Upon invocation of the corporate guarantees vide notices dated 03.01.2020, the Corporate Debtor failed to make payment within the stipulated period despite receipt of the said notices on 07.01.2020, resulting in default on 14.01.2020 in terms of Section 3(11) of the Code. The continued non-payment of dues, along with the financial distress of the borrower entities, clearly establishes the occurrence of default.
15. The Financial Creditor further submits that the petition is within the prescribed period of limitation, as the cause of action arose only upon the occurrence of default following invocation of the guarantees. The Financial Creditor issued the invocation notice on 03.01.2020, which was received by the Corporate Debtor on 07.01. 2020, calling upon it to discharge the outstanding dues within five days. In terms of Clause 3 of the Guarantee Deeds, the liability of the Corporate Debtor crystallized only upon its failure to comply with such demand. As no payment was made within the stipulated period, the default occurred on 14.01.2020, and the limitation period is therefore to be computed from this date, rendering the present petition within limitation.
16. The present application is complete in all respects and is supported by all requisite documents evidencing the financial debt and default, in compliance with the requirements under Section 7 of the Code.
17. Further, the liability of the Corporate Debtor, being a guarantor, is co-extensive with that of the principal borrowers in terms of Section 128 of the Indian Contract Act, 1872, and the Financial Creditor is entitled to proceed against the Corporate Debtor independently or simultaneously. Additionally, the Corporate Debtor has placed reliance on certain judgements to contend there



is no bar under the Code on initiating proceedings against both the principal borrowers and the guarantor. The Financial Creditor has further contended that CIRP can be validly initiated against a Corporate Guarantor independently, and that the liability of the guarantor is co-extensive and enforceable irrespective of proceedings against the principal borrower.

18. The Financial Creditor has placed reliance on the judgement of *Lalit Kumar Jain v. Union of India & Ors. (2021) 9 SCC 321* to state that liability of the guarantor is independent and does not stand discharged merely on account of proceedings against or resolution of the principal borrower. Further, claims can be pursued against both the borrower and the guarantor for the same debt, subject to adjustment upon actual recovery.

19. The final details of the claims filed against the Borrowers / Co-borrowers by the Financial Creditor are provided in detail herein below:

<b>Name of the Borrower(s) / Corporate Guarantor / Personal Guarantor(s)</b>	<b>Agreement</b>	<b>Date on which the claim was calculated</b>	<b>Claim Amount</b>
<b>Borrower(s)</b>			
Ninex Developers Limited; C.P. (I.B) No. 281 of 2019	TLA 1	August 8, 2019	Rs. 2,19,58,952
Abloom Infotech Limited; C.P.(I.B.) of 2019	TLA 2	March 26, 2021	Rs. 12,11,39,464
<b>Co-borrower(s)</b>			
Redtopaz Real Estate Pvt. Ltd.; C.P. (I.B) No. 667 of 2019	TLA 1 TLA 2	January 6, 2020	Rs. 10,14,77,065
<b>Total Amount claimed from the Borrowers</b>			<b>Rs. 24,45,75,481</b>

20. The aggregate amount claimed by the Financial Creditor from the borrowers, after adjustment of the amounts received through the resolution plan of Abloom are as follows:



<b>Particulars</b>	<b>Amounts (Rs)</b>
Total amount claimed from the borrowers	Rs. 24,45,75,481
<b>Less:</b> Amount recovered from Abloom Infotech Private Limited	Rs. 12,11,39,464
<b>Revised Claim Amount</b>	<b>Rs. 12,34,36,017</b>

21. In view of the above, the Financial Creditor pleads that existence of financial debt, occurrence of default, and compliance with all statutory requirements stand established, and the present application deserves to be admitted.

22. The Financial Creditor has placed the following documents on record:

- a) A true copy of Loan Agreement 1 dated 30.12. 2014, along with the Amendment to Loan Agreement 1 dated 01.01.2016, together with notices of drawdown dated 30.12.2014 and 27.02.2015, and proof of disbursement.
- b) A true copy of Loan Agreement 2 dated 27.04.2016, along with the Amendment to Loan Agreement 2 dated 24.07.2017, together with notices of drawdown dated 02.05.2016, 12.02.2018, 13.03.2018, and 15.05.2018, along with proof of disbursement.
- c) A true copy of the demand notice dated 19.03.2019 and the legal notice dated 27.06.2019.
- d) A true copy of the Corporate Guarantee Deed dated 15.05.2018, along with the invocation of guarantee notice dated 03.01.2020, issued in relation to Loan Agreement 2.
- e) Copy of Statement of account.

23. The Financial Creditor has proposed the name of Mr. Harsh Kumar Arora, registration number IBBI/IPA-002/IP-N00836/2019-2020/12610, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to



Adjudicating Authority] Rules, 2016 along with a copy of registration certificate with IBBI.

**Submissions of learned Counsel appearing for the Corporate Debtor are as under:**

The details of the submissions made by the Corporate Debtor are as follows:

24. The Corporate Debtor submits that the present petition is not maintainable as it has been filed with the sole intent of recovery of money, which is impermissible under the Insolvency and Bankruptcy Code, 2016 as IBC is not a recovery mechanism but a resolution framework. The Financial Creditor has invoked the provisions of the Code only to enforce recovery against the Corporate Debtor, which amounts to misuse of the statutory process.
25. It is further submitted that the Financial Creditor has suppressed material facts by failing to disclose that it has already initiated multiple proceedings on the basis of the same debt and default, including CIRP against the Principal Borrower, proceedings against Personal Guarantors, and the present proceedings against the Corporate Guarantor. All such proceedings arise out of the same set of documents and the same claim, and such suppression alone renders the present petition liable to be dismissed with exemplary costs.
26. The CIRP against the Principal Borrower, Abloom Infotech Pvt. Ltd., is completed wherein the Resolution Plan was approved by the Committee of Creditors and subsequently by this Tribunal. Under the said Resolution Plan, the Financial Creditor received ₹12.11 Crores, which in fact has not been disclosed in the present petition. In such circumstances, the basis for maintaining the present proceedings has not been explained, and no amount can be said to be due and payable.
27. The Corporate Debtor further submits that the Financial Creditor is claiming the same amount in multiple proceedings by adding interest on the same principal sum and thereby inflating the claim. Such conduct amounts to unjust



enrichment and abuse of process of law, as the Financial Creditor is attempting to recover more than what is legally due on the basis of the same debt and documents. Details of the other CIRPs is as under:

Case Number	Date of Initiation	Court	Amount	Status
CP(IB) No.- 2115 of 2019- DMI vs. Abloom Infotech Ltd.	06.09.2019	NCLT	Rs. 7,94,47,080/-	Resolution approved. Amount already received by DMI- (Rs. 12.11 Crores).
3				
CP(IB) No.- 667 of 2019 M/S Renu Proptech Pvt. Ltd. Vs M/S Red Topaz Real Estate Pvt Ltd.	10.04.2019	NCLT	Rs. 10,14,77,065/-	12A Revival plan approved
CP(IB) No.- 281 of 2019- BDR Finvest Pvt. Ltd vs Ninex Developers Ltd.	06.02.2019	NCLT	Rs. 1,84,65,64,500/-	12A Revival plan approved
CP(IB) No. 765 of 2022- DMI vs. Sandeep Garg	2022	NCLT	Rs. 18,58,39,873/-	Pending
CP(IB) No. 909 of 2020- DMI vs. Sandeep Garg	09.09.2020	NCLT	Rs. 10,83,57,515/-	Pending
CP(IB) No.- 779 of 2022- (Present Case)	09.11.2022	NCLT	Rs. 18,58,39,873/-	Pending (Present Case)
The FC also sent a Notice under Section 13 of SARFAESI Act to M/s Dauphin AKG Hotels Pvt. Ltd. (Respondent herein) that the property over which the security has been created has market value of more than Rs. 18,00,00,000/- (This also includes the original amount of Rs. 7,94,47,080/-)				
The FC also filed an FIR against the Ninex Group of Companies which also includes the amount of Rs. 7,94,47,080/-. (This also includes the original amount of Rs. 7.94,47,080/-)				



28. The Corporate Debtor submits that initiation of multiple CIRPs for the same debt is contrary to the scheme of the Code and has referred to the judgement of the Hon'ble NCLAT in the case of *Vishnu Aggarwal v. Piramal Enterprises Ltd.*, wherein it was held that while simultaneous filing may be permissible, once an application for the same claim and default has been admitted against one Corporate Debtor, a second application cannot be admitted against another. In the present case, CIRP has already been admitted against the Principal Borrower, and therefore, the present petition against the Corporate Guarantor is not maintainable.

29. It is also submitted that the principle laid down in *Vishnu Aggarwal v. Piramal Enterprises Ltd.* continues to hold the field, as there is no stay by the Hon'ble Supreme Court in the pending appeal arising therefrom. The Corporate Debtor reserves its right to pursue appropriate remedies before the Hon'ble Supreme Court; however, the present petition deserves to be tested on the basis of the prevailing legal position.

30. It is further submitted that the Hon'ble Supreme Court in *Vidarbha Industries Power Ltd. v. Axis Bank Ltd. (2022) 8 SCC 352* has held that the Adjudicating Authority has discretion under Section 7 of the Code to admit or reject an application based on the facts and circumstances of each case. In the present case, the facts clearly warrant exercise of such discretion in favour of the Corporate Debtor, particularly in view of the ongoing CIRP, suppression of facts, and absence of any real subsisting default.

31. It is further submitted that no legally enforceable financial debt or subsisting default exists qua the Corporate Debtor so as to sustain the present petition under Section 7 of the IBC. The Corporate Debtor is merely a corporate guarantor, and it is a settled position that the existence of a "financial debt" under Section 5(8) necessarily requires a disbursement against the consideration for time value of money to the Corporate Debtor. In the present case, no amount was ever disbursed to the Corporate Debtor, as all funds were advanced exclusively to the principal borrowers, namely Ninex Developers Ltd. and Abloom



Infotech Pvt. Ltd. In the absence of any direct financial accommodation to the Corporate Debtor, the essential ingredient of disbursement is not satisfied, and therefore, no financial debt can be said to exist. Mere reliance on a corporate guarantee, without an independent and legally enforceable underlying debt qua the Corporate Debtor, is insufficient to invoke the provisions of the Code. Consequently, the very foundation for initiating CIRP against the Corporate Debtor is absent, rendering the present petition wholly non-maintainable.

32. It is further submitted that the Financial Creditor has taken inconsistent stands with respect to the quantum of claim, initially claiming ₹7.94 Crores and subsequently enhancing the same to ₹12.11 Crores during the CIRP of the Principal Borrower, which has been accepted by the Resolution Professional without proper verification. Despite specific requests, the basis for such enhancement has not been disclosed, which casts serious doubt on the legitimacy of the claim.
33. It is further submitted by the Corporate Debtor that the present petition is ex facie barred by limitation and is liable to be dismissed on this ground alone. The date of default, as reflected in the Financial Creditor's own pleadings, is 15.08.2019, whereas the present petition has been filed on 19.09.2022, beyond the prescribed period of three years under Section 238A of the IBC. The attempt of the Financial Creditor to extend limitation by relying on the alleged invocation of the guarantee in 2020 is legally untenable, as limitation runs from the date of default and cannot be extended by unilateral acts in the absence of any valid acknowledgment.
34. In view of the aforesaid facts and circumstances, it is submitted that the present petition is not maintainable, is barred by limitation, suffers from suppression of material facts, involves impermissible multiplicity of proceedings for the same debt, and constitutes a clear abuse of the process of law. Accordingly, it is prayed that this Hon'ble Adjudicating Authority may exercise its discretion in not



admitting the Petition under Section 7 of the Code and dismiss the same with exemplary costs.

### **Analysis and Findings**

35. We have heard the Learned Counsels for the Financial Creditor and the Corporate Debtor and perused the averments made in the petition, reply and rejoinder. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.
36. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a “debt” owed to the Financial Creditor and whether there is a “default” with respect to such debt.
37. In the present case, it is observed that the Financial Creditor had extended financial assistance to the Corporate Debtor under the Term Loan Agreements dated 30.12.2014 and 27.04.2016. The said financial facilities were duly disbursed in terms of Clause 2.1 read with Schedule 2 of the Term Loan Agreements, as evidenced from the bank statements and drawdown letters placed on record. The disbursement was made against consideration for the time value of money and carried an obligation of repayment along with interest as stipulated under Clause 2.5 of the said agreements. Accordingly, the said transaction squarely falls within the ambit of ‘financial debt’ as defined under Section 5(8) of the Code.
38. It is further noted that the Corporate Debtor executed Corporate Guarantee Deeds dated 15.05.2018 in favour of the Financial Creditor, thereby undertaking to secure and repay the outstanding dues arising under the aforesaid Term Loan Agreements. The guarantees were in the nature of continuing guarantees and remained in full force until discharge of the entire liability. In terms of Section 5(8)(h) and (i) of the Code, any liability arising out



of a guarantee or indemnity in respect of a financial facility also constitutes a 'financial debt'. Hence, the liability of the Corporate Debtor under the said Guarantee Deeds is co-extensive and falls within the definition of 'financial debt'.

39. From the material available on record, it is evident that a total amount of Rs. 18,58,39,873/- was due and payable by the Corporate Debtor as on 30.06.2022. The said amount arises directly from the Term Loan Agreements and the invoked guarantees, thereby establishing the existence of a financial debt.
40. With regard to the occurrence of default, it is observed that the Financial Creditor issued an Invocation of Guarantee Notice dated 03.01.2020, calling upon the Corporate Debtor to repay the outstanding dues within a period of five days from receipt of the said notice. In terms of Clause 3 of the Guarantee Deeds, the Corporate Debtor was under an obligation to make payment forthwith on first demand without demur. However, despite such demand, the Corporate Debtor failed to discharge its liability within the stipulated period. Accordingly, the date of default stands crystallized as 14.01.2020.
41. The failure of the Corporate Debtor to repay the admitted dues despite invocation of guarantee clearly establishes 'default' within the meaning of Section 3(12) of the Code, which defines default as non-payment of a debt when it has become due and payable.
42. At this stage, it is relevant to refer to the law laid down by the Hon'ble Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank & Anr. (2018) 1 SCC 407***, wherein it has been held as follows:

*"28..... Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of*



*the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.*

*30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."*

43. In light of the aforesaid judgment, this Adjudicating Authority is only required to ascertain the existence of a financial debt, the occurrence of default, and completeness of the application. In the present case, the Financial Creditor has successfully demonstrated, through documentary evidence, the disbursement of loan, subsisting liability under the guarantee, and the failure of the Corporate Debtor to repay the dues despite demand.
44. Accordingly, this Adjudicating Authority is satisfied that there exists a 'financial debt' as defined under Section 5(8) of the Code and that a 'default' has occurred on 14.01.2020 in respect of the said debt. Hence, the essential conditions for admission of the application under Section 7 of the Code stand fulfilled.



45. This Adjudicating Authority has considered the issue of limitation in light of the facts placed on record. The liability of the Corporate Debtor arises from the Corporate Guarantee Deeds dated 15.05.2018, which are in the nature of continuing guarantees. In terms of the said deeds, the obligation of the Corporate Debtor to discharge the outstanding dues is triggered upon invocation of the guarantee and failure to comply with the demand raised by the Financial Creditor.

46. In the present case, the Financial Creditor invoked the corporate guarantee vide notice dated 03.01.2020, calling upon the Corporate Debtor to repay the outstanding dues within the stipulated period of five days. The Corporate Debtor failed to honour the said demand within the prescribed time, and accordingly, the default stood crystallized on 14.01.2020. The right to initiate proceedings under Section 7 of the Code, therefore, accrued from the said date.

47. The legal position in this regard stands settled by the Hon'ble Supreme Court in *Laxmi Pat Surana v. Union Bank of India* (2021) 8 SCC 481, wherein it has been held:

*23. Indubitably, a right or cause of action would enure to the lender (financial creditor) to proceed against the principal borrower, as well as the guarantor in equal measure in case they commit default in repayment of the amount of debt acting jointly and severally. It would still be a case of default committed by the guarantor itself, if and when the principal borrower fails to discharge his obligation in respect of amount of debt. For, the obligation of the guarantor is coextensive and coterminous with that of the principal borrower to defray the debt, as predicated in Section 128 of the Contract Act. As a consequence of such default, the status of the guarantor metamorphoses into a debtor or a corporate debtor if it happens to be a corporate person, within the meaning of Section 3(8) IBC. For, as aforesaid, the expression "default" has also been defined in Section 3(12) IBC to mean non-payment of debt when whole or any part or instalment of the amount of debt has become due or payable and is not paid by the debtor or the corporate debtor, as the case may be.*

*24. A priori, in the context of the provisions of the Code, if the guarantor is a corporate person [as defined in Section 3(7) IBC], it*



would come within the purview of the expression “corporate debtor”, within the meaning of Section 3(8) IBC.

**26.** Thus understood, it is not possible to countenance the argument of the appellant that as the principal borrower is not a corporate person, the financial creditor could not have invoked remedy under Section 7 IBC against the corporate person who had merely offered guarantee for such loan account. 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 IBC 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.

48. In view of the aforesaid authoritative pronouncement, it is clear that in cases of continuing guarantees, the period of limitation is to be reckoned from the date on which the guarantor fails to discharge its liability upon invocation of the guarantee. Applying the aforesaid principle to the facts of the present case, the limitation period commenced from 14.01.2020, being the date of default. The present Application having been filed within a period of three years from the said date is, accordingly, within limitation.
49. The issue that arises for consideration is whether the liability of the Corporate Debtor, being a guarantor, is co-extensive and independently enforceable so as to sustain the present Application under Section 7 of the Insolvency and Bankruptcy Code, 2016.
50. In this regard, reference may be made to Section 128 of the Indian Contract Act, 1872, which stipulates that the liability of the surety is co-extensive with that of the principal debtor, unless otherwise provided by the contract. In the present case, the Corporate Debtor executed the Corporate Guarantee Deeds dated 15.05.2018, thereby undertaking to secure repayment of the financial facilities extended under the Term Loan Agreements. The liability of the Corporate Debtor, therefore, arises from the same transaction and is co-extensive, enabling the Financial Creditor to proceed against it independently.



51. The permissibility of initiating CIRP against a corporate guarantor, even where proceedings against the principal borrower are pending or contemplated, is no longer res integra. The Hon'ble NCLAT in *State Bank of India v. Athena Energy Ventures Pvt. Ltd.*, Company Appeal (AT) (Ins.) No. 633 of 2020 has held that:

*“It is always open to a Financial Creditor to initiate CIRP against the principal borrower as well as the corporate guarantor for the same set of debt and default. The Code does not bar simultaneous proceedings against both.”*

52. Further, the scope and continuance of liability of a guarantor has been authoritatively settled by the Hon'ble Supreme Court in *Lalit Kumar Jain v. Union of India* (2021) 9 SCC 321. The Hon'ble Court held:

*“125. ... 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 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.”*

53. In view of the aforesaid statutory framework and the settled legal position, it is evident that the liability of the Corporate Debtor, being a guarantor, is co-extensive and continues to subsist independently of the principal borrower. Accordingly, the Financial Creditor is entitled to initiate proceedings under Section 7 of the Code against the Corporate Debtor, and such initiation is legally sustainable.

54. From the perusal of aforesaid facts, it is clear that the applicants are Financial Creditors and the debt owed to them by the Corporate Debtor is a Financial Debt, and there has been a default, as stipulated in Sections 3(12), 5(7) and Section 5(8) of the IBC which are as follows:

Section 3(12) of IBC defines Default. *“Default means non-payment of debt when whole or any part or installment of the*



*amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.”*

Section 5(7) of IBC defines Financial Creditor: *“Financial Creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.”*

Section 5(8) of IBC defines Financial Debt. *“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 maybe 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;*
- (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.”*

55. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition established that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under Section 4(1) of the Code, stipulated at the relevant point of time. We are of the view that since this Petition was filed on 27.08.2022, and even admittedly the debt owed to the Financial Creditor was an amount of Rs. 18,58,39,873 (Rupees Eighteen Crore Fifty-Eight Lakh Thirty-Nine Thousand Eight Hundred and Seventy-Three) as on 30.06.2022(date of default) which meets the threshold of Rs. One Crore.
56. In the light of the above facts and circumstances, and in terms of Section 7(5) (a) of the Code, the instant petition **COMPANY PETITION IB (IBC)/779(PB) 2022** filed by DMI Finance Pvt Ltd, the Financial Creditor, under Section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s Dauphin AKG Hotels Private Limited, the Corporate Debtor, stands **admitted** and CIRP of Dauphin AKG Hotels Private Limited is initiated.
57. That the petitioner in part-III of the petition has proposed the name of Mr. Harsh Kumar Arora, registration number IBBI/IPA-002/IP-N00836/2019-2020/12610 and Email Id- cacsharora@gmail.com, as the Interim Resolution Professional of the Corporate Debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. The proposed Interim Resolution Professional is directed to give his written consent in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating



Authority] Rules, 2016 along with a copy of registration certificate as well as a valid AFA within 5 days of receipt of this order.

58. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- (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.*
- (e) *The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*

59. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has



come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

60. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
61. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Mr. Harsh Kumar Arora to meet out the expenses to perform the initial functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
62. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
63. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the



‘Corporate Debtor’. In case there is any violation committed by the ex- management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing appropriate orders.

64. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the ‘Corporate Debtor’ as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
65. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
66. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **COMPANY PETITION IB (IBC)/779(PB) 2022 stands admitted.**
67. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Sd/-**

**(ANU JAGMOHAN SINGH)**  
**MEMBER (TECHNICAL)**

**Sd/-**

**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**