IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT III

I.A. 4404 of 2024

In

C.P. No. (IB) 560/MB/C-III/2022

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016

In the matter of

L & T Finance Limited
Having its registered office at:
4th Floor, Brindavan, Plot No. 177, CST Road, Kalina, santa Cruz (E), Mumbai – 400098

... Applicant

Vs.

Divyesh Desai

Resolution Professional of Rajesh Estates and Nirman Private Limited
Having office at:
Moore Singhi Advisors 402, Marathon Innova, 4th-Floor, Off Ganpatrao Kadam Marg, Lower Parel, Mumbai, Maharashtra- 400013

... Respondent

In the matter of

1. **Clearwater Capital Partners Singapore Fund IV Private Limited**

2. **Clearwater Capital Partners Singapore Fund V Private Limited**

... Financial Creditors

Vs

Rajesh Estates and Nirman Private Limited

Registered Office: 139, Nagindas Master Road, 2nd Floor, Seksaria Chambers, Fort, Mumbai 400023

CIN Number: U28991MH1996PTC099089

… Corporate Debtor

Order pronounced on: 10.09.2025

Coram:

Sh. Hariharan Neelakanta Iyer
Member *(Technical)*

Ms. Lakshmi Gurung
Member *(Judicial)*

Appearances:

For the Applicant : Adv. Shyam Kapadia a/w Adv. Jyotika Raichandani, Adv. Shruti Mania, Adv. Kashmita Belwalkar i/b Solomon and Co.

For the Respondent : Mr. Pulkit Sharma a/w Adv. Neel Mehta, Adv. Rishab Chandra i/b Vaish Associates

Per: **Ms. Lakshmi Gurung, Member (*Judicial*)**

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1. M/s L & T Finance Limited (**Applicant/L&T**) has moved the present application challenging the rejection of its claim of Rs. 209,96,04,196/- (Rupees Two Hundred and Nine Crores Ninety-Six Lakhs Four Thousand One Hundred and Ninety Six Only) by the Resolution Professional (**RP/ Respondent**) of Rajesh Estates and Nirman Private Limited (**Corporate Debtor**).

2. **Brief Background:**

2.1 The Applicant had sanctioned a term loan facility of Rs. 212 crores to one M/s Odeon Constructions and Developers Private Limited (**Borrower/Odeon**) vide the Sanction Letter dated 24.12.2021. Subsequently, loan agreement dated 31.01.2022 was executed

between the Applicant and the Borrower. Against this term loan, the corporate debtor executed Corporate Guarantee dated 31.01.2022 on the same date.

2.2 The applicant has mentioned about Joint Development Agreement (JDA) dated 09.02.2022 for construction and two Supplement Agreements executed on 16.02.2022 and 06.09.2022 but has not further elaborated on the same and has not annexed copies of the said JDA and Supplemental Agreements.

2.3 In addition to the corporate guarantee given by the CD to secure the loan of Rs. 212 crores to Odeon by the applicant, the Corporate Debtor also executed a registered Deed of Mortgage dated 15.07.2022, in favour of the Catalyst Trusteeship Limited, the Security Trustee (acting on behalf of L&T).

2.4 In the meantime, the captioned Company Petition No. 560/2022 came to be filed against the Corporate Debtor and vide order dated 24.03.2023, the Corporate Debtor was admitted to the Corporate Insolvency Resolution Process (**CIRP**). Public announcement inviting claims was made on 31.03.2023.

2.5 An appeal bearing no. CA (AT) (Ins) No. 460/2023 was preferred before the Hon'ble National Company Law Appellate Tribunal (**Appellate Tribunal**) challenging the admission order dated 24.03.2023. The Appellate Tribunal vide order dated 20.04.2023 directed the RP not to constitute the Committee of Creditors (**CoC**) of the Corporate Debtor. Finally, the appeal stood dismissed vide order dated 21.12.2023.

2.6 On 13.02.2024, the Applicant submitted its claim in Form C as a financial creditor for an amount of Rs. 209,96,04,196/- (**claim amount**).

2.7 The RP, vide email dated 05.03.2024, had raised queries regarding the delay in filing the claim and the invocation of guarantee. To this, the Applicant responded through email dated 13.03.2024. It is submitted by the Applicant that vide the said email dated 13.03.2024, the Applicant also requested the RP not to deal with the property charged to the Applicant under the Deed of Mortgage dated 15.07.2022.

2.8 Vide email dated 23.04.2024, the RP admitted the claim of the Applicant. However, subsequently, on 26.04.2024, the RP sent an email to the Applicant intimating about the rejection of the said claim on the ground that the guarantee was not invoked by the Applicant prior to the insolvency commencement dated (ICD) relying on the judgments of *Ghanashyam Mishra and Sons Private Limited versus Edelweiss Asset Reconstruction Company Limited [(2021) 9 SCC 657]* and *IDBI Trusteeship Services Limited vs. Abhinav Mukherji & Ors. [2022 SCC OnLine NCLAT 267].*

2.9 The Applicant, through its Advocates, replied vide letter dated 24.05.2024, *inter alia*, stating that the securities mortgaged in favour of the Applicant in respect of the Loan are jeopardised on initiation of CIRP in the Corporate Debtor and resultantly, the same qualifies as an Event of Default under the Loan Agreement. There was no response from the RP.

2.10 In the context of the preceding facets, the Applicant has filed the present application. The reliefs sought in particular are set forth hereinbelow:

a. To allow the present Application.

b. To admit the claim of the Applicant to the tune of INR 209,96,04, 196/- (Indian Rupees Two Hundred Nine Crores Ninety-Six Lacs Four Thousand One Hundred Ninety-Six only) submitted on 13th February 2024 before the Respondent No.1 and accordingly

allow the Applicant to participate in the CIRP of the Corporate Debtor.

c. *In the alternative to prayer (b) above, to direct the Respondent to not include any of the assets mortgaged to the Applicant vide Deed of Mortgage dated 15th July 2022 in the Resolution Process of the Corporate Debtor to enable the Applicant to exercise all its rights in the capacity of a Mortgagee.*

d. *Pending the hearing and final disposal of the above Application, to grant an order of injunction, restraining the Respondent and their servants, agents from directly or indirectly, dealing with disposing of, selling, alienating, transferring, encumbering or parting with possession of, creating third party interest in respect of the assets mortgaged by the Corporate Debtor to the Applicant vide Deed of Mortgage dated 15th July 2022.*

e. *Ad-interim relief in terms of prayer (d);*

f. *And such further and other Order (s) as this Tribunal may deem fit in the facts and circumstances of the present case.*

Submissions of the Parties

3. **Submissions of the Applicant**

Rejection of claim

3.1 It is submitted that the Corporate Debtor has expressly waived any right that it may have of first requiring the Applicant to issue any notice to either Borrower or Corporate Debtor. It is further submitted that the Corporate Debtor has unconditionally accepted the financial obligation under the Guarantee and agreed to reflect the same as 'contingent liability' in its balance sheet and therefore, obligation under the Corporate Guarantee is absolute and is not affected for additional or future exercise, by an act, omission, circumstance, etc. The Applicant relies on Clauses 19, 22 and 34 of the Guarantee Deed dated 31.01.2022.

3.2 The Applicant distinguishes the judgements of *Ghanashyam Mishra (supra)* and *IDBI Trusteeship (supra)* relied upon by the RP in his rejection email dated 26.04.2024 and submits that in the above-mentioned two cases, the Principal Borrower had committed default, however, the lender therein did not invoke the Corporate Guarantee whereas in the present case, the Applicant did not get an opportunity to invoke the guarantee prior to initiation of CIRP as there was no default by the Borrower. The Loan was still standard in the books of the Applicant till initiation of CIRP in the Corporate Debtor and there arose no reason for the Applicant to invoke the Corporate Guarantee. It is further submitted that the Event of Default had set into motion only on initiation of CIRP in the Corporate Debtor.

Conduct of RP

3.3 It is submitted that the act of the RP in rejecting the claim of the Applicant after having admitted the same is beyond his authority under the Code.

3.4 Having once admitted a claim, a Resolution Professional has no authority whatsoever to reject the same claim irrespective of any reason. A Resolution Professional can only change or modify the quantum of claim upon admitting the same.

4. **Submissions of the Resolution Professional**

Rejection of claim

4.1 There is no default made by the Principal Borrower in respect of its obligation under the term loan as on Insolvency Commencement Date (ICD) or even as on date of filing of the claim. In fact, the account of the Principal Borrower is standard in the books of the Applicant and the Principal Borrower has been regular in honoring its financial commitment qua the term loan for which the Corporate Debtor stood as guarantor. This has not been disputed by the Applicant as well.

4.2 The RP submits that a claim based on uninvoked guarantee cannot be admitted. Reliance is placed on the following judgments:

i. *Ghanashyam Mishra and Sons Private Limited versus Edelweiss Asset Reconstruction Company Limited [(2021) 9 SCC 657];*

ii. *IDBI Trusteeship Services Limited vs. Abhinav Mukherji & Ors. [2022 SCC OnLine NCLAT 267];*

iii. *Cable Corporation of India vs. State Bank of India [MANU/NC/4241/2023];*

Conduct of RP

4.3 It is submitted that the law/IBC does not restrict a Resolution Professional from rejecting claim of a creditor after initial admission/ acceptance of the same, if the same is found to be contrary to the provisions of the law for the time being in force or against the law laid down by Court/ Tribunal.

4.4 If the argument of the Applicant is accepted then it would open pandora's box as Resolution Professional will be constrained to keep the claim which were initially accepted which is otherwise in violation of law.

Alternate Prayer on treatment of Mortgage Assets in CIRP

4.5 As regards the alternate prayer 'c' sought in the application, the RP submits that the said prayer is in direct violation of the provisions of the Code as a secured creditor is prohibited under section 14(1)(c) of the Code from taking 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Reliance is placed on the judgment of Appellate Tribunal in the matter of *Edelweiss Asset Reconstruction Company Ltd Vs Anuj Jain, Resolution Professional of Ballarpur Industries Ltd. and Others [CA(AT)(Ins) No. 517 & 518 of 2023]* wherein it was held

that third-party security holder is bound by the provision of section 14(1)(c) of the Code.

4.6 It is further submitted that Section 238 of the Code is a non-obstante clause and therefore no person including a secured creditor can take any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property during the CIRP period, notwithstanding the alleged rights and entitlements of such person /creditor under any instrument having effect by virtue of such law including deed of mortgage.

4.7 The RP also refers to Regulation 37(1)(b) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**) which states that a resolution plan shall provide for, *"...(b) sale of all or part of the assets whether subject to any security interest or not..."*.

Analysis & Findings

5. Heard Ld. Counsel for the parties and perused the record.

6. After commencement of CIRP of the Corporate Debtor on 24.03.2023, the public announcement inviting claims was made by the IRP on 31.03.2023. In the meantime, upon an appeal preferred by the suspended director of the Corporate Debtor, the Hon'ble NCLAT stayed the constitution of the CoC. However, appeal was finally dismissed on 21.12.2023.

7. Thereafter, the Applicant filed its claim in Form C on 13.02.2024 for a claim of Rs. 209,96,04,196 arising out of the guarantee deed dated 31.01.2022 executed by the Corporate Debtor in favour of the Applicant to secure the repayment of the loan advanced to M/s Odeon Constructions and Developers Private Limited, the Borrower. The RP vide email dated 05.03.2024 sought reasons for delay in submitting the claim and also sought clarification on whether there is any default by the principal

borrower and whether the Applicant has invoked the guarantee furnished by the Corporate Debtor.

8. The Applicant submitted its response vide email dated 13.03.2024 stating that the delay in filing claim was due to the pending appeal due to which the formation of CoC was stayed till 21.12.2023. As regards the query on default by Borrower, it was submitted that, *"in terms of the loan and security documents, insolvency constitutes an event of default which entitles us to exercise our rights against the borrower and/or obligors, including invocation of guarantee."*

9. On 23.04.2024, the RP sent an email to the Applicant admitting its claim of Rs. 209,96,04,196/- on following terms:

> *"In this connection, please note that the primary loan has been granted by Odeon to the Corporate Debtor purportedly out of the proceeds of the loan disbursed by you to Odeon. Accepting both your claim and Odeon's claim would amount to duplication. However, since Odeon has not yet filed any claim in respect thereof, we are admitting your claim as a secured creditor subject to the condition that in the event Odeon files a claim in respect of the same transaction, we will be accepting their claim, being the primary obligation of the Corporate Debtor. In such circumstances, the undersigned will revise the position in view of new facts and additional information and your claim will be rejected.*
>
> *Further, please note that the undersigned has made / in the process of making application to NCLT for setting aside the Second Supplementary Agreement dated September 6, 2022 and the letter dated September 10, 2022 pursuant to sections 43 and 44 of the Insolvency and Bankruptcy Code, 2016. In the event any court or tribunal holds the assignment pursuant to letter dated September 10, 2022 or any other document to be valid or passes any order in relation to the title of the land or receivables, your position as secured creditor may be reviewed and the undersigned may not reckon any security which a court or tribunal holds to have been transferred to any other person.*
>
> *Additionally, we understand that the loan account of Odean is standard account and the loan has been serviced by them regularly. You are requested to share with us outstanding balance*

during each CoC meetings (henceforth) and your voting right will be decided based on outstanding amounts subject to an upper cap of INR 209,96,04,196."

10. Subsequently, the RP sent another email dated 26.04.2024 to the Applicant intimating about the rejection of the Applicant's claim. The contents of the email are reproduced below:

"Dear Sir,

Further to the trailing mail we are constrained to revise and reject your claim in Form C filed by you on February 13, 2024 lodging a claim for INR 209,96,04,196 as we have come across the following judgment of NCLAT:

> *IDBI Trusteeship Services Pvt Ltd vs Abhinav Mukherji - wherein relying on the judgment of the Hon'ble Supreme Court in in 'Ghanshyam Mishra and Sons Private Limited' Vs. 'Edelweiss Asset Reconstruction Company Limited', (2021) 9 SCC 657, Hon'ble NCLAT held that "We are of the view that the ratio of the Hon'ble Supreme Court in 'Ghanshyam Mishra and Sons Private Limited' (Supra), is squarely applicable to the facts of this case and hence we are of the considered view that when the 'Corporate Debtor' is a 'Guarantor' and when the 'Corporate Guarantee' has never been invoked prior to the commencement of the CIRP, as on the date of filing of the Claims, the 'Right to Payment' has not accrued'*

Copy of the judgment is attached. In this case, it has been held that claim of beneficiary of corporate guarantee cannot be admitted if the corporate guarantee has not been invoked before commencement of corporate insolvency resolution process.

In this connection, ECL Finance has filed an appeal before the Hon'ble Supreme Court which is pending disposal and on September 12, 2022, the parties were directed to maintain status quo till further orders.
Copy of the status quo order is also attached.

We will review the position if the Hon'ble Supreme Court disposes of the said appeal during the corporate insolvency resolution process period of Rajesh Estates and Nirman Private Limited.

Best Regards,
Divyesh Desai
Resolution Professional - Rajesh Estates and Nirman Private Limited"

11. The email dated 26.04.2024 is under challenge before us. Lengthy submissions were made by the parties on both sides which continued for few days.

12. The arguments canvassed by Mr. Shyam Kapadia, Ld. Counsel for the Applicant, are succinctly put as follows:

i. Once a claim is admitted, the RP does not have the authority to unilaterally review its own decision and reject the claim of the Applicant. Reliance is placed on the following decisions:
   a. *Union Bank of India vs. Rajdeep Clothing Advisory & Ors. [2022 SCC OnLine NCLAT 4699];*
   b. *Mr. Avil Menezes, Resolution Professional of AMW Auto Component Ltd vs. Shah Coal Pvt. Ltd. [CA (AT) (Ins) 63/2021];*

ii. Claim of the Applicant basis an uninvoked Corporate Guarantee ought to be admitted as per the law laid down in the case of *China Development Bank Versus Doha Bank Q.P.S.C. [2024 SCC OnLine 3829]*.

iii. Without prejudice and only in the alternative to the aforesaid arguments, if the claim of the Applicant is not admitted as a financial creditor, but is only treated as a secured creditor, the Applicant would be in a position where it would have to be provided the value of its security as part of only CIRP/resolution plan process. Reliance is placed on *Vistra ITCL vs Dinkar Venkatsubramaian [(2023) 7 SCC 324]* wherein the Hon'ble Supreme Court allowed Vistra ITCL to enforce its security interest.

13. The submissions advanced by Mr. Pulkit Sharma, Ld. Counsel for the RP, are summarized below:

i. The reliance placed by the Applicant on *China Development Bank (supra)* cannot hold good as the same is delivered by a Two-Judge Division Bench which is lesser in strength versus the landmark

Judgment of *Ghanashyam Mishra (Supra)* which is delivered by a larger bench i.e. three-judge Bench. Further, *China Development Bank (supra)* did not consider the ruling of *Ghanashyam Mishra (Supra).*

ii. The RP relies on the judgment of Hon'ble Supreme Court in *M/s Trimurthi Fragrances (P) Ltd. Vs Government of N.C.T. of Delhi*, delivered by a Division Bench of five judges whereby the principle of stare decisis was discussed holding that the principle of stare decisis operates not only vertically but also horizontally in the sense that a larger Bench formation ruling (i.e., Ghanshyam Mishra (Supra) in the present case) would be binding and prevail upon the ruling of a smaller Bench formation (I.e., China Development Bank (Supra)) and thereafter held that it is settled law that majority decision of a Bench of larger strength would prevail over the decision of lesser strength.

iii. Hence, the claim of the Applicant cannot be admitted as Financial Creditor as per the judgments of *Ghanashyam Mishra (supra)* and *IDBI Trusteeship (supra)* since the Corporate Guarantee has never been invoked before the ICD.

iv. As far as the alternative prayer to keep aside the mortgaged property is concerned, it is submitted that the exclusion of assets allegedly mortgaged to the Applicant in the CIRP to enable the Applicant to exercise all its alleged rights in the capacity of a Mortgagee is legally not permissible under the Code by virtue of sections 14(1)(c) and 238 thereof read with Regulation 37 of the CIRP Regulations. The relevant judgment in this context is *Edelweiss Asset Reconstruction Company Ltd. vs. Anuj Jain, RP of Ballarpur Industries Ltd. & Ors.*

v. As regards the conduct of the RP, it is submitted that the law does not restrict a Resolution Professional from rejecting claim of a creditor after initial acceptance, if the same is found to be contrary to the provisions of the law for the time being in force or against the law laid down by the appropriate Court/Tribunal.

vi. It is submitted that without prejudice to the above submissions, this Tribunal, if it deems fit and appropriate, may provide liberty/opportunity to the Applicant by directing the Applicant to submit its claim under prescribed Form F (Claims by other creditors) and the RP shall verify such claim as per law and such claim shall be dealt with in accordance with law and will be subject to and bound by the outcome of the Interlocutory Application No. 2506 of 2024 (Avoidance of the Preferential Transactions) filed by the Respondent herein before this Tribunal which is sub-juice as on date.

14. We have given our thoughtful consideration to the submissions of the parties and the records placed before us. Based on the rival contentions, two issues that have arisen for consideration are:

I. Whether, in the facts and circumstances of the present case, the decision of RP in re-verifying and rejecting an already admitted claim is beyond his power under the Code?

II. Whether the claim of the Applicant arising out of an uninvoked guarantee is liable to be admitted in the given facts and circumstances?

Issue I

15. It is admitted fact that the RP had initially admitted the said claim vide email dated 23.04.2024. Subsequently, on 26.04.2024, the RP had revised his decision and rejected the claim of the Applicant. The Applicant had challenged the conduct of the RP for being beyond his powers as conferred under the Code.

16. In this regard, we would refer to the observations of the Appellate Tribunal in ***Union Bank of India vs. M/s Rajdeep Clothing and Advisory Private Limited & Ors. [Company Appeal (AT) (Ins) No. 399/2021],*** *decided on 05.12.2022:*

> *"23. ... Now, coming to the powers of IRP/RP, it is apparent that they are responsible for collating the claims, revising the claims from time to time based upon information coming to their possession or being provided by the creditors. We have found no provision in the CODE or Regulations which permit for review of status of a creditor as all provisions focus only on the amount of claim.* ***Thus, IRP /RP cannot, on its own, review and reverse his own earlier decision without approval of Adjudicating Authority.*** *...* ***We are further of the view that scope of updating exercise is limited and confine to the determination of quantum of claim and, by no stretch of imagination it gives any power to the IRP /RP to review the status of a creditor.*** *This position does not mean that once a creditor is categorized, this category cannot be changed. For this purpose, the right approach would be to file an application before the Adjudicating Authority with the relevant material for appropriate directions and the decision of the Adjudicating Authority would resolve that issue. This position will not change even if report of some External Expert has been taken by RP on its own or with the approval of COC. It may not be out of place to mention that this decision of the Adjudicating Authority cannot be challenged by RP though COC or the creditor can challenge the same before the Appellate Authority as they may be an aggrieved party."*

17. Similarly, in ***Mr. Avil Menezes, RP of AMW Auto Component Ltd. vs. M/s. Shah Coal Pvt. Ltd. [Company Appeal (AT) (Ins) No. 63/2021****, decided on 03.02.2021,* it was observed by the Appellate Tribunal as follows:

> *"...in terms of subsection (1) of Section 21, he is only supposed to collate the claims which implies comparison with the record and verification. Unlike a Liquidator who is empowered to admit or reject a claim under Section 40 of the 'I&B Code' against which an appeal lies to the Adjudicating Authority (NCLT), the Resolution Professional is not vested with any adjudicatory powers and being a part of the mechanism all actions taken by him are subject to control of the Adjudicating Authority."*

18. The submission which has been pressed by the RP is that the Code does not restrict the RP from rejecting a claim after its initial acceptance if the same is found to be in contrary to the provisions of the law. He further submitted that unlike in facts of the cases cited by Applicant, the RP, in

the present case, had immediately rejected the admitted claim after coming across the Judgement laying down the correct position of law on treatment of uninvoked guarantee.

19. We are not convinced by the submission of the RP. The principle laid down in the judgments cited in the foregoing paragraphs does not classify any particular situation during which the RP may or may not review a claim. Rather it has been unequivocally held that the role of RP under the Code is limited to verification and collation of claims and not review or adjudication of the status of a creditor.

20. IBC is a complete Code in itself. The powers and duties of the IRP/RP are defined and such powers/duties being statutory in nature cannot be overstepped by the RP. Further, under the Code as also held in a catena of judgments, the role of RP is administrative and not adjudicatory. Once IRP had admitted the claims of the creditor, he could not have subsequently rejected it *suo-moto* in the garb of revision/ re-verification of the claims. This would amount to adjudication of the claims of the creditors which RP is not entitled to do. Thus, without prejudice to our decision on merits, we are of the view that the rejection email dated 26.04.2024 is liable to be quashed on this ground alone. Accordingly, Issue I is answered in affirmative.

Issue II

21. From the email dated 26.04.2024 communicated by the RP to the Applicant, it can be seen that the RP considered the uninvoked guarantee as the basis for rejecting the Applicant's claim. The RP has relied on the judgments of ***Ghanashyam Mishra*** *(supra)* and ***IDBI Trusteeship*** *(supra).*

22. In this regard, it is apropos to look at Regulation 14 of the CIRP Regulations which reads as follows:

> *"**Determination of amount of claim.***
> *14**.** (1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution*

professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.

(2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision."

23. It is quite apparent that the above Regulation recognizes claims which are contingent in nature and imposes a duty on the RP to make reasonable estimates of the amount of the claim based on the information available with him.

24. Further, it is pertinent to note that during the pendency of the application, the case of ***China Development Bank vs. Doha Bank Q.P.S.C. & Ors. [2024 SCC OnLine SC 3829]***, came to be decided by the Hon'ble Supreme Court (*judgment dated: 20.12.2024*). Mr. Shyam Kapadia, Ld. Counsel for the Applicant in his oral arguments, and in the written submissions, has relied upon the said judgment to contend that a claim arising out of an uninvoked guarantee is liable to be admitted by the RP.

25. In ***China Development Bank*** *(supra),* the Hon'ble Supreme Court discussed on the definition of debt, claims (including contingent claims) and uninvoked guarantees etc. Some of the relevant paragraphs are extracted below:

> *"48. …In terms of sub-section (11) of Section 3, debt is a liability or obligation in respect of a claim which is due from any person and includes a financial debt or operational debt. As noted earlier, a claim is a right to payment whether or not, such right is reduced to judgment and whether it is disputed or undisputed. The right to payment can be legal, equitable, secured or unsecured. Therefore, if there is a liability or obligation in respect of a payment which is disputed, it still becomes a claim. Once there is a liability or obligation in respect of a claim, it becomes a debt. Once there is a financial debt, the person to whom a debt is owed, becomes a Financial Creditor.*

REQUIREMENT OF OCCURRENCE OF 'DEFAULT'

61. There is an argument canvassed before us that default under the DoH has not occurred. We have already quoted the definition of 'financial debt' under Section 5(8) of the IBC. There is no requirement incorporated therein that a debt becomes financial debt only when default occurs. Under Section 5(7) of the IBC, any person to whom financial debt is owed becomes a Financial Creditor even if there is no default in payment of debt. Therefore, this argument deserves to be rejected.

62. On this aspect, we may also note that under Section 3(12), 'default' has been defined. This definition of 'default' becomes relevant only while invoking the provisions of Section 7(1) of the IBC when the CIRP is sought to be initiated by the Financial Creditor. Section 7(1) provides that a Financial Creditor can initiate CIRP against the Corporate Debtor when there is a default on the part of the Corporate Debtor. There is no requirement under Section 5(8) of the IBC that there can be a debt only when there is a default. The moment it is established that the financial debt is owed to any person, he/she becomes a Financial Creditor. In this case, we are concerned with the claim made by the appellants. A public announcement of CIRP under Section 15(1) must contain the last date of submission of claims as may be specified. Thus, if a person has a claim within the meaning of Section 3(6), he can submit it on public announcement contemplated by Section 15 being made. A Financial Creditor has a claim as explained earlier. Therefore, for submitting the claim by a Financial Creditor, there is no requirement of actual default."

*"**EXTINGUISHMENT OF CONTINGENT CLAIM ON IMPOSITION OF MORATORIUM***

***63.** Arguments have been canvassed that clause 5(iii) of the DoH is a contingent contract wherein the contingent event is the shortfall between realisation and expenses. The clause applies to the shortfall in the total liability of the borrower after necessary amount is realised from the hypothecated assets. It is contended that the contract has become impossible, since owing to the moratorium imposed, the*

hypothecated properties could not be sold and the shortfall could not arise.

Section 14(1) imposes an embargo or prohibition on certain acts. However, it does extinguish the claim. If the argument that the claims of all the creditors of the Corporate Debtor are extinguished once the moratorium comes into force is accepted, no creditor would be able to file a claim. For example, if money advanced is secured by a promissory note or a negotiable instrument, a suit for recovery based on the said documents will not lie once a moratorium comes into force. But, the liability under the documents will continue to exist. In fact, after moratorium, no creditor can recover any dues from the Corporate Debtor. But still, there is a provision for making a claim. Hence, the argument based on moratorium deserves to be rejected. The DoH will continue to be valid. However, on the basis of the DoH, something which is prohibited by Section 14, cannot be done. Therefore, Section 14 will be of no assistance to the 1st respondent-Doha Bank.

***

65. Another argument was canvassed based on the definition of 'claim' under Section 3(6) of the IBC. If the right to payment exists or if a breach of contract gives rise to a right to payment, the definition of 'claim' is attracted. ***Even if that right cannot be enforced by reason of the applicability of the moratorium, the claim will still exist. Therefore, whether the cause of action for invoking the guarantee has arisen or not is not relevant for considering the definition of 'claim'.****"*

(emphasis provided)

26. The above observation by Hon'ble Supreme Court settles the issue surrounding the admissibility of claims arising out of uninvoked guarantees.

27. Mr. Pulkit Sharma, Ld. Counsel for the RP, vehemently argued that the principle laid down in ***China Development Bank*** *(supra)* cannot be a binding precedent since the said judgment passed by a Two-Judge Bench did not consider the judgment passed by a Three-Judge Bench in ***Ghanashyam Mishra*** *(supra).* He further submits that as per the ruling in ***M/s Trimurthi Fragrances (P) Ltd. Vs Government of N.C.T. of Delhi,***

decision of a Bench of larger strength would prevail over the decision of a Bench with a lesser strength.

28. We are under obligation to interpret both the judgments to arrive at a conclusion on which of the two judgments passed by Hon'ble Supreme Court would be applicable in the present case. To appreciate this, it is first apposite to look at the observations by the Appellate Tribunal in the case of ***IDBI Trusteeship*** *(supra)* in which case, the claim arising out of an uninvoked guarantee was rejected by the Appellate Tribunal relying on ***Ghanashyam Mishra*** *(supra).* The relevant observations are reproduced as under:

> *"The Hon'ble Supreme Court in 'Ghanshyam Mishra and Sons Private Limited' Vs. 'Edelweiss Asset Reconstruction Company Limited', (2021) 9 SCC 657, (Supra), has addressed to this issue. It is pertinent to reproduce the relevant paras with respect to invocation of Corporate Guarantee as hereunder:*
> *xxx*
> *27. It is seen from the aforenoted Judgement that an uninvoked Corporate Guarantee cannot be considered as a 'Matured Claim'. In para 133 of the aforenoted Judgement the Hon'ble Supreme Court has upheld the finding of the Adjudicating Authority that once the moratorium was applied under Section 14 of the Code, a Corporate Guarantee cannot be invoked. Though this is a case where the Resolution Plan has been approved, the fact remains that the Principle that a Corporate Guarantee cannot be invoked once the CIRP has commenced and that an uninvoked Corporate Guarantee as on date of filing of the Claim, cannot be considered as 'Matured Claim' has been laid down by the Hon'ble Supreme Court.*
>
> *30. ... Therefore, we are of the view that the ratio of the Hon'ble Supreme Court in 'Ghanshyam Mishra and Sons Private Limited' (Supra), is squarely applicable to the facts of this case and hence we are of the considered view that when the 'Corporate Debtor' is a 'Guarantor' and when the 'Corporate Guarantee' has never been invoked prior to the commencement of the CIRP, as on the date of filing of the Claims, the 'Right to Payment' has not accrued."*

29. Now, let us come to the relevant observations of Hon'ble Supreme Court in ***Ghanashyam Mishra*** *(supra):*

"102. ...From the record placed before NCLT, it was clear, that EARC had not invoked the corporate guarantee. NCLT therefore posed a question to itself, as to whether an uninvoked corporate guarantee could be considered as matured claim of the applicant. NCLT found, that once the moratorium was applied under Section 14 of I&B Code, EARC was prevented from invoking the corporate guarantee. NCLT further found that the OMML's guarantee had not been invoked by EARC till the date of completion of CIRP process and once the moratorium was imposed, it could not invoke the corporate guarantee. NCLT therefore found, that there is no illegality or irregularity in not admitting the claim of EARC.

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115. Shri Bhushan, learned counsel appearing on behalf of EARC, strongly relying on the judgment of NCLAT dated 14.8.2018 passed in Export Import Bank of India vs. Resolution Professional JEKPL Private Limited, submits, that NCLAT itself in the said case had held, that invocation of corporate guarantee has no nexus with filing of the claim pursuant to public announcement made under Section 13(1)(b) read with Section 15(1)(c) of the I&B Code and also for collating the claim under Section 18(1)(b) or for updating claim under Section 25(2)(e). He submits, that Civil Appeal challenging the said judgment and order has been dismissed by this Court vide order dated 23.1.2019.

116. He submits, that NCLAT itself in the said case had directed EXIM Bank and Axis Bank to be treated as 'financial creditors' and had further directed them to be given representation on CoC. He submits, that, however, in the present case, NCLAT has taken a contrary view. He therefore submits, that in the alternative this Court should direct RP/CoC to treat EARC as a 'financial creditor' and give it representation on CoC and take a decision in accordance with law.

117. We find, that the said case, on facts, would not be applicable to the case at hand. No doubt, that the appeal filed against the judgment and order of NCLAT dated 14.8.2018 has been dismissed by this Court on 23.1.2019. However, it is a settled law, that dismissal of a Special Leave Petition/Appeal does not amount to affirmation of the view taken in the judgment impugned in the Special Leave Petition/Appeal.
xxx

119. It is to be noted, that in the appeal before NCLAT, the EXIM Bank as well as Axis Bank had taken steps immediately after the claim of said Banks on the basis of corporate guarantee came to be rejected by RP/ CoC. After rejection of the claim, said Banks had filed an application under Section 60(5) before NCLT. On NCLT rejecting the said claim, those Banks had approached NCLAT in appeals, which were allowed and the order, as stated hereinabove, was passed.

120. In the present case, the claim of EARC was rejected on 22.1.2018. Instead of challenging the said rejection, EARC participated in the proceedings and was one of the resolution applicants. Not only that, in the first round, it was a successful bidder being ranked H1 bidder.

However, since in the negotiations it failed to satisfy CoC, fresh bids were invited from the resolution applicants, which had submitted their EOI. In the 12 th meeting of CoC held on 25.4.2018, the resolution plan of GMSPL was approved by 89.23% of the voting shares. Only thereafter, EARC filed two applications; one challenging the approval of resolution plan of GMSPL by CoC and another challenging rejection of its claims by RP/ CoC.

121. It could thus be clearly seen, that EARC was taking chances. After rejection of its claim, it did not choose to challenge the same by an application under Section 60(5) but waited till the decision of CoC. During this period, it was actually pursuing its resolution plan. Only after its resolution plan was not approved and the resolution plan of GMSPL was approved, it filed the aforesaid two applications. Apart from that, as already observed hereinabove, in the resolution plan of EARC itself, it has provided for extinguishment of all claims not forming part of resolution plan.

122. Even otherwise, if for the sake of argument, it is held, that EARC was entitled to be treated as a 'financial creditor' and entitled for a participation in CoC, still its share was about 9% and as such, the resolution plan of GMSPL would have been passed by a majority of 80%, which is much above the statutory requirement."

30. As can be seen from the above, in ***Ghanashyam Mishra*** *(supra),* the Ld. NCLT had dismissed the claim arising from an uninvoked guarantee. When the matter went up to the Supreme Court, the Hon'ble Supreme Court though noted the ground of dismissal of claim, however, did not give any

concrete finding on the same. There is no legal principle that has been laid down by Hon'ble Supreme Court on the admission/rejection of claims based on uninvoked guarantees. Moreover, the facts therein were entirely distinguishable and cannot be applied to the present case.

31. On the other hand, in ***China Development Bank*** *(supra),* the Hon'ble Supreme Court had comprehensively discussed on the scope and nature of guarantee as well as the admissibility of uninvoked guarantee. The observation that, *"...whether the cause of action for invoking the guarantee has arisen or not is not relevant for considering the definition of 'claim'",* clarifies the position of claims under invoked guarantee.

32. Moreover, we also note that the Appellate Tribunal itself in a recent case of ***Nilesh Sharma, RP of Today Homes and Infrastructure Pvt. Ltd. vs. Indian Renewable Energy Development Agency Ltd. [Company Appeal (AT) (Ins) No. 1039/2024]****, decided on 21.08.2025,* had followed the ruling in ***China Development Bank*** *(supra)* while holding that a claim can be admitted even on the basis of an uninvoked guarantee. The relevant observations are extracted below:

> *"22. The judgment in Ankur Kumar (supra) relied by learned Counsel for the Appellant is the judgment where this Tribunal has taken the view that when the corporate guarantee was not invoked, the claim admitted in CIRP is not matured. In the above case, the Adjudicating Authority has allowed an IA filed by the Financial Creditor to accept the claim, which was allowed, against which the RP has filed an Appeal, which Appeal was allowed.*
>
> *23. We notice that judgment of the Ankur Kumar was delivered on 06.02.2025, whereas judgment of the Hon'ble Supreme Court in China Development Bank was delivered earlier on 20.12.2024 and the judgment of the Hon'ble Supreme Court in China Development Bank was neither placed before this Tribunal, nor noticed by this Tribunal in Ankur Kumar's case. We, thus, need to follow the judgment of the Hon'ble Supreme Court in China Development Bank with respect to definition of 'claim' and the claim submitted by Respondent No.1.*

24. Now, coming to the observations made by the Adjudicating Authority in the impugned order regarding that RP has entered into adjudication of the claim. Suffice it to say that the RP under the CIRP Regulations, under Regulation 13, has a duty to verify every claim as on the insolvency commencement date. The RP, thus, for verification of the claim has to look into the nature of the claim, the basis of the claim, the fact that whether the RP has verified the claim or not, it cannot be said to be adjudication of the claim. The verification of claim is a statutory duty of the RP, enforced by Regulation 13. The decision of the RP to verify or not verify a claim, may be erroneous, but that cannot be said to be adjudication of the claim by RP. The Adjudicating Authority has rightly held that RP has no adjudicatory function, which is the law laid down by the Hon'ble Supreme Court in Swiss Ribbons. We, thus, are of the view that the act of not verifying the claim by the RP and communicating email dated 13.07.2021 and 23.01.2021 giving reason for non-verification, cannot be said to be in excess and abuse of the duties of the RP. We, thus, are of the view that adverse observations made in paragraph 5(viii) against the RP, need to be deleted and further directions issued in paragraph 6(ii) forwarding copy of the order to IBBI is also needs to be deleted.

25. We have noticed that under paragraph 5(ix), which is the operative portion where the Adjudicating Authority directed the RP to reconsider the claim of the Applicant (Respondent No.1 herein), the Adjudicating Authority had neither entered into the nature of the claim of Respondent No.1 nor the quantification. We, thus, are of the view that the directions issued by Adjudicating Authority to reconsider the claim cannot be faulted in the facts of the present case and the law as noticed above and the RP has to carry out reconsideration of the claim of Respondent No.1 and take a decision. While entertaining the Appeal on 24.05.2024, we had only directed that no further steps shall be taken by IBBI in pursuance of the impugned order. In the Appeal there was no direction with regard to reconsideration of Respondent No.1's claim by the RP. We, thus, observe that in event the claim of Respondent No.1 has not yet been considered, the same may be reconsidered as per directions of the Adjudicating Authority, in accordance with law."

33. Thus, on a harmonious construction of all the judgments placed before us, we are of earnest view that the judgment of Hon'ble Supreme Court in ***China Development Bank vs Doha Bank*** *(supra)* will be applicable in the facts and circumstances of the present case.

34. In the light of above discussions, we hold that the Applicant's claim on account of uninvoked guarantee is admissible. Accordingly, the RP's rejection email dated 26.04.2024 is set aside and we direct the RP to verify the claim of the Applicant in accordance with law. Thus, Issue II is also answered in positive.

35. At this juncture, we may add that there is an application bearing no. IA/2506/2024 filed by RP seeking reversal of preferential transaction under one of the Agreements entered by Corporate Debtor which may have a bearing on the claim filed by the Applicant. We clarify here that the admission of the claim of the Applicant shall be without prejudice and subject to the outcome of the said IA/2506/2024.

36. With above observations, present application is **disposed of**.

Sd/-
Hariharan Neelakanta Iyer
Member (Technical)

Sd/-
Lakshmi Gurung
Member (Judicial)

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