



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V**

C.P. (I.B) No. 764/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. Twin City Urban Co-operative Credit Society Ltd.

Through Miss Dipmala Shankar Jadhav,
Having office at Vimal Complex, Mashal Vasti,
Vijapur Road, Solapur, Maharashtra – 413004

...Petitioner/Financial Creditor

Vs

Pandhe Hospitality Private Limited

234, Praneet Jaywant Palkar Marg, Worli,
Mumbai - 400030, (Maharashtra)

... Respondent/Corporate Debtor

Order Dated: 04.03.2025

Coram:

Ms. Reeta Kohli, Hon'ble Member (Judicial)

Ms. Madhu Sinha, Hon'ble Member (Technical)

Appearances:

For the Petitioner: Adv. Mohit Jolly (VC)

For the Respondent: Counsel for the Respondent



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ORDER

Per: Reeta Kohli, Member (Judicial)

I. This Company Petition is filed by **M/s. Twin City Urban Co-operative Credit Society Ltd.** (hereinafter referred as “**the Petitioner/Financial Creditor**”) on 23.08.2024 seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **Pandhe Hospitality Private Limited** (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 7** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for a Financial Debt of **Rs. 1,63,32,667/-** with the date of default as **08.06.2023**.

II. Facts of the Financial Creditor-

1. As submitted, the Principal Borrower, i.e., M/s Pandhe Construction Private Limited, approached the Financial Creditor and applied for the grant of the Credit facility of Rs. 65,00,000/-. Pursuant to this, the Applicant sanctioned a loan of Rs. 65,00,000/- vide sanction letter dated 20.10.2018 against the mortgage of an immovable property owned by the Principal Borrower. the Principal Borrower executed the loan agreement dated 28.11.2018 in favour of the applicant. In terms of the Loan Agreement dated 28.11.2018 executed between the Principal Borrower and the applicant, the Credit facility was repayable in 180 months by the cash credit account with interest 13.50 % p.a. The limit of the said credit facility was ultimately enhanced to Rs. 90,00,000/-.
2. Further, as stated, the Corporate Debtor, Pandhe Hospitality Pvt. Ltd., executed an unconditional, continuing and irrevocable deed of Personal Guarantee in favour of the Applicant / Financial Creditor for the repayment of the loan facilities availed by the Principal Borrower. A



Promissory Note was also executed by the Corporate Debtor in favour of the Applicant. However, the loan account of the Principal Borrower became irregular and despite repeated requests by the Financial Creditor, the Principal Borrower and the Corporate Debtor did not make regular payments. Subsequently, the Financial Creditor declared the said loan account as overdue account on 31.05.2019.

3. As contended by the Financial Creditor, the Principal Borrower and the Corporate Debtor along with other guarantors have been accepting, acknowledging and admitting the liabilities towards the applicant from time to time by executing Balance Confirmation Letters/Revival Letters dated 31.03.2019, 31.03.2020, 31.03.2021, 31.03.2022, 31.03.2023, 31.03.2024. However, despite requests the Principal Borrower and the Corporate Debtor (being the guarantor) failed to repay the outstanding loan amount. Thus, in view of the aforesaid facts, the Financial Creditor sent a loan recall notice dated 27.05.2023 to the Principal Borrower and the Corporate Debtor, including other guarantors calling upon them to repay, jointly and severally, the total outstanding amount of Rs. 1,43,82,191/- due as on 31.03.2023 along with future interests without any further delay, in one instalment within a period of 7 days from the receipt of the said loan recall notice.
4. As alleged by the Financial Creditor, despite the service of the aforementioned loan recall notice dated 27.05.2023, the Corporate Debtor and the Principal Borrower failed to repay the total outstanding amount due to the Financial Creditor. Hence, the Financial Creditor preferred the present Petition before this Hon'ble Tribunal seeking to initiate CIRP against the Corporate Debtor (being a Guarantor) whose liability is coextensive with that of the Principal Borrower.



III. Facts of the Corporate Debtor-

1. The Corporate Debtor is a company engaged in the hospitality sector, involved in the business of Hotels, Camping sites and other provisions of short stay accommodation. At the outset, the Corporate Debtor denied all contentions made by the Financial Creditor and further stated that the present Petition is completely misconceived and deserves an outright dismissal.
2. The case of the Respondent is that M/ s Pandhe Construction Pvt. Ltd. is a Principal Borrower who approached the Financial Creditor and applied for a grant of the Credit Facility of Rs. 65,00,000 /- and the Corporate Debtor stood as a guarantor and executed an unconditional, continuing and irrevocable deed of Personal Guarantee in favour of the Financial Creditor for the repayment of the loan facilities availed by the Principal Borrower.
3. As contended by the Corporate Debtor, the present company petition is liable to be dismissed as the primary obligation to repay the loan amount is of the principal borrower i.e. M/ s Pandhe Construction Private Limited. The Respondent is merely a Corporate Guarantor who executed a deed of guarantee in favour of the Financial Creditor to secure the obligations of the Principal Borrower and the deed of guarantee explicitly limits the liability of the Corporate Debtor / Respondent to the acts and defaults of the Principal Borrower and in view of the same, the Respondent, as a Corporate Guarantor, is not independently liable to pay the alleged amount claimed by the Applicant. As contended by the Corporate Debtor, the obligation to honor the guarantee arises only upon the establishment of default by the Principal Borrower and the Financial Creditor has failed to substantiate the same.



4. Thus, in light of the aforementioned facts, the Corporate Debtor prays for the dismissal of the present Petition.

IV. Findings-


1. After hearing the Ld. Counsels for both the parties and perusing the documents available on record, it becomes clear that the case of the Financial Creditor is that a credit facility was availed by the Principal Borrower, i.e. M/s Pandhe Constructions Private Limited, and the Corporate Debtor herein stood as a guarantor and executed an unconditional, continuing and irrevocable Deed of Personal Guarantee in favour of the Financial Creditor for the repayment of the loan facilities availed by the Principal Borrower. However, the Principal Borrower and the Corporate Debtor failed to discharge their obligations with respect to the repayment of the said credit facility and thus, the present Petition was filed before this Court. On the other hand, the case of the Respondent / Corporate Debtor is that the primary obligation to repay the loan is of the Principal Borrower, and as a mere Corporate Guarantor, the Respondent cannot be held independently liable for the alleged debt. Hence, the present Petition deserves to be dismissed.
2. Upon perusal of the documents available on record, it deserves to be appreciated that the Corporate Debtor has not disputed the execution of the Corporate guarantee given in favour of the Financial Creditor and has also not denied the fact that the Principal Borrower has failed to discharge his obligation of payment of the amount due to the financial creditor.
3. Further, it deserves to be taken note of that various revival letters dated 31.03.2019, 31.03.2020, 31.03.2021, 31.03.2022, 31.03.2023, and 31.03.2024 have been placed on record, annexed as '*Annexure A – 11 (Colly)*' [Page No. 103 to 107]. The said revival letters have been duly



signed by the Principal Borrower and the Corporate Debtor as well. Thus, in view of the aforementioned revival letters, the debt and default on part of the Corporate Debtor stands established. In this regard, reliance deserves to be placed on the judgment of the Hon'ble Supreme Court in the matter of ***Laxmi Pat Surana V. Union Bank of India & Anr. (Civil Appeal No. 2734 of 2020)***, wherein it has been held as under-

“19. Indubitably, a right or cause of action would ensure 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) of the Code. For, as aforesaid, expression “default” has also been defined in Section 3(12) of the Code 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.”


4. Thus, in view of the aforementioned judgment of the Hon'ble Supreme Court, it becomes clear that a Financial Creditor can proceed against the



Principal Borrower as well as the Guarantor as the obligation of the Guarantor is coextensive and coterminous with that of the Principal Borrower to repay the debt payable to the Financial Creditor. Therefore, in view of the aforesaid and also in view of the fact that the execution of Corporate Guarantee has not been denied by the Corporate Debtor, it stands established that the Financial Creditor has rightly proceeded against the Corporate Debtor, being a guarantor, whose liability cannot be segregated from that of the Principal Borrower.

5. Therefore, in light of the facts and circumstances of the present case, we are of the considered opinion that the present Petition fulfills all the requirements as stipulated under Section 7(5) of the Code. The Financial Creditor is entitled to claim its dues as it has been duly established that there exists a financial debt and a default in payment of the financial debt has occurred on part of the Corporate Debtor. Further, the amount stated to be due in this case is above the threshold limit as stipulated under Section 4 (1) of IBC and the present Petition has been filed within the period of limitation prescribed in the Limitation Act, 1963. Thus, in view of the settled law wherein the Hon'ble Supreme Court in the matter of *M/s. Innoventive Industries Ltd. vs. ICICI Bank 2018 (1) SCC 407*, has been pleased to hold as under-

“28. 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.”

6. Hence, the present Petition is hereby **admitted** to CIRP by passing the following order:

ORDER

- a. The above Company Petition No.764/IBC/MB/2024 is hereby **admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Pandhe Hospitality Private Limited**.
- b. The Petitioner has proposed the name of **Stalwart Resolution Professional LLP**, bearing Registration No. IBBI/IPE/0162/IPA-3/2023-24/50070, as Interim Resolution Professional. The IRP proposed by the Petitioner, is hereby appointed as Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner shall deposit an amount of Rs. 2 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- d. That this Bench hereby declare moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;



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; 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. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- f. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- g. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P. No. 764/IBC/MB/2024 is **admitted**.



1. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

MADHU SINHA

Member (Technical)

/Jhanvi/

Sd/-

REETA KOHLI

Member (Judicial)